

OSHKOSH CITY CODE

CITY OF OSHKOSH
GARDEN COUNTY, NEBRASKA

Ordinance No. 440
ADOPTED AUGUST 16, 2018

Prepared by:
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ORDINANCE NO. 440

AN ORDINANCE OF THE CITY OF OSHKOSH, GARDEN COUNTY, NEBRASKA, TO AMEND AND REVISE ITS ENTIRETY THE OSHKOSH CITY CODE; REPEALING ORDINANCE NO. 388; PROVIDE FOR PUBLICATION IN BOOK FORM; AND TO PROVIDE WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.

Be it ordained by the Mayor and Council of the City of Oshkosh, Nebraska that:

SECTION 1.

Ordinance No. 388 of the City of Oshkosh is replaced in its entirety by this ordinance known as the "Oshkosh City Code".

SECTION 2.

Ordinance No. 388 and all other ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 3.

This ordinance shall be and is on the date of passage published in book form by authority of the City Council as allowed in Neb. R.S. 17-613 and the publication date shall be the date of the passage as stated herein.

SECTION 4.

This Ordinance (Oshkosh City Code) shall be in full force and effect from and after its passage, approval and publication according to law.

Passed, approved and adopted on August 16, 2018.

James Levick, Mayor

ATTEST:

LeAnn Brown, City Clerk

CHAPTER I: GENERAL PROVISIONS

ARTICLE

1-1. GENERAL PROVISIONS

2-1. CITY STANDARDS

ARTICLE 1: GENERAL PROVISIONS

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§ 1-1.1 TITLE OF CODE.

This codification of ordinances by and for the City of Oshkosh, Nebraska, shall be designated as the Oshkosh City Code and may be so cited.

§ 1-1.2 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.

§ 1-1.3 APPLICATION TO FUTURE ORDINANCES.

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

§ 1-1.4 CAPTIONS.

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

§ 1-1.5 DEFINITIONS.

1-1.5.1 *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.

1-1.5.2 *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 of Oshkosh, Nebraska.

CITY COUNCIL, COUNCIL, or CITY COUNCIL. The legislative body of the City of Oshkosh.

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. Garden County, Nebraska.

MAY. The act referred to is permissive.

MONTH. A calendar month.

OATH. 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.

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

YEAR. A calendar year, unless otherwise expressed.

§ 1-1.6 RULES OF INTERPRETATION.

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

1-1.6.1 **AND** or **OR**. Either conjunction shall include the other as if written “and/or,” if the sense requires it.

1-1.6.2 *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, such requisition shall be satisfied by the performance of such act by an authorized agent or deputy.

1-1.6.3 *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.

1-1.6.4 *General term*. A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

§ 1-1.7 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.

§ 1-1.8 REFERENCE TO OTHER SECTIONS.

Whenever in one section reference is made to another section hereof, such reference shall extend and apply to the section referred to as subsequently amended, revised, re-codified, or renumbered unless the subject matter is materially altered by the amendment or revision.

§ 1-1.9 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.

§ 1-1.10 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 such intent, such spelling shall be corrected and such 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 such error.

§ 1-1.11 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.

§ 1-1.12 REASONABLE TIME.

1-1.12.1 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 such act or the giving of such notice.

1-1.12.2 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.

§ 1-1.13 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 such ordinances prior to repeal.

§ 1-1.14 EFFECTIVE DATE OF ORDINANCES.

All ordinances passed by the Mayor and City Council requiring publication shall take effect from and after the due publication thereof.

Statutory reference:

Statutes affecting publication, see Neb. RS 17-613 and 19-3701

§ 1-1.15 ORDINANCES UNAFFECTED.

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. The following ordinances shall be considered to be ordinances of a temporary or special nature:

- 1-1.15.1 Ordinances vacating streets and alleys.
- 1-1.15.2 Ordinances authorizing or directing public improvements to be made.
- 1-1.15.3 Ordinances levying taxes or special assessments.
- 1-1.15.4 Ordinances granting any right, privilege, franchise, or license to persons, firms, or corporations.
- 1-1.15.5 Ordinance providing for the issuance of bonds or other instruments of indebtedness.
- 1-1.15.6 Ordinances establishing grades.
- 1-1.15.7 Real estate transactions.
- 1-1.15.8 Any other ordinance which by nature would be considered special.

§ 1-1.16 REPEAL OR MODIFICATION OF ORDINANCE.

1-1.16.1 Whenever any ordinance or part of an ordinance shall be 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.

1-1.16.2 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.

1-1.16.3 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

§ 1-1.17 STATUTORY REFERENCES.

1-1.17.1 A statutory cite indicates that the text of the section reads substantially the same as the statute. Example: (Neb. RS 17-100)

1-1.17.2 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:

Statutory reference:

For provisions concerning the inspection of public records, see Neb. RS 84-712 et seq.

§ 1-1.18 SUPPLEMENTATION OF CODE OF ORDINANCES.

1-1.18.1 *Discretion.* When preparing a supplement to this municipal code, the person making the supplement may make formal non-substantive changes in ordinances and parts of ordinances included in the supplement as necessary to embody them into a unified code.

1-1.18.2 *Prohibition.* In no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the code and not repealed by any ordinance.

§ 1-1.19 GENERAL PENALTY.

1-1.19.1 Any person, or that person's agents or servants, who violates any of the provisions of this municipal 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. The first offense may be paid by waiver at \$25 plus costs at the office of the County Clerk/Magistrate office. Any violation after the first is not waiver able and shall require an appearance in the County Court. A new violation shall be deemed to have been committed every 24 hours of failure to comply with the provisions of this code.

1-1.19.1.1 Whenever a nuisance exists as defined in § 5-3.5, the municipality may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law.

1-1.19.1.2 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, Neb. RS 18-1720 and 18-1722

Ordinance enforcement powers, see Neb. RS § 17-505

ARTICLE 2-1: CITY STANDARDS

Section

- 2-1.1 Official corporate seal
- 2-1.2 City limits

§ 2-1.1 OFFICIAL CORPORATE SEAL.

2-1.1.1 There shall be owned by the city and kept in the office the City Clerk a common seal of the corporation having engraved thereon the words “City of Oshkosh, Garden County, Nebraska, Seal.”

2-1.1.2 The City Clerk shall affix an impression of the official seal to all licenses, ordinances and other papers issued by order of the Mayor and City Council to be signed by the Mayor and countersigned by the Clerk.

Statutory reference:

Authorization, see Neb. RS 17-502

Seal to be engraved or ink, see Neb. RS 64-118

§ 2-1.2 CITY LIMITS.

2-1.2.1 As used in this code, the terms ***CITY LIMITS, CORPORATE LIMITS OF THE CITY*** and all similar terms shall mean the area included within the boundaries of the original Town of Oshkosh plus all other areas added by annexation or otherwise.

2-1.2.2 There shall be kept in the office of the City Clerk one or more maps which shall show all areas which are located within the city limits. The map or maps shall be kept available for public inspection during regular business hours at the City Hall.

CHAPTER 2: ADMINISTRATION

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ARTICLE 2-1: CITY COUNCIL; ORDINANCES

Section 2-1

Section

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§ 2-1.1 GENERALLY.

In addition to the public meeting requirements stated in §§ 6.1 through 6.66, City Council meetings are subject to the following section.

§ 2-1.2 REGULAR MEETINGS; AGENDA; QUORUM.

2-1.2.1 The meetings of the City Council shall be held at city hall. Regular meetings shall be held on the second Thursday of each month at the hour of 7:30 p.m.

2-1.2.2 Requests for placement on the agenda for a regular meeting will close at 10:00 a.m. on the Wednesday before the meeting.

2-1.2.3 A majority of all the members elected to the City Council shall constitute a quorum for the transaction of any business, but a smaller number may adjourn from day to day and demand the attendance of absent members. Whether a quorum is present or not, all absent members shall be sent for and demanded to attend.

2-1.2.4 Unless a greater vote is required by law, an affirmative vote of at least one-half of the elected members shall be required for the transaction of any business.
(Neb. RS 17-105)

2-1.2.5 At the hour appointed for the 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. In the absence of both the Mayor and the President of the Council, the City Council members shall elect a President pro tempore.

Statutory reference:

Election, qualifications, term, see Neb. RS 17-104

§ 2-1.3 SPECIAL MEETINGS.

2-1.3.1 Special meetings may be called by the Mayor or by three members of the City Council, the object of which shall be submitted to the Council in writing. The call and object, as well as the disposition thereof, shall be entered upon the journal by the City Clerk.
(Neb. RS 17-106)

2-1.3.2 On filing the call for a special meeting, the City Clerk shall notify the Council members of the special meeting, stating the time and its purpose. Notice of a special meeting need not be given to a Council member known to be out of the state or physically unable to be present.

2-1.3.3 All ordinances passed at any special meeting shall comply with procedures set forth in §§ 3.8 through 3.16.

§ 2-1.4 ORDER OF BUSINESS.

2-1.4.1 All regular and special meetings of the City Council shall be open to the public. The business of the Council shall be taken up for consideration and disposition in the following order:

2-1.1.4.1 Roll call;

2-1.1.4.2 Agenda;

2-1.1.4.3	Approval of minutes of previous meeting;
2-1.1.4.4	Consideration of claims;
2-1.1.4.5	Reports of officers, boards and commissions;
2-1.1.4.6	Reports of standing committee chairpersons;
2-1.1.4.7	Public Comment;
2-1.1.4.8	Unfinished business;
2-1.1.4.9	New business;
2-1.1.4.10	Adjournment.

2-1.4.2 Provided, that any matter to come before the Council which requires a public hearing shall be set for a time certain and be taken up at that time, or immediately upon the conclusion of the item of business before the Council at that time; and provided, that the presiding officer may refer back to any order of business after passing it if there is no objection by any member of the Council.

2-1.4.3 All committees, boards and commissions of the City Council shall make their reports in writing when directed to do so by the presiding officer, but no less than once a year at the June meeting. All reports shall be filed with the City Clerk.

2-1.4.4 A motion to adjourn shall always be in order and shall be decided without debate.

§ 2-1.5 READING OF THE MINUTES.

The minutes of the previous meeting shall be read in full; except that reading of the minutes may be waived and the minutes may be approved as written by motion made, seconded and passed by a majority of the members of the City Council present at the meeting.

§ 2-1.6 RULES OF PROCEDURE.

2-1.6.1 *Robert's Rules of Order.* Except as otherwise specified, the City Council shall be governed in all matters of procedure by the latest edition of that compilation of rules of procedure known as *Robert's Rules of Order*.

2-1.6.2 *Rules of debate.*

2-1.6.2.1 In the event the presiding officer is the Mayor, the presiding officer may debate from the chair, subject only to such limitations of debate as are imposed by these rules. In the event the presiding officer is someone other than the Mayor, the presiding officer may move, second and debate from the chair, subject only to the limitations of debate as are imposed by these rules and shall not be deprived of any of the rights and privileges of a member of the City Council by reason of acting as the presiding officer.

2-1.6.2.2 Every member of the Council desiring to speak shall address the presiding officer, and upon recognition by the presiding officer, shall confine himself or herself to the question under debate, avoiding all personalities and indecorous language.

2-1.6.2.3 A member of the Council, once recognized, shall not be interrupted when speaking, unless it is to call the member to order as otherwise provided by these rules. If a member, while speaking, is called to order, the member shall cease speaking until the question of order is determined; and if the member is determined to be in order, the member shall be permitted to proceed.

2-1.6.2.4 A member of the Council having the floor shall yield the floor for a point of order addressed to the presiding officer, a question of personal privilege raised by any member, and an inquiry for information addressed to the presiding officer. The member may, upon request of any other member, temporarily yield the floor for any interrogation or statement by the other member, at the conclusion of which the member will again be entitled to the floor.

2-1.6.2.5 The Council may, by a general rule, limit debate or discussion by the Council on any matter or may, by a motion adopted at the time, limit debate or discussion by the Council on any particular subject or motion; and the Council may, by majority vote of the members present, extend any such limit. Neither the Mayor nor any member of the Council shall speak more than once on any subject under discussion without permission from the presiding officer.

2-1.6.2.6 The member of the Council making a motion shall have the privilege of closing the debate.

2-1.6.2.7 A motion to reconsider any action taken by the Council may be made only on the day such action was taken. It may be made either during the same session or at a recessed session thereof. A motion to reconsider must be made by one of the prevailing side but may be seconded by any other member; and it may be made at any time, shall have precedence over all other motions or while a member has the floor, and shall be debatable. Nothing in this subsection shall be construed to prevent any member of the Council from making or remaking the same or any other motion at a subsequent meeting of the Council.

2-1.6.2.8 A member of the Council may request the privilege of having entered in the minutes an abstract of the member's statement on any subject under consideration by the Council. The request shall be directed to the presiding officer, who shall state the question to the Council; and upon assent thereto by a majority of the members present at the meeting, the statement shall be entered in the minutes.

2-1.6.2.9 Upon direction by the presiding officer and assent thereto by a majority of the members present at the meeting, the City Clerk or Assistant City Clerk shall enter in the minutes a synopsis of the discussion of any question coming before the meeting.

2-1.6.3 *Protests by members against Council action.* Any member of the City Council shall have the right to have the reasons for his or her dissent from or protest against any action of the Council entered on the minutes.

§ 2-1.7 DECORUM.

2-1.7.1 While the City Council is in session, the Mayor and the members of the Council shall preserve decorum and order, and neither the Mayor nor any member of the Council shall, by conversation or otherwise, delay or disturb the proceedings or the peace of the Council, nor disturb the Mayor or any member of the Council while speaking, nor refuse to obey the orders of the Mayor or Council, except as otherwise provided in this chapter.

2-1.7.2 While the Council is in session, no person shall make personal, impertinent or slanderous remarks, nor otherwise disturb the order and decorum of any Council meeting. At the direction of the Mayor, the sergeant-at-arms shall remove any person, other than the Mayor or member of the Council, violating the provisions of this division.

2-1.7.3 The Mayor may designate the person to be the sergeant-at-arms at each regular or special meeting of the Council. The sergeant-at-arms shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the meeting.

CITY COUNCIL

§ 2-1.8 SELECTION AND DUTIES.

The members of the City Council shall be elected to serve for a four (4) year term. The City Council shall be the legislative division of the municipal government and shall perform such duties and have such powers as may be authorized by law. The City Council shall maintain the peace, regulate business, protect the public health and safety, and assess such taxes and fees as are necessary and appropriate in the exercise of these functions.

Statutory reference:

Additional provisions, see Neb. RS 32-533

§ 2-1.9 PRESIDENT; ACTING PRESIDENT.

The City Council shall elect one of its own body each year who shall be styled the President of the Council and who shall preside at all meetings of the City Council in the absence of the Mayor. In the absence of the Mayor and the President of the Council, the City Council shall elect one of its own body to occupy that place temporarily, who shall be styled Acting President of the Council. Both the President of the Council and the Acting President of the Council, when occupying the position of the Mayor, shall have the same privileges as the other members of the City Council, and all acts of the President of the Council, or Acting President of the Council, while so acting, shall be as binding upon the City Council, and upon the municipality as if done by the elected Mayor.

(Neb. RS 17-148)

§ 2-1.10 MAYOR SELECTION AND DUTIES.

The Mayor shall be elected at the municipal election and shall serve a four-year term of office. The Mayor shall be a resident and registered voter of the municipality. The Mayor of the municipality shall have the general and immediate control over all property and officials, whether elected or appointed, of the municipality. The Mayor shall preside at all meetings of the City Council and may vote when his or her vote shall be decisive, and the Council is equally divided on any pending matter, or transaction, and the Mayor shall, for the purpose of such vote, be deemed to be a member of the Council. Notwithstanding, the Mayor may not vote in instances where it is contrary to this code or statute, including votes on ordinances. The Mayor's signature must appear on the Municipal Clerk's minutes of all meetings, and he or she must sign all resolutions which have been passed and warrants for the payment of money when ordered by the City Council. The Mayor shall have the power to veto or sign any ordinance passed by the City Council. Any ordinance vetoed by the Mayor may be passed over the veto by a vote of two-thirds of the members of the City Council. If the Mayor neglects or refuses to sign any ordinance and returns it with his or her objections in writing at the next regular Council meeting, the same shall become a law without his or her signature. The Mayor shall from time to time communicate to the Council such information and recommendations as, in his or her opinion, may improve the municipality. The Mayor may require at reasonable intervals any municipal official to exhibit accounts and make reports to the Council on any subject pertaining to the official's office. The Mayor shall have the power to remit fines or pardon any offense arising under the ordinances of the city. The Mayor's territorial authority shall extend over all places within five miles of the corporate limits of the municipality for the enforcement of any health ordinance, and ½ mile in all matters vested in the Mayor except taxation. He or she shall also have such other duties as the City Council may

by resolution confer upon the Mayor or in any other matters which the laws of the State of Nebraska repose in the Mayor.

Statutory reference:

Authorizing and similar provisions, see Neb. RS 17-107, 17-110 through 17-117, and 32-533

§ 2-1.11 COUNCIL ORGANIZATION.

City Council members of this municipality shall take office and commence their duties on the first regular meeting in December following their election. The newly elected Council members who have qualified as prescribed by law, together with the members of the City Council holding over, shall assemble in a regular meeting at the hour and place hereinafter prescribed and perfect the reorganization of the City Council as herein provided, and all appointive offices in which the terms of incumbents are expired shall be filled by appointment. After the meeting has been called to order, the minutes of the previous meeting approved by the old Council, and old business addressed and handled, the City Clerk shall report to the City Council the names of all City Council members-elect and Mayor who have qualified for their respective offices, and this report shall be spread upon the minutes of the meeting preceding the roll call of the new Council. After ascertaining that all members are duly qualified, the Council shall then elect one of its own body who shall be styled as "President of the Council." The Mayor shall then nominate candidates for appointive offices. He or she shall then proceed with the regular order of business. It is hereby made the duty of each and every member of the Council, or his or her successor in office, and of each officer elected to any office to qualify prior to the first regular meeting in December following election

Statutory reference:

Council member qualifications, see Neb. RS 17-104

Elections at large, see Neb. RS 32-554

BONDS AND OATHS

§ 2-1.12 BONDS; FORM.

Official bonds of the city shall be in form, joint and several, and shall be made payable to the city in such penalty as the City Council may set by resolution, provided that the penalty amount on any bond shall not fall below the legal minimum, when one has been set by the State of Nebraska, for each particular official. All official bonds of the city officials shall be executed by the principal named in such bonds and by at least two sufficient sureties who shall be freeholders of the county, or by the official as principal and by a guaranty, surety, fidelity, or bonding company, provided that no city official, while still in his or her official term of office, shall be accepted as surety on any other official's bond, contractor's bond, license bond, or appeal bond under any circumstances. Only companies that are legally authorized to transact business in the State of Nebraska shall be eligible for suretyship on the bond of an official of the city. All said 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 the city and any persons who may be injured by a breach of the conditions of such bonds. 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 said instrument by the Mayor and City Clerk pursuant to the said approval of the City Council. All bonds shall be paid out of the General Fund of the City of Oshkosh, Nebraska. All official bonds, meeting the conditions herein, shall be filed with the City Clerk for his or her official records, and it shall be the duty of the City Clerk to furnish a certified copy of any bond so filed upon the payment of a fee, which shall be set by resolution of the City Council. In the event that the sureties on the official bond of any officer of the city, in the opinion of the City Council, become insufficient, the City Council may, by resolution, fix a reasonable time

within which the said officer may give a new bond or additional sureties as directed. In the event that the officer should fail, refuse, or neglect to give a new bond or additional sureties to the satisfaction and approval of the City Council, then the office shall, by such failure, refusal, or neglect, become vacant, and it shall be the duty of the City Council to appoint a competent and qualified person to fill the said office. Any official who is re-elected to office shall be required to file a new bond after each election.

Statutory reference:

Bonds generally and similar provisions, see Neb. RS 11-103 through 11-118

Power to require bonds from officers, see Neb. RS 17-604

§ 2-1.13 OATH OF OFFICE; CITY OFFICIALS.

2-1.13.1 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.”

2-1.13.2 If any such officer is not required to give bond, the oath shall be filed in the office of the City Clerk. (Neb. RS 11-101)

§ 2-1.14 RESTRICTIONS ON OTHER EMPLOYMENT OR ELECTIVE OFFICE.

2-1.14.1 The Mayor and members of the City Council shall hold no other elective or appointive office or employment with the city, except as provided by ordinance.

2-1.14.2 For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ELECTIVE OFFICE. Any office which has candidates nominated or elected at the time of a statewide primary election, any office which has candidates nominated at the time of a statewide primary election and elected at the time of a statewide general election, any office which has candidates elected at the time of a statewide general election, any office which has candidates nominated or elected at a city or village election, and any office created by an act of the Legislature which has candidates elected at an election and includes an office which is filled at an election held in conjunction with the annual meeting of a public body created by an act of the Legislature.

HIGH ELECTIVE OFFICE. A member of the Legislature, an elective office described in article IV, section 1 or 20, or article VII, section 3 or 10, of the constitution of Nebraska, or a county, city, or school district elective office. (Neb. RS 32-109)

2-1.14.3 No candidate for member of the Legislature or an elective office described in article IV,

section 1 or 20 or article VII, section 3 or 10, of the constitution of Nebraska shall be eligible to file as a candidate, to petition on the ballot as a candidate, to accept a nomination by a political party convention, caucus, or committee to fill a vacancy, or to be a declare write-in candidate for more than one elective office to be filled at the same election except for the position of delegate to a county, state, or national political party convention. No candidate for any other high elective office shall be eligible to file as a candidate, to petition on the ballot as a candidate, to accept a nomination by a political party of by party convention, caucus, or committee to fill a vacancy, or to be declared a write-in candidate for more than one high elective office to be filled at the same election. (Neb. RS 32-603)

2-1.14.4 Except as provided in divisions 3.6.5 or 3.6.7 of this section, no person shall be precluded from being elected or appointed to or holding an elective office for the reason that he or she has been elected or appointed to or holds another elective office.

2-1.14.5 No person serving as a member of the Legislature or in an elective office described in article IV, section 1 or 20, or article VII, section 3 or 10, of the constitution of Nebraska shall simultaneously serve in any other elective office, except that such a person may simultaneously serve in another elective office that is filled at an election held in conjunction with the annual meeting of a public body.

2-1.14.6 Whenever an incumbent serving as a member of the Legislature or in an elective office described in article IV, section 1 or 20, or article VII, section 3 or 10, of the constitution of Nebraska assumes another elective office, except an elective office filled at an election held in conjunction with the annual meeting of a public body, the office first held by the incumbent shall be deemed vacant.

2-1.14.7 No person serving in a high elective office shall simultaneously serve in any other high elective office.

2-1.14.8 Notwithstanding divisions 3.6.5 through 3.6.7 of this section, any person holding more than one high elective office upon September 13, 1997, shall be entitled to serve the remainder of all terms for which he or she was elected or appointed. (Neb. RS 32-604)

Statutory reference:

Mergers of offices or employment, see Neb. RS 17-108.02

§ 2-1.15 STANDING COMMITTEES.

2-1.15.1 *Appointment; term.* The Mayor shall appoint committee members and receive approval of the City Council. The Mayor shall attempt through appointment, though it shall not be mandatory, that there be one Council member on each Council committee. The Mayor will serve as ex officio member of each standing committee.

2-1.15.2 The purposes of the various standing committees shall be to establish policy for the city, to assist the various Council persons on the committees to develop expertise in a specified area, to review specific problems or situations, and to provide recommendations to the Mayor and Council as a whole. It is not the purpose of the committees to usurp the administrative powers of the Mayor. The various standing committees shall meet on a periodic basis and shall keep accurate minutes and records of their meeting. Staff of the city shall be available to lend assistance to the various committees. The minutes and records of the various committee meetings shall be presented to the Mayor and City Council at a regular monthly meeting.

2-1.15.3 The following standing committees shall be appointed or reappointed each year until changed by the City Council: public utilities, public property, streets and sidewalks.

Statutory reference:

Powers of the Mayor, see Neb. RS 17-107

CITY OFFICERS AND ELECTED OFFICIALS

§ 2-1.16 COMPENSATION OF ELECTED OFFICIALS.

The compensation of any elective official of the city shall not be increased or diminished during the term for which he or she shall have been elected except when there has been a merger of offices, provided that the compensation of the members of the City Council, a board, or commission may be increased or diminished at the beginning of the full term of any member, whether or not the terms of one or more members commence and end at different times. No elected official may be rehired at a greater salary if he or she resigns and desires to be rehired during the unexpired term of office. He or she may be rehired after the term of office during which he or she resigned at a greater salary. All salaries shall be set by ordinance of the City Council and will be available for public inspection at the office of the City Clerk.

Statutory reference:

Compensation for merged offices, see Neb. RS 17-108.02

Compensation of elected offices regulated, see Neb. RS 17-612

§ 2-1.17 CONFLICT OF INTEREST.

2-1.17.1 For purposes of this section, **OFFICER** shall mean:

2-1.17.1.1 Any 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

2-1.17.1.2 Any elected city official.

2-1.17.2 No officer shall have an interest in any contract to which his or her City Council, or anyone for its benefit is a party. The existence of such an interest in any contract renders the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment thereof with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the City Council or by any resident thereof and must be brought within one year after the contract is signed or assigned. Any such 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 City Council has benefited thereby.

2-1.17.2.1 The prohibition in this section shall apply only when the officer or his or her parent, spouse, or child:

2-1.17.2.1.1 Has a business association with the business involved in the contract.

BUSINESS ASSOCIATION means a business:

2-1.17.2.1.2 In which the individual is a partner, limited liability company member, director, or officer; or

2-1.17.2.1.3 In which the individual or a member of the individual's

- immediate family is a stockholder of a 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; or
- 2-1.17.2.1.4 Will receive a direct pecuniary fee or commission as a result of the contract
 - 2-1.17.2.2 The provisions of this section shall not apply if the interested officer:
 - 2-1.17.2.2.1 Makes a declaration on the record to the City Council responsible for approving the contract regarding the nature and extent of his or her interest, prior to official consideration of the contract;
 - 2-1.17.2.2.2 Does not vote on the matter of granting the contract, except that if the number of members of the City Council 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 matter; and
 - 2-1.17.2.2.3 Does not act for the City Council which is party to the contract as to inspection or performance under the contract in which he or she has an interest.

2-1.17.3 The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of any such City Council by a financial institution shall not be considered a contract under the provisions 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. If an officer's parent, spouse, or child is an employee of his or her City Council, 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. Any contract entered into with an interested officer of the City Council shall be subject to applicable competitive bidding requirements and shall be fair and reasonable to the City Council. (Neb. RS 49-14,103.01)

2-1.17.4 The Clerk of the City Council shall maintain, separately from other records, a ledger containing the information listed in this division about every contract entered into by the City Council in which an officer of the body has an interest as specified above for which disclosure is made as provided in division 2-17.2.2.1.

2-1.17.4.1 Such information shall be kept in the ledger for five years from the date of the officer's last day in office and shall include the:

- 2-1.17.4.1.1 Names of the contracting parties;
- 2-1.17.4.1.2 Nature of the interest of the officer in question;
- 2-1.17.4.1.3 Date that the contract was approved by the City Council involved;
- 2-1.17.4.1.4 Amount of the contract; and
- 2-1.17.4.1.5 Basic terms of the contract.

2-1.17.5 The information supplied relative to the contract shall be provided no later than ten days after the contract has been signed by both parties. The ledger 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)

2-1.17.6 An open account established for the benefit of any municipality or entity thereof, with a business in which an officer has an interest, shall be deemed a contract subject to the provisions of this section. The statement required to be filed pursuant to this section shall be filed within ten days after such account is opened. Thereafter, the Clerk shall maintain a running account of all amounts purchased on the open account. Purchases made from petty cash or a petty cash fund shall not be subject to the provisions of this section.
(Neb. RS 49-14,103.03)

2-1.17.7 Notwithstanding divisions 6.21.4 through 6.21.7 of this section, the City Council may prohibit contracts over a specific dollar amount in which an officer of the City Council may have an interest.
(Neb. RS 49-14,103.05)

2-1.17.8 The City Council may be exempt from the provisions of this section contracts involving \$100 or less in which an officer of the City Council may have an interest.
(Neb. RS 49-14,103.06)

2-1.17.9 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 pay a person who is not an officer for the performance of any act, service, or duty, which shall come within the proper scope of the duties of any officer of the city.
(Neb. RS 17-611)

Statutory reference:

Penalty for violation, see Neb. RS 49-14,103.04

Private gain by public officers, see Neb. RS 18-305 through 18-312

Utility officers permitted to serve in elected office, see Neb. RS 70-624.04

2-1.17.10.1 An official or employee of the City of Oshkosh may hire, supervise the hiring of an immediate family member if:

2-1.17.10.1.1 He or she does not abuse his or her official position;

2-1.17.10.1.2 He or she makes a reasonable solicitation and consideration of applications for employment;

2-1.17.10.1.3 He or she discloses the matter to the city council either on the record or in writing; and

2-1.17.10.1.4 The City Council approves the employment or supervisory position.

2-1.17.10.2 The term immediate family member means a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual's spouse as a dependent for federal income tax purposes.

2-1.17.10.3 Abuse of official position includes, but is not limited to, employing an immediate family member who:

2-1.17.10.3.1 Is not qualified for and able to perform the duties of the position;

2-1.17.10.3.2 Is paid an unreasonably high salary; or

2-1.17.10.3.3 Is not required to perform the duties of the position.

2-1.17.10.3.4 In the event that an immediate family member was employed by the city prior to the time that a city council member, or mayor was elected or appointed, the official shall make the required disclosure as soon as reasonably possible after taking office.

Statutory reference:

Hiring of immediate family, see Neb.RS §49-1499.04-.05, §49-1425.

§ 2-1.18 PERSONNEL POLICIES.

The city's personnel policies as set forth in employee's manual are adopted by reference and incorporated herein as fully as if set out at length in the code of ordinances.

§ 2-1.19 VACANCY- MAYOR AND COUNCIL.

Mayor:

2-1.19.1 In the case of any vacancy in the office of Mayor, or in case of his or her disability or absence, the President of the Council shall exercise the office of Mayor for the unexpired term until such vacancy is filled or such disability is removed, or in case of temporary absence, until the Mayor returns. If the President of the Council assumes the office of Mayor for the unexpired term, there shall be a vacancy on the Council.

2-1.19.2 The Mayor shall within four weeks after the meeting at which such notice has been presented, or upon the death of the incumbent, call a special meeting of the City Council at which time the Mayor shall submit the name of a qualified elector to fill the vacancy for the balance of the unexpired term.

2-1.19.3 The Mayor may fill vacancies of city offices by holding a special municipal election to fill such vacancies. If the vacancies are in the office of the majority, then a special municipal election will be conducted by the Secretary of State to fill such vacancies.

2-1.19.4 Upon a majority vote of approval by the City Council the vacancy shall be filled. If a majority vote is not reached, the nomination shall be rejected, and the Mayor shall at the next regular meeting submit the name of another qualified elector. If the vote on the nominee fails to carry by majority vote, the Mayor shall continue at such meeting to submit the names of qualified electors and the City Council shall continue to vote upon such nominations until the vacancy is filled.

City Council:

2-1.19.5 For any other reasons specified by this ordinance, or by law, a vacancy on the City Council shall also exist if a member is absent from more than five consecutive regular meetings of the council unless the absences are excused by a majority vote of the remaining members. 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 council member. If a council member has been absent from six 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. At the hearing, the council member shall have the right to present information on why one or more of the absences should be excused. If the council does not excuse one 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.

(Neb. RS 19-3101)

2-1.19.6 The City Council shall at once give public notice of the vacancy by causing to be published in a newspaper of general circulation with the city or by posting in three public places in the city the office vacated and the length of the unexpired term.

2-1.19.7 No officer who is removed at a recall election or 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 City Council during the remainder of his or her term of office.

2-1.19.8 The Council may fill vacancies of city offices by holding a special municipal election to fill such vacancies. If the vacancies are in the office of the majority, then a special municipal election will be conducted by the Secretary of State to fill such vacancies.

2-1.19.9 All City Council member shall cast a ballot for or against each nominee.

PUBLIC BODY MEETINGS

§ 2-1.20 DEFINITIONS.

2-1.20.1 For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

2-1.20.2 ***MEETINGS.*** 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. (Neb. RS 84-1409(2))

2-1.20.3 *PUBLIC BODY.*

2-1.20.3.1 The City Council;

2-1.20.3.2 All independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies, now or hereafter created by constitution, statute, ordinance, or otherwise pursuant to law; and

2-1.20.3.3 Advisory committees of the bodies listed above.

2-1.20.4 This section shall not apply to subcommittees of the bodies designated in this definition unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body. (Neb. RS 84-1409(1))

§ 2-1.21 MEETINGS TO BE PUBLIC.

2-1.21.1 All public meetings as defined by law shall be held in a city public building which shall be open to attendance by the public. All meetings shall be held in the public building in which the City Council usually holds such meetings unless the publicized notice required by this section designates some other public building or other specified place.

2-1.21.2 The advance publicized notice of all public convened meetings shall be simultaneously transmitted to all members of the City Council and to the public. The notice shall contain the time and specific place for each meeting and either an enumeration of the agenda subjects known at the time of the notice or a statement that such an agenda that is kept continually current shall be readily available for public inspection at the office of the City Clerk during normal business hours. Requests to be placed on the agenda shall close at 10:00 a.m. on the Wednesday prior to a Council meeting. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meetings.

2-1.21.3 The minutes of the City Clerk shall include the record of the manner and advance time by which the advance publicized notice was given, a statement of how the availability of an agenda of the then known subjects was communicated, the time and specific place of the meetings, the names of each member of the City Council present or absent at each convened meeting, and the substance of all matters discussed. The minutes of the City Council shall be a public record open to inspection by the public upon request at any reasonable time at the office of the City Clerk.

2-1.21.4 Any official action on any question or motion duly moved and seconded shall be taken only by roll call vote of the City Council in open session. The record of the City Clerk shall show how each member voted or that the member was absent and did not vote.

Statutory reference:

Meetings required to be public, see Neb. RS 84-1408

Definitions, see Neb. RS 84-1409

Notice, agenda, and the like, see Neb. RS 84-1411

Minutes, roll call, secret ballot, see Neb. RS 84-1413

§ 2-1.22 CLOSED SESSIONS.

2-1.22.1 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 such individual has not requested a public meeting. Closed sessions may be held for but shall not be limited to such reasons as:

- 2-1.22.1.1 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;
- 2-1.22.1.2 Discussion regarding deployment of security personnel or devices;
- 2-1.22.1.3 Investigative proceedings regarding allegations of criminal misconduct; or
- 2-1.22.1.4 Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.
- 2-1.22.1.5 Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

2-1.22.2 The vote to hold a closed session shall be taken in open session. The vote of each member on the question of holding a closed session, the reason for the closed session and the time when the closed session commenced and concluded shall be recorded in the minutes. The public body holding such a closed session shall restrict its consideration to matters during the closed portions to only

those purposes set forth in the minutes as the reason for the closed session and shall be specifically identified at the beginning of 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 shall mean 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 subdivision 2-1.22.1 of this section.

2-1.22.3 Any member of the 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. Such challenge and its disposition shall be recorded in the minutes.

2-1.22.4 Nothing in this section shall be construed to require that any meeting be closed to the public. 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 the provisions of this section. No closed session, informal meeting, chance meeting, social gathering, or electronic communication shall be used for the purpose of circumventing the provisions of this section.

2-1.22.5 The provisions of this section shall 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 and 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)

§ 2-1.23 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 such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. 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(4))

§ 2-1.24 MINUTES.

Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed. The minutes shall be public records and open to public inspection during normal business hours. Minutes shall be written and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier.

(Neb. RS 84-1413(1), (4), and (5))

Statutory reference: Rights of the public, see Neb. RS 84-1412

§ 2-1.25 PUBLIC PARTICIPATION.

2-1.25.1 Subject to the provisions of this section, the public shall have 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 meetings called pursuant to § 6.3, 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.

2-1.25.2 It shall not be a violation 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. No public body shall require members of the public to identify themselves as a condition for admission to the meeting. The body may require any member of the public desiring to address the body to identify himself or herself.

2-1.25.3 No public body shall, for the purpose of circumventing the provisions of this section, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience. 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.

2-1.25.4 An agency which contracts with cities outside the State of Nebraska may hold meetings of any committee outside the State of Nebraska if such meetings are held only in such contracting cities. Final action on any agenda item shall only be taken by the agency at a meeting in the State of Nebraska, which meeting shall comply with Neb. RS 84-1408 to 84-1414.

2-1.25.5 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. Public bodies shall make available at the meeting, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting.
(Neb. RS 84-1412)

RISK MANAGEMENT

§ 2-1.26 INTERGOVERNMENTAL RISK MANAGEMENT.

The City Council and any one or more public agencies, as defined in Neb. RS 44-4303, may make and execute an agreement providing for joint and cooperative action in accordance with Neb. RS 44-4301 through 44-4339 to form, become members of, and operate a risk management pool for the purpose of providing to members risk management services and insurance coverages in the form of group self-insurance or standard insurance, including any combination of group self-insurance and standard insurance, to protect members against losses arising from any of the following:

- 2-1.26.1 General liability;
- 2-1.26.1.1 Damage, destruction, or loss of real or personal property, including but not limited to loss of use or occupancy and loss of income or extra expense resulting from loss of use or occupancy;
- 2-1.26.1.2 Errors and omissions liability; and
- 2-1.26.1.3 Workers' compensation liability.

Statutory reference:

Intergovernmental risk management authorized and regulated, see Neb. RS 44-4301 through 44-4339.

ARTICLE 2-2: ORDINANCES, RESOLUTIONS, AND MOTIONS

Section 2

Ordinance, Resolutions, and Motions

- 2-2.1 Grant of power
- 2-2.2 Procedure for resolutions and motions
- 2-2.3 Ordinance style
- 2-2.4 Ordinance title
- 2-2.5 Reading and passage of ordinances, resolutions, orders, bylaws
- 2-2.6 Publication or posting
- 2-2.7 Certificate of publication or posting
- 2-2.8 Effective date; emergency ordinances
- 2-2.9 Ordinance amendments and revisions

ORDINANCES, RESOLUTIONS, AND MOTIONS

§ 2-2.1 GRANT OF POWER.

The City Council may make all ordinances. Bylaws, rules, regulations, and resolutions, not inconsistent with the laws of the State of Nebraska, as may be expedient for maintaining the peace, good government and welfare of the municipality and its trade, commerce and manufactures, and 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)

§ 2-2.2 PROCEDURE FOR RESOLUTIONS AND MOTIONS.

Resolutions and motions shall be introduced in one of the methods prescribed for the introduction of ordinances. After their introduction, they shall be fully and distinctly read one time in the presence and hearing of a majority of the members elected to the City Council. 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 of the City Council (Mayor may vote in case of a tie) shall be required to pass any resolution or motion. The vote on any resolution or motion shall be by roll call vote.

§ 2-2.3 ORDINANCE STYLE.

The style of all city ordinance shall be:

“Be it ordained by the Mayor and Council of the City of Oshkosh, Nebraska:”
(Neb RS 17-613)

§ 2-2.4 ORDINANCE TITLE.

No ordinance shall contain a subject which is not clearly expressed in the title.

Statutory reference:

Additional requirements, see Neb. RS17-614

§ 2-2.5 READING AND PASSAGE OF ORDINANCES, RESOLUTIONS, ORDERS, BYLAWS.

2-2.5.1 Ordinances of a general or permanent nature shall be read by title on three different days unless three-fourths of the City Council vote to suspend this requirement, except that such requirement shall not be suspended for any ordinance for the annexation of territory. In case such requirement is suspended, the ordinance shall be read by title and then moved for final passage. A reading of any ordinance in full may be required by three-fourths of the City Council before enactment under either procedure set out in this section. All ordinances and resolutions or orders for the appropriation or payment of money shall require the minimum approval of three of the members elected to the City Council (Mayor may not vote).

(Neb. RS 17-616)

2-2.5.2 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.

(Neb. RS 17-614)

§ 2-2.6 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:

2-2.6.1 In some newspaper published in the municipality or, if no paper is published in the municipality, then by posting a written or printed copy in each of three public places in the municipality; or

2-2.6.2 In book or pamphlet form.

Statutory reference:

Emergency ordinance, see Neb. RS 17-613

Additional provisions, see Neb RS 18-131

§ 2-2.7 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 municipality from the Municipal 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

§ 2-2.8 EFFECTIVE DATE; EMERGENCY ORDINANCES.

2-2.8.1 Except as provided in § 3.44 and division 3.15.2 of this section, an ordinance for the government of the municipality which has been adopted by the City Council without submission to the voters of the municipality shall not go into effect until 15 days after the passage of the ordinance.

(Neb. RS 19-3701)

2-2.8.2 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 three of the most public places in the municipality. The emergency ordinance shall recite the emergency, be passed by a three-fourths vote of the City Council and be entered of record on the Municipal Clerk's minutes.

(Neb. RS 17-613)

§ 2-2.9 ORDINANCE AMENDMENTS AND REVISIONS.

No ordinance or section thereof shall be revised or amended, and the 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 municipality and modifications to zoning or building districts may be adopted as otherwise provided by law.

(Neb. RS 17-614)

Statutory reference:

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

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

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

ARTICLE 2-3: APPOINTED CITY OFFICIALS

Section

- 2-3.1 Appointment; removal
- 2-3.2 Merger of offices
- 2-3.3 City Clerk
- 2-3.4 City Treasurer
- 2-3.5 Treasurer's reports
- 2-3.6 City Administrator
- 2-3.7 City Attorney
- 2-3.8 Law enforcement
- 2-3.9 City Engineer
- 2-3.10 Utilities Superintendent
- 2-3.11 Enforcement Officer

§ 2-3.1 APPOINTMENT; REMOVAL.

2-3.1.1 The Mayor, with the consent of the City Council, may appoint such officers as shall be required by ordinance or otherwise required by law.

2-3.1.2 All appointed officials may be removed at any time by the Mayor.

Statutory reference:

Appointments generally, see Neb. RS 17-107

Water Commissioner, see Neb. RS 17-541

Law enforcement reserve force, see Neb. RS 81-1438

§ 2-3.2 MERGER OF OFFICES.

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 Council member, with any other elective or appointive office or employment so that one 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. 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. The salary or compensation of the officer or employee holding the merged or 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.

(Neb. RS 17-108.02)

§ 2-3.3 CITY CLERK.

2-3.3.1 The City Clerk shall attend the meetings of the City Council and keep a correct journal of the proceedings of that body. He or she shall keep a record of all outstanding bonds against the city and when any bonds are sold, purchased, paid, or canceled, said record shall show the fact. He or she shall make, at the end of the fiscal year, a report of the business of the municipality transacted through his or her office for the year. That record shall describe particularly the bonds issued and sold during the year and the terms of the sale, with each and

every item and expense thereof. He or she shall file all official bonds after the same shall have been properly executed and approved. He or she shall make the proper certificate of passage which shall be attached to original copies of all bond ordinances hereafter enacted by the City Council.

2-3.3.2 The City 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.

2-3.3.3 The City 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. 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, 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. Nothing herein shall be construed to prevent any citizen, official, or other person from examining any public records at all reasonable times.

2-3.3.4 The City 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 said claim is disallowed in part, or in whole, the City Clerk shall notify such claimant, his or her agent, or attorney by letter within five days after such disallowance, and the City Clerk shall then prepare transcripts on appeals of any disallowance of a claim in all proper cases.

2-3.3.5 The City 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. He or she shall destroy city records under the direction of the state Records Board pursuant to Neb. RS 84-1201 through 84-1227, provided that the City Council shall not have the authority to destroy the minutes of the City Clerk, the permanent ordinances, and resolution books, or any other records classified as permanent by the state Records Board.

Statutory reference:

Additional duties, see Neb. RS 17-605

Publication of proceedings of Council, see Neb. RS 19-1101 et seq.

Penalty on Clerk for violations of Neb. RS 19-1101 through 19-1103, see Neb. RS 19-1104

Publication rates, see Neb. RS 23-122 and Neb. RS 33-141 through 33-143

Examination of public records free of charge, see Neb. RS 84-712

Records Management Act, see Neb. RS 84-1201 through 84-1227

§ 2-3.4 CITY TREASURER.

The City Treasurer shall be the custodian of all moneys belonging to the city. He or she shall keep all money belonging to the city separate and distinct from his or her own money. He or she shall keep a separate account of

each fund or appropriation, and the debits and credits belonging thereto. He or she shall give to every person paying money into the city treasury a receipt therefor, specifying the date of payment and the account paid. One copy of the receipt shall be filed with the Treasurer's monthly report, and another copy of the receipt shall be kept on file in his or her office. His or her books and accounts shall always be open for inspection by any citizen of the city whenever any city fiscal record, audit, warrant, voucher, invoice, purchase order, requisition, payroll check, receipt, or other record of receipt, cash, or expenditure involving public funds is involved. 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 shall obtain from the County Treasurer a monthly report as to the collection of delinquent taxes. The Treasurer's daily cash book shall be footed and balanced daily, and he or she shall adopt such bookkeeping methods as the City Council shall prescribe. He or she shall invest and collect all money owned by or owed to the city as directed by the City Council.

Statutory reference:

Statutory duties, see Neb. RS 17-606 through 17-609

Free examination of public records, see Neb. RS 84-712

§ 2-3.5 TREASURER'S REPORTS.

2-3.5.1 The City Treasurer shall at the end of each and every month, and such other times as the City Council may deem necessary, render an account to the City Council under oath showing the financial state of the city at that date, the amount of money remaining in each fund and the amount paid therefrom, and the balance of money remaining in the treasury. He or she shall accompany the said account with a statement of all receipts and disbursements, outstanding accounts receivable by age, together with all warrants redeemed and paid by him or her. He or she shall also produce depository evidence that all city money is in a solvent and going bank in the name of the city. If the City Treasurer shall neglect or fail for the space of ten days from the end of each and every month to render the accounts as aforesaid, the City Council shall by resolution declare the office vacant and appoint some person to fill the vacancy. The City Treasurer shall be present at each regular meeting of the City Council, at which time he or she shall read and file his monthly report.

2-3.5.2 The City Treasurer shall prepare and publish annually in a legal newspaper having general circulation within the city, within 60 days following the close of the city fiscal year, a statement of the receipts and expenditures by funds of the city for the preceding fiscal year.

(Neb. RS 19-1101)

Statutory reference:

Statutory duties, see Neb. RS 17-606 through 17-609

Annual report required to be published, see Neb. RS 19-1101 and 19-1103

§ 2-3.6 CITY ADMINISTRATOR.

2-3.6.1 *Appointment; duties.*

2-3.6.1.1 The office of City Administrator is an executive office of the city. The City Administrator shall be appointed by the Mayor, by and with the advice and consent of the City Council and may be removed from office by the Mayor with the consent of the Council.

2-3.6.1.2 The duties, responsibilities and powers of the City Administrator shall be as follows:

2-3.6.1.2.1 To direct, supervise, be responsible for and coordinate all

departments, divisions and services of city government which are under the control and jurisdiction of the Mayor come under the direction and supervision or be the responsibility of the City Administrator, although the City Administrator shall be available to and shall assist officers in any administrative matter that may arise and officers shall be available to and shall assist the City Administrator in the discharge of the duties, responsibilities and powers of the City Administrator as set forth in this section;

2-3.6.1.2.2 To prepare and keep up to date an inventory of all real and personal property and other public property that the city owns or has an interest in, and to act as purchasing agent for the purchase of all supplies, goods, wares, merchandise, equipment and material which may be required for the various departments, divisions and services of the city, subject to the approval of the Mayor and Council;

2-3.6.1.2.3 To keep the Mayor and Council fully advised as to the financial condition and needs of the city, to be responsible for and prepare the annual estimate of expenditures for presentation to the Mayor and Council prior to the time for the passage and adoption of the annual appropriation ordinance and, upon the adoption of such ordinance, to properly Administrator and execute the same;

2-3.6.1.2.4 To serve in any appointed office or head of department within the city government if the need arises and when appointed thereto by the Mayor and Council, and to hold and perform the duties thereof at the pleasure of the Mayor and Council;

2-3.6.1.2.5 To act as Deputy City Clerk and Treasurer, and in the absence of the City Clerk and Treasurer, due to illness or otherwise, the City Administrator shall be empowered to perform all the duties of the City Clerk and Treasurer.

2-3.6.1.2.6 To analyze the functions, activities, duties and responsibilities of the various departments, divisions and services of the city government and of all officers and employees thereof, to make recommendations respecting the same to the Mayor and City Council, and to Administrator any recommendations made by the Mayor and Council respecting such functions, activities, duties and responsibilities;

2-3.6.1.2.7 To recommend to the Mayor and Council the appointment and dismissal of all department heads and subordinate employees of the city over which the Mayor and Council exercise jurisdiction and control;

2-3.6.1.2.8 To annually prepare and recommend to the Mayor and Council revisions and modifications of the classification and compensation plan covering city officers and employees;

2-3.6.1.2.9 To prepare and submit to the Mayor and Council at the end of each fiscal year a complete report on the finances and administrative activities of the city for the preceding fiscal year and future projections based on the preceding fiscal year, which report shall include recommended short and long-range improvements and any necessary facts to substantiate such recommendations;

2-3.6.1.2.10 To attend all regularly scheduled meetings of the Council and such other meetings of the Council and city departments, divisions, services, boards, commissions, committees and officers as the City Administrator's duties may require, to report at such meetings any matter concerning city affairs within the jurisdiction and under the control of the City Administrator, and to recommend to the Mayor and Council for passage and adoption such measures, resolutions and ordinances which may be deemed necessary or expedient;

2-3.6.1.2.11 To exercise general supervision and control over all real and personal property and other public property under the control and jurisdiction of the Mayor and Council;

2-3.6.1.2.12 To manage the affairs of the city and any department, division or service thereof under direction of the Mayor and Council; and

2-3.6.1.2.13 To perform such other duties and exercise such powers as may be delegated to the City Administrator from time to time by the Mayor and Council, and to delegate any duty, responsibility or power set forth herein to other city employees under his or her supervision and control, upon approval of the Mayor and Council.

2-3.6.2 *Agent of Mayor.* The City Administrator shall act as an agent of the Mayor in the discharge of all of his or her duties, responsibilities and powers set out in division (A) of this section; and, in the event the City Administrator shall be absent from the city or incapable of discharging such duties, responsibilities and powers for any reason, the Mayor shall act as City Administrator during such absence or incapacity.

§ 2-3.7 CITY ATTORNEY.

The City Attorney is the city's legal advisor, and as such he or she shall commence, prosecute, and defend all suits on behalf of the city necessary to be commenced, prosecuted or defended on behalf of the city, or that may be ordered by the City Council. When requested by the City Council, he or she shall attend meetings of the City Council and shall advise any city official in all matters of law in which the interests of the city may be involved. He or she shall draft such ordinances, bonds, contracts, and other writings as may be required in the administration of the affairs of the city. He or she shall examine all bonds, contracts, and documents on which the City Council will be required to act and attach thereto a brief statement in writing to all such instruments and documents as to whether or not the document is in legal and proper form. He or she shall prepare complaints, attend, and prosecute violations of the municipal ordinances. Without direction, he or she shall appear and prosecute all cases for violation of the city ordinances that have been appealed to and are pending in any higher court. He or she 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 they will be valid and subsisting local laws in so far as their passage and approval are concerned. The City Council shall have the right to compensate the City Attorney for legal services on such terms as the City Council and the City Attorney may agree and to employ any additional legal assistance as may be necessary out of the funds of the city.

Statutory reference:

Authorizing and similar provisions, see Neb. RS 17-610

§ 2-3.8 LAW ENFORCEMENT

The City contracts through an interlocal agreement with the County for law enforcement within the City. The County Sheriff acts as the City's "chief law enforcement officer" who shall file the necessary complaints in cases arising out of criminal violation of the City ordinances, shall direct the Law Enforcement work of the City shall be responsible for the maintenance of law and order, and shall make all necessary reports required by the City ordinances or by the State of Nebraska. He shall act as Health Inspector, except in the event the City appoints another person.

(Neb. RS 17-107, 17-121)

Statutory reference:

Merger of offices, see Neb. RS 17-107

Chief of designated as secretary and quarantine officer of Health Board, see Neb. RS 17-121

§ 2-3.9 CITY ENGINEER.

The City Engineer, who may be appointed by the City Council or contracted as needed for special projects, shall make all surveys, estimates, and calculations necessary to be made for the establishment of any public utilities and the costs of labor and materials therefor. He or she shall accurately make all plats, sections, and maps as may be necessary under the direction of the City Council. Upon request, he or she shall 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 and the improvement of streets and erection and repair of buildings, and shall perform such other duties as the City Council may require.

Statutory reference:

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

Duties related to annexation, see Neb. RS 17-405

Duties related to public works, see Neb. RS 17-568.01

Engineers and Architects Regulation Act, see Neb. RS 81-3401 through 81-3455

§ 2-3.10 UTILITIES SUPERINTENDENT

A Utilities Superintendent shall be appointed in the event that there is more than one Municipal utility, and the Governing Body determines that it is in the best interest of the Municipality to appoint an official to have the immediate control over all the said Municipal utilities. The Utilities Superintendent may be removed at any time by a two-thirds (2/3) vote of the Governing Body. Any vacancy occurring in the said office by death, resignation or removal may be filled in the manner hereinbefore provided for the appointment of all Municipal officials. The Utilities Superintendent's duties over the following departments shall be as stated herein:

He or she shall have general supervision and control over the Municipal Water System, and shall be primarily responsible for its economic operation and prudent management. Included in the said water system shall be the water plant, the pump house, all machinery, and appliances used in connection with producing and distributing water to inhabitants of the Municipality. All actions, decisions, and procedures of the Utilities Superintendent shall be subject to the general directives and control of the Governing Body. The Utilities Superintendent shall have general control and supervisory authority over all employees of the Water System which the Governing Body may from time to time hire to operate and maintain the said system. He or she shall make a detailed report to the Governing Body at least once every six (6) months, of the condition of the said water system, of all mains, pipes, hydrants, reservoirs, and machinery and such improvements, repairs, and extensions thereof as he or she may think proper. The report shall show the amount of receipts and expenditures on account thereof for the preceding six (6) months. No money shall be expended for improvements, repairs or extensions of the said waterworks system except upon the recommendation of the Superintendent. The Utilities Superintendent shall provide a bond conditioned upon the faithful discharge of his duties which shall amount to not less than the amount set by resolution of the Governing Body and on file in the office of the Municipal Clerk. He or she shall perform such additional duties as may be prescribed by the Governing Body.

§ 2-3.11 ENFORCEMENT OFFICER.

2-3.11.1 Appointment, duties: To enforce all ordinances not enforced by Law Enforcement.

2-3.11.2 The office of City Enforcement Officer is an executive office of the city. The City Enforcement Officer shall be appointed by the Mayor, by and with the advice and consent of the City Council and may be removed from office by the Mayor.

2-3.11.3 The duties, responsibilities and powers of the City Enforcement Officer shall be as follows:
2-3.11.3.1 The City Enforcement Officer shall be responsible for enforcement of all fee schedules adopted by the Council governing all licenses and permits for building, electrical work, plumbing work, gas work and excavation work performed within the jurisdiction of the city, and shall also be responsible for the collection of all such fees;

2-3.11.3.2 The City Enforcement Officer shall be responsible for ensuring compliance with the city's zoning ordinances, subdivision ordinances and regulations, and excavation ordinances, by enforcement of the provisions thereof;

2-3.11.3.3 The City Enforcement Officer shall be responsible for making all inspections of all excavation, building, and plumbing installations or repairs performed within the jurisdiction of the city, and the City Enforcement Officer shall not affix his or her certificate of approval to any of the above specified work, installation or repair unless such work, installation or repair fully complies with all of the city ordinances and regulations as of the date of such performance;

2-3.11.3.4 The City Enforcement Officer shall maintain an office and regular hours in the city hall;

2-3.11.3.5 The City Enforcement Officer shall keep complete records of all applications, permits and fees received by him or her, all inspections made by him or her, and all certificates of approval issued by him or her;

2-3.11.3.6 The City Enforcement Officer shall make a written monthly report to the Mayor and Council covering all applications, approved or denied, all of the work, installations and repairs performed within the jurisdiction of the city for which licenses, permits or inspections are required, and also setting forth the inspections he or she has performed and the certificates of approval he or she has issued during the month;

2-3.11.3.7 The City Enforcement officer shall meet with and assist the Planning Commission as they may request or as his or her duties may require;

2-3.11.3.8 The City Enforcement Officer shall pay over all fees which he or she has collected to the City Treasurer on a monthly basis; and

2-3.11.3.9 The City Enforcement officer shall obtain at the expense of the city and file with the Council a corporate surety bond in the sum of \$5,000, running to the city and conditioned upon his or her proper performance of all of the duties and obligations vested in him or her.

2-3.11.4 *Substitute authority.* Should the City Enforcement Officer be incapable of discharging his or her duties, responsibilities and powers for any reason, the Mayor shall act as the City Enforcement officer during such absence or incapacity or until a new City Enforcement Officer can be appointed to fill such absence or vacancy.

2-3.11.5 *Compensation.* The salary of the City Enforcement officer shall be fixed by ordinance of the City Council.

ARTICLE 2-4: DEPARTMENTS, BOARDS, AND COMMISSIONS

Section

- 2-4.1 Appointments and notice of meetings
- 2-4.2 Library Board
- 2-4.3 Planning Commission
- 2-4.4 Board of Adjustment
- 2-4.5 Board of Health
- 2-4.6 Housing Agency Board
- 2-4.7 Economic Development Advisory Committee
- 2-4.9 Tree Advisory Board

§ 2-4.1 APPOINTMENTS AND NOTICE OF MEETINGS.

The Mayor, with approval of the City Council, shall make the appointments and fill vacancies for the boards, commissions, and departments described in this chapter unless otherwise stated. Advance notice of the meetings of the city boards and committees shall comply with ordinance and statute for public bodies.

§ 2-4.2 LIBRARY BOARD.

2-4.2.1 The Library Board shall consist of five appointed members who shall be residents of the City and who shall serve terms of four (4) years. 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 case of any vacancy by resignation, removal, or otherwise, the City Council shall fill the vacancy for the unexpired term.

2-4.2.2 No member shall receive any pay or compensation for any services rendered as a member of the Library Board. The City Council may require the members of the Library Board to give a bond in a sum set by resolution of the City Council and conditioned upon the faithful performance of their duties.

2-4.2.3 At the time of the Board's first meeting in January of each year, the Board shall organize by selecting from their number a Chairperson, Secretary, and Treasurer. No member of the Library Board shall serve in the capacity of both the Chairperson 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.

2-4.2.4 A majority of the Board members shall constitute a quorum for the transaction of business. 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 a majority of the members of the Board.

2-4.2.5 The Library Board shall have the authority to appoint a director and all other employees. The Library Board shall have the power to erect, lease, or occupy an appropriate building for the use of such library and to appoint a suitable librarian and assistants, to fix their compensation, and to remove such appointees at pleasure. The Board shall have supervisory authority over all employees of the library, including the director.

2-4.2.6 The Library Board shall have general charge of the city library and shall establish appropriate rules and regulations for the management, operation, and use of the library. All actions of the Board shall be subject to the review and supervision of the City Council.

2-4.2.7 The Library Board shall, on or before the second Monday in June in each year, make a report to the City Council of the condition of its trust on June 1 of such year, showing all money received or expended; the number of books and periodicals on hand; newspapers and current literature subscribed for or donated to the reading room; the number of books and periodicals ordered by purchase, gift, or otherwise obtained during the year, and the number of lost or missing; the number of and character of books loaned or issued, with such statistics, information and suggestions as it may deem of general interest, or as the City Council may require, which report shall be verified by affidavit of the proper officers of such Board.

(Neb. RS 5-213)

Statutory reference:

Authority, regulations, see Neb. RS 51-202

§ 2-4.3 PLANNING COMMISSION.

2-4.3.1 The Planning Commission shall consist of nine regular members who shall represent, insofar as is possible, the different professions or occupations in the city. 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 is a sufficient number of residents in the area over which the city exercises extraterritorial zoning and subdivision regulation, one regular member of the Commission shall be a resident from such area. If it is determined by the City Council that a sufficient number of residents reside in the area subject to extraterritorial zoning and 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. For purposes of this section, a sufficient number of residents shall mean 500 residents. The term of each regular member shall be three years, except that three regular members of the first Commission shall serve for terms of one year, three for terms of two years, and one for a term of three years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before the City Council, be removed by the Mayor, with the consent of a majority vote of the members elected to the City Council, for inefficiency, neglect of duty, or malfeasance in office, or other good and sufficient cause.

2-4.3.1.1 All regular members of the Commission shall serve without compensation and shall hold no other city office except when appointed to serve on the Board of Adjustment as provided in Neb. RS 19-908. All members of the Commission may be required, in the discretion of the Mayor and City Council, to give bond in a sum set by resolution of the City Council and conditioned upon the faithful performance of their duties.

2-4.3.1.2 At the time of the Commission's first meeting in January of each year, the Commission shall organize by selecting from its membership a Chairperson and Secretary. It shall be the duty of the Secretary to keep the full and correct minutes and records of all meetings and to file them with the City Clerk where they shall be available for public inspection during office hours. The Commission shall be funded by the City Council from time to time out of the general fund. The expenditures of the Commission, exclusive of gifts, shall be within the amounts appropriated for that purpose by the City Council, and no expenditures nor agreements for expenditures shall be valid in excess of such amounts.

2-4.3.1.3 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. Special meetings may also be held upon the call of the Chairperson or any three members of the Commission.

2-4.3.1.4 It shall be the duty of the Commission to 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 the city. All actions by the Commission shall be subject to the review and supervision of the Mayor and City Council, as defined in City Zoning Ordinance.

2-4.3.1.5 Recommendations from the Commission shall be received by the City Council within 60 days after the Commission begins consideration of a matter relating to the comprehensive development plan, capital improvements, building codes, subdivision development, the annexation of territory, or zoning. The Commission shall be responsible for making such reports and performing such other duties as the Mayor and City Council may, from time to time, designate.

2-4.3.1.6 No member of the City Council or other city official, except where otherwise specifically provided, shall serve as a member of the Commission while serving any other term of office. No member of the Commission shall serve in the capacity of both the Chairperson and Secretary of the Commission.

Statutory reference:

General provisions; Planning Commissions regulated, see Neb. RS 19-924 through 19-929

§ 2-4.4 BOARD OF ADJUSTMENT.

The Board of Adjustment and its duties and authority is described in the City Zoning Ordinance.

§ 2-4.5 BOARD OF HEALTH.

2-4.5.1 The Board of Health shall consist of four members. The members of the Board shall include the Mayor, who shall serve as Chairperson, the President of the City Council, one member shall be a physician or health care provider, if one can be found who is willing to serve and the other shall be the chief law enforcement officer. Such physician or health care provider, if appointed, shall be the Board's medical advisor. The members of the Board shall serve, without compensation, a one-year term of office, unless reappointed, and shall reorganize at the first meeting in January of each year. No member of the Board of Health shall hold more than one Board of Health position.

2-4.5.2 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. The Board of Health shall be funded by the City Council from time to time out of the general fund. A majority of the Board shall constitute a quorum for the purpose of doing business. 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 two members of the Board.

2-4.5.3 The Board 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. The Board shall enforce the rules and regulations and provide fines and punishments for any violations thereof. It may regulate, suppress, and prevent the occurrence of nuisances and enforce all laws of the State of Nebraska and ordinances of the city relating to nuisances and to matters of sanitation which affect the health and safety of the people. The Board shall regularly inspect such premises and businesses as the City Council may direct. 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.

Statutory reference:

Authority, see Neb. RS 17-121

§ 2-4.6 HOUSING AGENCY BOARD.

The local Housing Authority established under prior state law and in existence on January 1, 2000, shall have continued existence as a housing agency under the Nebraska Housing Agency Act.

The City Council shall appoint five (5) persons who shall constitute the Housing Agency and such persons shall be called the Commissioners. One (1) Commissioner shall be appointed each year. Each commissioner shall serve a five (5) year term of office or until his successor is duly appointed; Provided, that all vacancies shall be

filled for the unexpired terms. The City Council may appoint one (1) of its members to serve as one of the five (5) members of such Housing Agency for such term as the City Council may determine. No persons shall serve as a Commissioner unless he or she resides within the area of operation of that Housing Authority. A certificate of the appointment or reappointment of any Commissioner shall be filed with the City Clerk and such certificate shall be conclusive evidence of the proper appointment of such Commissioner. A Commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including travel expenses, incurred in the discharge of his duties. A majority of Commissioners shall constitute a quorum of the Agency for the purpose of conducting its business, exercising its powers, and for all other purposes. Action may be taken by the Agency upon the vote of the majority of the Commissioners present unless in any case the bylaws of the Agency shall require a larger number. The Commissioners shall elect a chairman and vice-chairman from among the Commissioners and shall have the power to employ an executive director who shall serve as ex officio secretary of the Authority. The Agency may also employ legal counsel, or it may call upon the chief law officer of the City, for such services as it may require. It may employ technical experts and such other officers, agents, and employees as it may require and it shall determine their qualifications, duties, and compensations, and terms of office. The Agency may delegate such other powers and duties to its agents or employees as it may deem proper. During this tenure, and for one (1) year thereafter, no commissioner, officer, or employee of the City Housing Agency shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any housing project. If any such commissioner, officer, or employee involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as commissioner, officer, or employee, he or she shall immediately disclose his or her interest in writing to the Authority, and such disclosure shall be entered upon the minutes of the Authority, and he or she shall not participate in any action by the Agency relating to the property or contract in which he has any such interest; Provided, that nothing herein shall apply to the acquisition of any interest in notes or bonds of the Agency issued in connection with any housing project, or to the execution of agreements by banking institutions for deposit or handling of funds in connection with any housing project, or to the execution of agreements by banking institutions for deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services, the rates for which are fixed or controlled by a governmental agency. The Mayor may remove a Commissioner for neglect of duty or misconduct in office in the manner prescribed hereinafter. The Mayor shall send a notice of removal to such Commissioner which notice shall contain a statement containing the charges against him. Unless within ten (10) days from the receipt of such notice, such Commissioner files with the Clerk a request for a hearing before the City Council, the Commissioner shall be deemed as removed from office. If a request for a hearing is filed with the Clerk, the City Council of Oshkosh shall hold a hearing at which the Commissioner shall have the right to appear in person or by counsel and the City Council shall determine whether the removal shall be disapproved or upheld. If the removal is disapproved, the Commissioner shall continue to hold his or her position.

The Housing Agency shall keep an accurate account of all its activities and of its receipts and disbursements and shall make a report to the City Council on all such information.
(Neb. RS 71-1524 thru 71-1526, 71-1552)

§ 2-4.7 ECONOMIC DEVELOPMENT ADVISORY REVIEW COMMITTEE.

This committee is defined and authorized as stated in the Local Operations Municipal Economic Development Act.

§ 2-4.8 TREE ADVISORY BOARD.

2-4.8.1 *Creation and establishment.* There is created and established a City Tree Advisory Board for the city which shall consist of a minimum of three residents of this city.

2-4.8.2 *Term of office.* The term of the persons to be appointed shall be three years except that the term 1/3 of the members appointed to the first Board shall be for only one year and the term of 1/3 of members of the first Board shall be for two years, in the event that a vacancy shall occur during the term of any member, a successor shall be appointed for a new three year term.

(Ord. 303, 4-5-90)

2-4.8.3 *Compensation and finances.*

2-4.8.3.1 Members of the Board shall serve without compensation.

(Ord. 303, 4-5-90)

2-4.8.4 *Duties and responsibilities.*

2-4.8.4.1 The Board will also investigate, provide assistance, and make recommendations to the City Administrator regarding supplemental funding from sources (such as, grants, loans, donations) other than the required \$2 per capita.

2-4.8.4.2 It shall be the responsibility of the Board to study, investigate, counsel, and develop and/or update annually, and Administrator written plans (annual and long-range) for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs in parks, along streets, in other public areas. Such plans will be presented annually to the City Council and upon their acceptance and approval shall constitute the official Comprehensive City Tree Plan for the City of Oshkosh, Nebraska.

2-4.8.4.3 The Board will also keep an updated inventory of public trees by species, number, and location. The written plan will be presented annually to the City Council and upon their acceptance and approval shall constitute the official comprehensive city tree plan for the city.

2-4.8.4.4 The Board, when requested by the City Council, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its work.

2-4.8.5 *Operation.* The Board shall choose its own officers, make its own rules and regulations and keep a record of minutes of its proceedings. A current copy of its rules and regulations shall be kept in the office of the City Clerk.

Statutory reference:

Open meetings law, see Neb. RS 84-1408 through 84-1414

ARTICLE 2-5: FIRE DEPARTMENT

§ 2-5.1 CITY FIRE PROTECTION

Fire protection for the City of Oshkosh shall be provided by the Garden County Rural Fire District #2 as set forth in the joint resolution between the City of Oshkosh and The Garden County Rural Fire District #2, Resolution No. 05-07 as passed and adopted June 14, 2007.

ARTICLE 2-6 FINANCE AND REVENUE

Section

General Provisions

- 2-6.1 Contracts and purchases; bidding and other requirements
- 2-6.2 Annual audit; financial statements
- 2-6.3 Claims
- 2-6.4 Expenditures
- 2-6.5 Warrants
- 2-6.6 Collection of special assessments; procedure
- 2-6.7 Special assessment fund
- 2-6.8 Sinking funds
- 2-6.9 Deposit of funds
- 2-6.10 Certificates of deposit; time deposits; conditions
- 2-6.11 Bond issues
- 2-6.12 Investment of funds

Annual Budget

- 2-6.13 Fiscal year
- 2-6.14 Expenditures prior to adoption of budget
- 2-6.15 Proposed budget statement; contents; filing
- 2-6.16 Proposed budget statement; hearing; adoption; certification of amount to be received from taxation
- 2-6.17 Adopted budget statement; filing; certification of amount of tax
- 2-6.18 Public funds defined
- 2-6.19 Budget procedures
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Tax Levies

- 2-6.22 All-purpose levy; allocation; abandonment; extraordinary levies
- 2-6.23 Property tax; certification of amount
- 2-6.24 Property tax levy; maximum; authority to exceed
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Housing Agency

- 2-6.26 Housing Authority; Continued existence as Housing Agency
- 2-6.27 Housing Agency; Reports
- 2-6.28 Housing Agency; Rules and regulations
- 2-6.29 Housing Agency; Ownership
- 2-6.30 Housing Agency; Definitions

GENERAL PROVISIONS

§ 2-6.1 CONTRACTS AND PURCHASES; BIDDING AND OTHER REQUIREMENTS.

2-6.1.1 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 such enlargement or improvement is assessed to the property, costing over \$20,000, shall be made unless it is first approved by the City Council.

2-6.1.2 Except as provided in Neb. RS 18-412.01, before the City Council makes any contract in excess of \$20,000 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 such 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 8.1.3 and 8.1.5 of this section, the City Council may publish the amount of the estimate.

2-6.1.3 Advertisements for bids shall be required for any contract costing over \$20,000 entered into:

2-6.1.3.1 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 such enlargement or improvement is assessed to the property; or

2-6.1.3.2 For the purchase of equipment.

2-6.1.4 The City Council shall fix not only the day upon which such bids shall be returned, received, or opened, but shall also fix the hour at which such bids shall close, or be received or opened, and shall also provide that such bids shall be immediately and simultaneously opened in the presence of the bidders, or representatives of the bidders, when the hour is reached for the bids to close. If bids are being opened on more than one contract, the officials having in charge the opening of such bids may, if they deem it advisable, award each contract as the bids are opened.

(Neb. RS 73-101)

2-6.1.5 The advertisement provided for in division 8.1.3 of this section shall be published at least seven days prior to the bid closing in a legal newspaper published in or of general circulation in the city and, if there is no legal newspaper published in or of general circulation in the city, then in some newspaper of general circulation published in the county in which the city is located, and if there is no legal newspaper of general circulation published in the county in which the city is located, then in a newspaper, designated by the City Council, having a general circulation within the county where bids are required, and if no newspaper is published in the city or county, or if no newspaper has general circulation in the county, then by posting a written or printed copy thereof in each of three public places in the city at least seven days prior to the bid closing. 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 three-fourths vote of the City Council and entered of record.

2-6.1.6 If, after advertising for bids as provided in this section, the City Council receives fewer than two 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.

2-6.1.7 If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the City Council, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the purchasing city, the City Council may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

(Neb. RS 17-568.01)

2-6.1.8 Any city bidding procedure may be waived by the City Council:

2-6.1.8.1 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 to 81-162; or

2-6.1.8.2 When the contract is negotiated directly with a sheltered workshop pursuant to Neb. RS 48-1503.

(Neb. RS 17-568.02)

2-6.1.9 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 material division of the Department of Administrative Services. For purposes of this division 8.1.9:

2-6.1.9.1 **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; and

2-6.1.9.2 **PURCHASING** or **PURCHASE** means 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.

§ 2-6.2 ANNUAL AUDIT; FINANCIAL STATEMENTS

2-6.2.1 The City Council shall cause an audit of the city accounts to be made by a qualified accountant as expeditiously as possible following the close of the fiscal year. Such 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 not later than six months after the close of the fiscal year. The accountant making the audit shall submit not less than three copies of the audit report to the City Council. All public utilities or other enterprises which substantially generate their own revenue shall be audited separately, and the results of such audits shall appear separately in the annual audit report, and such audits shall be on an accrual basis and shall contain statements and materials which conform to generally accepted accounting principles. The audit report shall set forth the financial position and results of financial operations for each fund or group of accounts of the city as well as an opinion by the accountant with respect to the financial statements. Two copies of the annual audit report shall be filed with the City Clerk and shall become a part of the public records of the City Clerk's office and will at all times thereafter be open for public inspection. One copy shall be filed with the auditor of public accounts.

2-6.2.2 The City Council shall provide and file with the City Clerk not later than August 1 of each year financial statements showing its actual and budgeted figures for the most recently completed fiscal year. (Neb. RS 13-606)

Statutory reference:

State city auditing regulations; similar provisions, see Neb. RS 19-2901 through 19-2909

§ 2-6.3 CLAIMS.

All claims against the city shall be presented to the City Council in writing with a full account of the items, and no claim or demand shall be audited or allowed unless presented as provided for in this section. No costs shall be recovered against the city in any action brought against it for an unliquidated claim which has not been presented to the City Council to be audited, nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed, with the interest due. 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 shall be sufficient money in the city treasury for the appropriate fund against which it is to be drawn, provided that in the event there exists obligated funds from the federal and/or state government for the general purpose of such warrant, then such warrant may be drawn in excess of 85%, but not more than 100% of the current levy for the purpose for which said warrant is drawn.

Statutory reference:

Similar provisions, see Neb. RS 17-714 and 17-715

§ 2-6.4 EXPENDITURES.

2-6.4.1 No city official shall have the power to appropriate, issue, or draw any order or warrant on the city treasury for money, unless the same has been appropriated or ordered by ordinance.
(Neb. RS 17-708)

2-6.4.2 No expenditure for any improvement to be paid for out of the general fund of the city shall exceed in any one year the amount provided for that improvement in the adopted budget statement.

§ 2-6.5 WARRANTS.

2-6.5.1 All warrants drawn upon the city treasury must be signed by the Mayor and countersigned by the City Clerk, stating the particular fund to which the warrant is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon warrants so drawn. Each warrant shall specify the amount included in the adopted budget statement for the fund upon which it is drawn and the amount already expended of such fund.

2-6.5.2 All checks drawn upon the city treasury must include two signatures.
(Neb. RS 17-711)

§ 2-6.6 COLLECTION OF SPECIAL ASSESSMENTS; PROCEDURE.

2-6.6.1 The city shall have the authority to collect the special assessments which it levies and perform all other necessary functions related thereto including foreclosure.

2-6.6.2 If the municipality elects to collect its special assessments, notice that special assessments are due shall be mailed or otherwise delivered to the last known address of the person against whom such special assessments are assessed or to the lending institution or other party responsible for paying such special assessments. Failure to receive such notice shall not relieve the taxpayer from any liability to pay such special assessments and any interest or penalties accrued thereon.

2-6.6.3 The city shall:

- 2-6.6.3.1 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
- 2-6.6.3.2 File a release of assessment upon final payment of each assessment with the Register of Deeds.

(Neb. RS 18-1216)

§ 2-6.7 SPECIAL ASSESSMENT FUND.

All money received on special tax 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 such 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)

§ 2-6.8 SINKING FUNDS.

2-6.8.1 The City Council, subject to the limitations set forth herein, shall have the power to levy a tax not to exceed that prescribed by state law upon the taxable value of all taxable property within the city for a term not to exceed that prescribed by state law 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 the approved uses as authorized by state law.
(Neb. RS 19-1302)

2-6.8.2 To initiate the sinking fund, the City Council shall declare its purpose by resolution to submit to the qualified electors of the city the proposition to provide the improvement at the next general city election. The resolution shall set forth a clear description of the improvement, the estimated cost, the amount of the annual levy, over a definite period of years (not exceeding ten years) required to pay 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 such election. Notice of the proposition shall be published in its entirety three times on successive weeks before the day of the election in a legal newspaper of general circulation in the city. The sinking fund may be established after the election if a majority or more of the legal votes were in favor of the establishment of the fund. The City Council may then proceed to establish the fund in conformity with the provisions of the proposition and applicable state law. The funds received by the City Treasurer shall, as they accumulate, be immediately invested with the written approval of the City Council in the manner provided by state law. No sinking fund so established shall be used for any purpose or purposes contrary to the purpose as it appeared on the ballot unless the City Council is authorized to do so by 60% of the qualified electors of the city voting at a general election favoring such a change in the use of the sinking fund.

Statutory reference:

Similar provisions, see Neb. RS 19-1301 through 19-1304

Investment of funds, see Neb. RS 77-2339

§ 2-6.9 DEPOSIT OF FUNDS.

2-6.9.1 The City Council, at its December meeting in each fiscal year, shall designate some one or more banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing in which the City Treasurer shall keep at all times, subject to payment on his or her demand, all money held by him or her as City Treasurer. If there are one or more banks, capital stock financial institutions, or qualifying mutual financial institutions located in the city which apply for the privilege of keeping such money and give bond or give security for the repayment of deposits as provided in this section, such banks, capital stock financial institutions, or qualifying mutual financial institutions shall be selected as such depositories. The City Treasurer shall not give a preference to any one or more of them in the money he or she may so deposit.

2-6.9.2 The City Council shall require from all banks, capital stock financial institutions, or qualifying mutual financial institutions (1) a bond in such penal sum as may be the maximum amount on deposit at any time less the amount insured by the Federal Deposit Insurance Corporation or, in lieu thereof, (2) 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 such 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. The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution is also serving as Mayor, as a member of the City Council, or as any other officer of the City shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds. (Neb. RS 17-607)

2-6.9.3 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 to the extent that the deposits are insured by such corporation, and for deposits so insured, no other surety bond or other security shall be required. 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 77-2362)

Statutory reference:

Deposits of public funds regulated, see Neb. RS 77-2362 through 77-2364

Public Funds Deposit Security Act, see Neb. RS 77-2386 through 77-2397

§ 2-6.10 CERTIFICATES OF DEPOSIT; TIME DEPOSITS; CONDITIONS.

2-6.10.1 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 or capital stock financial institution in the State of Nebraska to the extent that such certificates of deposit or time deposits are insured 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 manner provided in this section. The provisions of Neb. RS 77-2366 shall apply to deposits in capital stock financial institutions. (Neb. RS 17-720)

2-6.10.2 For the security of the fund so deposited, the City Treasurer shall require each depository to give bond for the safekeeping and payment of such deposits and the accretions thereof, which bond shall run to the city and be approved by the Mayor. The bond shall be conditioned that such a depository shall, at the end of every quarter, render to the Treasurer a statement in duplicate, showing the several daily balances, the amount of money of the city held by it during the quarter, the amount of the accretion thereto, and how credited. The bond shall also be conditioned that the depository shall generally do and perform whatever may be required by the provisions of this section and all regulations imposed by law or adopted by the City Council for the receiving and holding thereof and shall faithfully discharge the trust reposed in the depository. The bond shall be as nearly as practicable in the form provided in Neb. RS 77-2304. No person in any way connected with any depository as an officer or stockholder shall be accepted as a surety on any bond given by the depository of which he or she is an officer or stockholder. The bond shall be deposited with the City Clerk. (Neb. RS 16-714)

2-6.10.3 In lieu of the bond required by division 8.10.2 of this section, any bank or capital stock financial institution making application to become a depository may give security as provided in the Public Funds Deposit Security Act to the City Clerk. The penal sum of such bond shall be equal to or greater than the amount of the deposit in excess of that portion of such deposit insured by the Federal Deposit Insurance Corporation. (Neb. RS 16-715)

2-6.10.4 The Treasurer shall not have on deposit in any bank or capital stock financial institution at any time more than the amount insured by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by the bank or capital stock financial institution if the bank or capital stock financial institution gives a surety bond, nor in any bank or capital stock financial institution giving a personal bond, more than the amount insured by the Federal Deposit Insurance Corporation plus one-half of the amount of the bond of such bank or capital stock financial institution, and the amount so on deposit any time with any such bank or capital stock financial institution shall not in either case exceed the amount insured by the Federal Deposit Insurance Corporation plus the paid-up capital stock and surplus of such bank or capital stock financial institution. The Treasurer shall not be liable for any loss sustained by reason of the failure of any such bonded depository whose bond has been duly approved by the Mayor as provided in division 8.10.2 of this section or which has, in lieu of a surety bond, given security as provided in division 8.10.3 of this section. (Neb. RS 16-716)

Statutory reference:

Public Funds Deposit Security Act, see Neb. RS 77-2386 to 77-2397

§ 2-6.11 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 such 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

Boundary bridge bonds, see Neb. RS 39-835 through 39-842.01

Cemetery bonds, see Neb. RS 17-939

City cemetery; issuance of bonds, see Neb. RS 12-1001 through 12-1004 and Neb. RS 17-939

Cold storage plant bonds, see Neb. RS 17-958

Compromise of indebtedness, see Neb. RS 10-301 through 10-305

Dikes, see Neb. RS 17-529.01

Flood control project bonds, see Neb. RS 17-529.08

Funding and refunding bonds, see Neb. RS 10-606 through 10-614

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

Internal improvement bonds, see Neb. RS 10-401 through 10-411

Joint power plant bonds, see Neb. RS 17-911

Library bonds, see Neb. RS 17-968

Medical and multiunit facility bonds, see Neb. RS 23-3513

Power plant bonds, see Neb. RS 17-908

Tax anticipation bonds, see Neb. RS 18-1202

Uniform registration and cancellation of bonds, see Neb. RS 10-201 through 10-209

Utilities bonds, see Neb. RS 17-905

Waterworks bonds, see Neb. RS 17-534

§ 2-6.12 INVESTMENT OF FUNDS.

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 certificates of deposit, in time deposits, and in any securities in which the state investment officer is authorized by law and as provided in the authorized investment guidelines of the Nebraska Investment Council in effect on the date the investment is made.

(Neb. RS 77-2341(1))

Statutory reference:

Investment in bonds, see Neb. RS 17-608 and 17-609

Investment in cooperative credit associations, see Neb. RS 21-1316.01

Investment of funds, see Neb. RS 77-2337 and 77-2341

§ 2-6.13 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 City Proprietary Function Act.

(Neb. RS 17-701)

§ 2-6.14 EXPENDITURES PRIOR TO ADOPTION OF BUDGET.

2-6.14.1 On and after the first day of its fiscal year of each succeeding year and until the adoption of the budget by the City Council in August, the City Council may expend any balance of cash on hand for the current expenses of the city. Except as provided in division 8.14.2 of this section, such 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. Such 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)

2-6.14.2 The restriction on expenditures in division 8.14.1 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)

§ 2-6.15 PROPOSED BUDGET STATEMENT; CONTENTS; FILING.

2-6.15.1 The Governing Body shall annually 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. A proposed budget statement shall contain the following information, except as provided by state law:

2-6.15.1.1 For the immediately preceding fiscal year, 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; the amount received by taxation of personal and real property; and the amount of actual expenditures;

2-6.15.1.2 For the current fiscal year, 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; the amount received from personal and real property taxation; and the amount of actual and estimated expenditures, whichever is applicable. Such statement shall contain the cash reserve for each fiscal year and shall note whether or not such reserve is encumbered. Such

cash reserve projections shall be based upon the actual experience of prior years. The cash reserve shall not exceed 50% of the total budget adopted exclusive of capital outlay items;

2-6.15.1.3 For the immediately ensuing fiscal year, 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; the amounts proposed to be expended during the year; and the amount of cash reserve, based on actual experience of prior years, which cash reserve shall not exceed 50% of the total budget adopted exclusive of capital outlay items;

2-6.15.1.4 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 Governing Body and (b) for all other purposes;

2-6.15.1.5 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 Governing Body; and

2-6.15.1.6 A list of the proprietary functions which are not included in the budget statement. Such proprietary functions shall have a separate budget statement which is approved by the Governing Body as provided in the Municipal Proprietary Function Act.

2-6.15.2 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 municipality as well as any funds held by the County Treasurer for the municipality and shall be accurately stated on the proposed budget statement.

2-6.15.3 The municipality shall correct any material errors in the budget statement detected by the Auditor of Public Accounts or by other sources.
(Neb. RS 13-504)

2-6.15.4 The estimated expenditures plus the required cash reserve for the ensuing fiscal year less all estimated and actual unencumbered balances at the beginning of the year 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 such 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.
(Neb. RS 13-505)

§ 2-6.16 PROPOSED BUDGET STATEMENT; HEARING; ADOPTION; CERTIFICATION OF AMOUNT TO BE RECEIVED FROM TAXATION.

2-6.16.1 After the filing of the proposed budget statement with the City Clerk, the City Council shall each year conduct a public hearing on the proposed budget statement. Notice of the place and time of the hearing, together with a summary of the proposed budget statement, shall be published at least five days prior to the date set for the hearing in a newspaper of general circulation within the city or by direct mailing of the notice to each resident within the city.

2-6.16.2 After the hearing, the proposed budget statement shall be adopted, or amended and adopted as amended, and a written record shall be kept of such 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:

- 2-6.16.2.1 The amount to be applied to the payment of principal or interest on bonds issued by the City Council; and
- 2-6.16.2.2 The amount to be received for all other purposes.

2-6.16.3 If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of such changes shall be published within 20 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 such changes.
(Neb. RS 13-506)

2-6.16.4 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)

§ 2-6.17 ADOPTED BUDGET STATEMENT; FILING; CERTIFICATION OF AMOUNT OF TAX.

2-6.17.1 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 on or before August 25 of each year and file with the Auditor of Public Accounts, a copy of the adopted budget statement, together with the amount of the tax required to fund the adopted budget, setting out separately:

- 2-6.17.1.1 The amount to be levied for the payment of principal or interest on bonds issued by the City Council; and
- 2-6.17.1.2 The amount to be levied for all other purposes.
- 2-6.17.1.3 Proof of publication shall be attached to the statements.

2-6.17.2 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 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 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 in the proposed budget statement.

2-6.17.3 The City Council may designate the Mayor or one of its members to perform any duty or responsibility required of such body by this section.
(Neb. RS 13-508)

§ 2-6.18 PUBLIC FUNDS DEFINED.

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

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(7))

§ 2-6.19 BUDGET PROCEDURES.

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

§ 2-6.20 APPROPRIATION BILL.

The City Council shall adopt a budget ordinance pursuant to the Nebraska Budget Act, to be termed “The Annual Appropriation Bill,” in which are appropriated such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the city.
(Neb. RS 17-706)

§ 2-6.21 REVISION OF BUDGET.

2-6.21.1 Unless otherwise provided by law, the Governing Body may propose to revise the previously adopted budget statement and shall conduct a public hearing on such proposal whenever during the current fiscal year it becomes apparent to the Governing Body that:

2-6.21.1.1 There are circumstances which could not reasonably have been anticipated at the time the budget for the current year was adopted;

2-6.21.1.2 The budget adopted violated Neb. RS 13-518 to 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 to 13-522; or

2-6.21.1.3 The Governing Body has been notified by the Auditor of Public Accounts of a mathematical or accounting error or noncompliance with the Nebraska Budget Act.

2-6.21.2 Notice of the time and place of the hearing shall be published at least five days prior to the date set for hearing in a newspaper of general circulation within the municipality. Such published notice shall set forth:

2-6.21.2.1 The time and place of the hearing;

2-6.21.2.2 The amount in dollars of additional or reduced money required and for what purpose;

2-6.21.2.3 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;

2-6.21.2.4 A copy of the summary of the originally adopted budget previously published; and

2-6.21.2.5 A copy of the summary of the proposed revised budget.

2-6.21.3 At such 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.

2-6.21.4 Upon conclusion of the public hearing on the proposed revised budget and approval of the proposed revised budget by the Governing Body, the Governing Body shall file with the County Clerk of the county or counties in which such Governing Body is located, and with the Auditor of Public Accounts, a copy of the revised budget, as adopted. The Governing Body may then issue warrants in payment for expenditures authorized by the adopted revised budget. Such warrants shall be referred to as registered warrants and shall be repaid during the next fiscal year from funds derived from taxes levied therefor.

2-6.21.5 Within 30 days after the adoption of the budget under Neb. RS 13-506, a Governing Body may, or within 30 days after notification of an error by the Auditor of Public Accounts, a Governing Body 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 Governing Body shall file a copy of the corrected budget with the County Clerk of the county or counties in which such Governing Body is located and with the Auditor of Public Accounts. The Governing Body may then issue warrants in payment for expenditures authorized by the budget. (Neb. RS 13-511)

§ 2-6.22 ALL-PURPOSE LEVY

The City Council has determined that the amount of money to be raised by taxation shall be certified to the County Clerk in the form of one all -purpose levy instead of certifying a schedule of levies for specific purposes added together. Said all-purpose levy shall not exceed an annual levy of one dollar and five cents (\$1.05) on each one hundred dollars upon the actual valuation of all taxable property in the Municipality, except intangible property. (Neb. RS 19-1309)

§ 2-6.23 PROPERTY TAX; CERTIFICATION OF AMOUNT.

The City Council shall, at the time and in the manner provided by law, cause to be certified to the County Clerk by resolution 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 ordinance for the ensuing year, including all special assessments and taxes assessed as otherwise provided. Subject to Neb. RS 77-3442, the maximum amount of tax which may be so certified, assessed, and collected shall not require a tax levy in excess of the amounts specified in Neb. RS 17-702. (Neb. RS 17-702)

§ 2-6.24 PROPERTY TAX LEVY; MAXIMUM; AUTHORITY TO EXCEED.

2-6.24.1 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 (2-6.24.1), except as provided in division (2-6.24.3). 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 such judgment, to the extent such 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 Department 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 (2-6.24.1). The limitations on tax levies provided in this division (2-6.24.1) 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 (2-6.24.1) 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 (2-6.24.3). (Neb. RS 77-3442)

2-6.24.2

2-6.24.2.1 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 Off-street 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 (2-6.24.1), except that such limitation shall not apply to property tax levies for pre-existing 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 Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport. For off-street parking districts established under the Off-street 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 (2-6.24.2). 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 (2-6.24.3).

2-6.24.2.2 On or before August 1, all political subdivisions subject to municipal levy authority under this division (2-6.24.2) 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 or the political subdivision's governing body. The failure of a political subdivision to make a preliminary request shall preclude such political subdivision from using procedures set forth in Neb. RS 77-3444 to exceed the final levy allocation as determined in this division (2-6.24.2).

2-6.24.3 The City Council shall;

2-6.24.3.1.1 Adopt a resolution by a majority vote of members present which determines a final allocation of levy authority to its political subdivisions; and

2-6.24.3.1.2 Forward a copy of such resolution to the chairperson of the governing body of each of its political subdivisions.

2-6.24.3.2 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)

2-6.24.4 The city may exceed the limits provided in division (2-6.24.1) 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.

2-6.24.4.1 The City Council may call for the submission of the issue to the voters:

2-6.24.4.2 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

2-6.24.4.3 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.

2-6.24.4.4 The resolution or petition shall include the amount of levy which would be imposed in excess of the limits provided in division (2-6.24.1) and the duration of the excess levy authority. The excess levy authority shall not have a duration greater than five 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.

2-6.24.4.5 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.

2-6.24.4.6 Any excess levy authority approved under this division (2-6.24.3) 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 (2-6.24.3)(8), whichever is earliest.

2-6.24.4.7 The City Council may pass no more than one resolution calling for an election pursuant to this division (2-6.24.3) during any one calendar year. Only one election may be held in any one calendar year pursuant to a petition initiated under this division (2-6.24.3). 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.

2-6.24.4.8 If a majority of the votes cast upon the ballot question are in favor of such tax, the County Board shall authorize a tax in excess of the limits in division (2-6.24.1), but such tax shall not exceed the amount stated in the ballot question. If a majority of those voting on the ballot question are opposed to such tax, the City Council shall not impose such tax.

2-6.24.4.9 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.

2-6.24.4.9.1 The City Council may call for the submission of the issue to the voters:

2-6.24.4.9.2. 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

2-6.24.4.9.3 Upon request of a petition by the County Clerk or Election Commissioner of every county containing all or part of the city by requesting an election signed by at least 5% of the registered voters residing in the city.

2-6.24.4.10 The resolution or petition shall include the amount and the duration of the previously approved excess levy authority and a statement that either such excess levy authority will be rescinded, or such excess levy authority will be modified. If the excess levy authority will be modified, the amount and duration of such modification shall be stated. The modification shall not have a duration greater than five 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.

Statutory reference:

Similar provisions, see Neb. RS 77-3442 through 77-3444

§ 2-6.25 PROPERTY TAX LEVY AND REQUEST; AUTHORITY TO SET.

2-6.25.1 The property tax request for the prior year shall be the property tax request for the current year for purposes of the levy set by the County Board of Equalization in Neb. RS 77-1601 unless the City Council passes by majority vote a resolution or ordinance setting the tax request at a different amount. Such resolution or ordinance shall only be passed after a special public hearing called for such purpose is held and after notice is published in a newspaper of general circulation in the area of the city at least five days prior to the hearing.

2-6.25.2 The hearing notice shall contain the following information:

2-6.25.2.1 The dollar amount of the prior year's tax request and the property tax rate that was necessary to fund that tax request;

2-6.25.2.2 The property tax rate that would be necessary to fund last year's tax request if applied to the current year's valuation; and

2-6.25.2.3 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.

2-6.25.3 Any resolution setting a tax request under this section shall be certified and forwarded to the County Clerk prior to October 14 of the year for which the tax request is to apply.

2-6.25.4 Any tax levy which is not in compliance with this subsection and Neb. RS 77-1601 shall be construed as an unauthorized levy under Neb. RS 77-1606.

Statutory reference:

Similar provisions, see Neb. RS 77-1601.02

HOUSING AGENCY

§ 2-6.26 HOUSING AUTHORITY; CONTINUED EXISTENCE AS HOUSING AGENCY

2-6.26.1 The local Housing Authority established under prior state law and in existence on January 1, 2000, shall have continued existence as a housing agency under the Nebraska Housing Agency Act.

2-6.26.2 The local housing agency shall conduct its operations consistent with the Nebraska Housing Agency Act. All property, rights in land, buildings, records, and equipment and any funds, money revenue, receipts, or assets of the Authority belong to the agency as successor. All obligations, debts, commitments, and liabilities of the Authority are obligations, debts, commitments, and liabilities of the successor agency.

2-6.26.3 Any resolution by the Authority and any action taken by the Authority prior to January 1, 2000, with regard to any project or program which is to be completed within or to be conducted for a twelve (12) month period following January 1, 2000 and which resolution or action is lawful under state law as it existed prior to January 1, 2000, is a lawful resolution or action of the successor agency and binding upon the successor agency and enforceable by or against the agency notwithstanding that such resolution or action is inconsistent with, not authorized by, or prohibited under the provisions of the Nebraska Housing Agency Act.

2-6.26.4 All Commissioners of the local housing agency and all officers, legal counsel, technical experts, directors, and other appointees or employees of the agency holding office or employment by virtue of any such prior law on January 1, 2000, shall be deemed to have been appointed or employed under the Nebraska Housing Agency Act. (*Ref 71-1576 RS Neb.*)

§ 2-6.27 HOUSING AGENCY; REPORTS.

The Housing Agency shall keep an accurate account of all its activities and of all its receipts and disbursements and shall make an annual report. Such report shall include all mortgages and other interests in real property held by the contracts; a listing of all bond issues and their essential terms and obligations; and all other financial obligations of the housing Agency over fifty thousand (\$50,000.00) dollars. Such reports shall be considered public records. If there has been no change from the last report in the status of any of the items reported pursuant to this section, the Housing Agency may file a statement to that effect in lieu of the report. (Neb. RS 71-1552)

§ 2-6.28 HOUSING AGENCY; RULES AND REGULATIONS.

The Housing Agency may establish from time to time rules and regulations consistent with the purposes of this Article concerning the priority of eligible applicants for occupancy. The Agency may give preferential treatment to applicants who are service-people and or veterans, relatives of service-people or veterans, or disabled service-people or veterans, the elderly or disabled, those in urgent need of adequate housing or who have no adequate source of income, provided that in any such system of priority, displaced persons in need shall have a priority ahead of all other persons and provided, further, that no tenant in good standing then in occupancy and qualified for continued occupancy shall have his tenancy terminated in order to provide dwelling units for classes or categories of applicants as the Agency may establish. (Neb. RS 71-1547)

§ 2-6.29 HOUSING AGENCY; OWNERSHIP.

The City Housing Agency is owned by the City and operated through the Housing Agency Commission. The Housing Agency shall constitute a body corporate and politic and shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Nebraska Housing Agency Law. (Neb. RS 71-1529)

§ 2-6.30 HOUSING AGENCY; DEFINITIONS.

Except as otherwise specifically provided, the definitions and terms set out in the Nebraska Statutes relating to Housing Authorities under the Nebraska Housing Agency Law are hereby adopted by reference as they now exist or may hereafter be amended. (Neb. RS 71-1522)

ARTICLE 2-7: ELECTIONS

Section

General Election Provisions

- 2-7.1 Generally
- 2-7.2 Election of officers; certification
- 2-7.3 Officers; terms; qualifications
- 2-7.4 Partisan ballot; when allowed; requirements
- 2-7.5 Primary election; number of candidates filing
- 2-7.6 Notice
- 2-7.7 Special elections
- 2-7.8 Filing fee
- 2-7.9 Petition candidates; number of signatures required; procedure
- 2-7.10 Registered voters; qualifications
- 2-7.11 Certificate of nomination or election
- 2-7.12 Tie votes
- 2-7.13 Exit polls

Initiative and Referendum

- 2-7.14 Definitions
- 2-7.15 Petitions; ballots
- 2-7.16 Petition form; declaratory judgments. Initiative and Referendum; Petition Form; Declaratory Judgment
- 2-7.17 Signature sheets
- 2-7.18 Petition notification; verification
- 2-7.19 Frequency of occurrence
- 2-7.20 Direct vote
- 2-7.21 Initiative and referendum; elections
- 2-7.22 Ballots
- 2-7.23 Initiative
- 2-7.24 Referendum; limitations
- 2-7.25 Referendum passage
- 2-7.26 Applicability

GENERAL ELECTION PROVISIONS

§ 2-7.1 GENERALLY.

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 non-partisan ballot and state law does not require otherwise. 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 by the city shall be held as provided in the Election Act unless otherwise provided by Neb. RS 19-3001 through 19-3052.

(Neb. RS 32-556)

Statutory reference:

Statewide primary election, see Neb. RS 32-401

Statewide general election, see Neb. RS 32-404

Conformance to Election Act, see Neb. RS 32-404(1)

Notice, publication, and printing of ballots, see Neb. RS 32-801 through 32-822

Election costs, see Neb. RS 32-1201 through 32-1208

§ 2-7.2 ELECTION OF OFFICERS; CERTIFICATION.

2-7.2.1 All city elections involving the election of officers shall be held in accordance with the Election Act and in conjunction with the statewide general election.

(Neb. RS 32-556)

2-7.2.2 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.

(Neb. RS 32-404(2))

§ 2-7.3 OFFICERS; TERMS; QUALIFICATIONS.

2-7.3.1 Commencing with the primary election in 1976 and every two years thereafter, all elected officers of the city shall be nominated at the statewide primary election and elected at the statewide general election. All elected officers of the city shall serve for terms of four years or until their successors are elected and qualified.

(Neb. RS 32-533)

2-7.3.2 The Mayor and Council members shall be residents and registered voters of the city.

2-7.3.3 The members of the City Council shall be elected from the city at large. The term of office shall begin on the first regular meeting of the City Council in December following the statewide general election. 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 city and a registered voter.

Statutory reference:

City Council, members, terms, qualifications, see Neb. RS 17-103 and 17-104

Mayor, qualifications, see Neb. RS 17-107

Merger of elective and appointive offices, see Neb. RS 17-108.02

Change from or to ward or at-large election, see Neb. RS 32-554

§ 2-7.4 PARTISAN BALLOT; WHEN ALLOWED; REQUIREMENTS.

All elective city offices shall be nominated and elected on a nonpartisan basis unless the City Council 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)

§ 2-7.5 PRIMARY ELECTION; NUMBER OF CANDIDATES FILING.

If the names of candidates properly filed for nomination at the primary election for officers of the city do not exceed two candidates for each position to be filled, any such candidates shall be declared nominated and their names shall not appear on any primary election ballots. (Neb. RS 32-811)

§ 2-7.6 NOTICE.

The notice of election required to be published by the Election Commissioner or County Clerk no less than 40 days prior to an election shall serve as the notice requirement for all city elections which are held in conjunction with the statewide primary or general election.

Statutory reference: Notice of election requirements, see Neb. RS 32-802

§ 2-7.7 SPECIAL ELECTIONS.

2-7.7.1 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 shall be subject to division (9.7.2) of this section.

2-7.7.1.2 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.

2-7.7.1.3 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 such 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 absentee ballots 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, including absentee 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)

2-7.7.2 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)

§ 2-7.8 FILING FEE.

2-7.8.1 Except as provided in divisions (2-7.8.3) or (2-7.8.4) of this section, a filing fee shall be paid to the County Treasurer by or on behalf of each candidate prior to filing for office. The filing fee shall be a sum equal to 1% of the annual salary such candidate will receive if he or she is elected and qualifies for the office for which he or she files as a candidate. The fee shall be placed in the general fund of the city. No candidate filing forms shall be filed until the proper receipt showing payment of such filing fee is presented to the filing officer. On the day of the filing deadline, the County Treasurer's office shall remain open to receive filing fees until the hour of the filing deadline.

2-7.8.2 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 ten 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.

2-7.8.3 No filing fee shall be required on 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.

2-7.8.4 No filing fee shall be required of any candidate completing an affidavit requesting to file for elective office in *forma pauperis*. A pauper shall mean 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. Available resources shall include every type of property or interest in property that an individual owns and may convert into cash except:

- 2-7.8.4.1 Real property used as a home;
- 2-7.8.4.2 Household goods of a moderate value used in the home; and
- 2-7.8.4.3 Assets to a maximum value of \$3,000 used by a recipient in a planned effort directed towards self-support.

2-7.8.5 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)

§ 2-7.9 PETITION CANDIDATES; NUMBER OF SIGNATURES REQUIRED; PROCEDURE,

2-7.9.1 Any registered voter who was not a candidate in the primary 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.

2-7.9.1.1 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 32-626(1) and the candidate files for the office by petition as prescribed in this section.

2-7.9.2 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.

2-7.9.2.1 The number of signatures of registered voters needed to place the name of a candidate upon the partisan ballot for the general election shall be at least 20% of the total vote for governor or president of the United States at the immediately preceding general election within the city, not to exceed 2,000.

2-7.9.3 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. Petitions shall be signed by registered voters residing in the city and shall be filed with the filing officer in the same manner as provided for candidate filing forms in Neb. RS 32-607. Petition signers and 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 payment of the required filing fee. The petitions shall be filed by September 1 in the year of the general election.
(Neb. RS 32-616 – 32-618)

§ 2-7.10 REGISTERED VOTERS; QUALIFICATIONS.

2-7.10.1 For purposes of this section, **REGISTERED VOTER** shall mean an elector who has a current voter registration record on file with the Election Commissioner or County Clerk.
(Neb. RS 32-115)

2-7.10.2 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

§ 2-7.11 CERTIFICATE OF NOMINATION OR ELECTION.

2-7.11.1 The Election Commissioner, County Clerk, or City Clerk shall, within 40 days after the election, prepare, sign, and deliver a certificate of nomination or a certificate of election to each person whom the canvassing board has declared to have received the highest vote for each city office. No person shall be issued a certificate of nomination as a candidate of a political party unless such person has received at least 5% of the total ballots cast at the primary election by registered voters affiliated with that political party in the district which the office for which he or she is a candidate serves.

2-7.11.2 A certificate of election prepared by the City Clerk shall be in the form as nearly as possible prescribed in Neb. RS 32-1033 and shall be signed by the Mayor, under the seal of the city, and countersigned by the Clerk.
(Neb. RS 19-3041, 32-1033)

Statutory reference:

Duty to issue certificates, see Neb. RS 32-558

§ 2-7.12 TIE VOTES.

In the case of a tie vote of any of the candidates in either the primary or general election, the Election Commissioner or County Clerk shall notify such candidates by certified mail to appear at his or her office on a given day and hour to determine the outcome before the canvassing board, and the certificate of nomination or election shall be delivered accordingly.
(Neb. RS 32-1122)

§ 2-7.13 EXIT POLLS.

No person shall conduct any exit poll, 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 room or, if inside the polling place building, within 100 feet of any voting booth.
(Neb. RS 32-1525)

INITIATIVE AND REFERENDUM

§ 2-7.14 DEFINITIONS.

The powers of initiative and referendum are reserved to the qualified electors of the city by state law. This section shall govern the use of initiative to enact, and the use of referendum to amend or repeal measures affecting the governance of the city. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CIRCULATOR. Any person who solicits signatures for an initiative or referendum petition.

CITY. The City of Oshkosh.

CLERK. The City Clerk or the city official in charge of elections.

MEASURE. An ordinance, charter provision, or resolution which is within the legislative Agency of the City Council to pass, and which is not excluded from the operation of referendum by the exceptions in § 2-7.26.

PETITION. A document authorized for circulation pursuant to § 2-7.17 or any copy of such document.

PLACE OF RESIDENCE. The street and number of the residence. If there is no street and number for the residence, ***PLACE OF RESIDENCE*** shall mean the mailing address.

PROSPECTIVE PETITION. A sample document containing the information necessary for a completed petition, including a sample signature sheet, which has not yet been authorized for circulation.

QUALIFIED ELECTORS. All persons registered to vote, at the time the prospective petition is filed, in the jurisdiction governed or to be governed by any measure sought to be enacted by initiative or altered or repealed by referendum.

RESIDENCE. That place at which a person has established his or her home, where he or she is habitually present, and to which, when he or she departs, he or she intends to return.

SIGNATURE SHEET. A sheet of paper which is part of a petition and which is signed by persons wishing to support the petition effort.

(Neb. RS 18-2503 – 18-2511)

Statutory reference:

Power reserved to qualified electors, see Neb. RS 18-2501

§ 2-7.15 PETITIONS; BALLOTS.

2-7.15.1 Before circulating an initiative or referendum petition, the petitioner shall file with the Clerk a prospective petition. The Clerk shall date the prospective petition immediately upon its receipt. The Clerk shall verify that the prospective petition is in proper form and shall provide a ballot title for the initiative or referendum proposal, as described below. If the prospective petition is in proper form, the Clerk shall authorize the circulation of the petition, and such authorization shall be given within three working days from the date the prospective petition was filed. If the form of the prospective petition is incorrect, the Clerk shall, within three working days from the date the prospective petition was filed, inform the petitioner of necessary changes and request that those changes be made. When the requested changes have been made and the revised prospective petition has been submitted to the Clerk in proper form, the Clerk shall authorize the circulation of the petition, and such authorization shall be given within two working days from the receipt of the properly revised petition. Verification by the Clerk that the prospective petition is in proper form does not constitute an admission by the Clerk, City Council, or city that the measure is subject to referendum or limited referendum or that the measure may be enacted by initiative.

(Neb. RS 18-2512)

2-7.15.2 The ballot title of any measure to be initiated or referred shall consist of:

2-7.15.2.1 A briefly-worded caption by which the measure is commonly known or which accurately summarizes the measure;

2-7.15.2.2 A briefly-worded question which plainly states the purpose of the measure

and which is phrased so that an affirmative response to the question corresponds to an affirmative vote on the measure; and

2-7.15.2.3 A concise and impartial statement, of not more than 75 words, of the chief

purpose of the measure. (Neb. RS 18-2513)

2-7.15.3 The ballots used when voting on an initiative or referendum proposal shall contain the entire ballot title. Proposals for initiative and referendum shall be submitted on separate ballots, and the ballots shall be printed in lower case, ten-point type, except that the caption shall be in bold face type. All initiative and referendum measures shall be submitted in a nonpartisan manner without indicating or suggesting on the ballot that they have or have not been approved or endorsed by any political party or organization.

(Neb. RS 18-2513)

§ 2-7.16 PETITION FORM; DECLARATORY JUDGMENTS. INITIATIVE AND REFERENDUM; PETITION FORM; DECLARATORY JUDGMENT.

2-7.16.1 The forms designed by the Secretary of State to be used for initiative and referendum petitions shall be made available to the public by the City Clerk, and they shall serve as a guide for individuals preparing prospective petitions. Substantial compliance with initiative and referendum forms is required before

authorization to circulate such petition shall be granted by the City Clerk. Chief petitioners or circulators preparing prospective petitions shall be responsible for making copies of the petition for circulation after authorization for circulation has been granted.

(Neb. RS 18-2514)

2-7.16.2 Each petition presented for signature must be identical to the petition authorized for circulation by the City Clerk. Every petition shall contain the name and place of residence of not more than three persons as chief petitioners or sponsors of the measure. The chief petitioners or sponsors shall be qualified electors of the municipality potentially affected by the initiative or referendum proposal. Every petition shall contain the caption and the statement specified to be part of the ballot title. When a special election is being requested, such fact shall be stated on every petition.

(Neb. RS 18-2515)

2-7.16.3 The city or any chief petitioner may seek a declaratory judgment regarding any questions arising under this Article, as it may be from time to time amended, including, but not limited to, determining whether a measure is subject to referendum or limited referendum or whether a measure may be enacted by initiative. If a chief petitioner seeks a declaratory judgment, the city shall be served by personal, residence, or certified mail service upon the chief executive officer or City Clerk. If the city seeks a declaratory judgment, only the chief petitioner or chief petitioners shall be required to be served.

2-7.16.4 Any action brought for declaratory judgment for purposes of determining whether a measure is subject to limited referendum or referendum, or whether a measure may be enacted by initiative, may be filed in the district court at any time after the filing of a referendum or initiative petition with the City Clerk for signature verification until 40 days from the date the City Council received notification from the verifying official that the necessary signatures have been obtained. If the city does not bring an action for declaratory judgment to determine whether the measure is subject to limited referendum or referendum, or whether the measure may be enacted by initiative, until after it has received such notification, it shall be required to proceed with the initiative or referendum election in accordance with the provisions of this Article. If the city does file such an action prior to receiving such notification, it shall not be required to proceed to hold such election until a final decision has been rendered in the action.

2-7.16.5 Any action for a declaratory judgment shall be governed generally by Neb. RS 25-21,149 through 25-21,164, except that only the city and each chief petitioner shall be required to be made parties. The city, City Clerk, City Council, or any of the city's officers shall be entitled to rely on any order rendered by the court in any such proceeding. Any action brought for declaratory judgment pursuant to this section shall be given priority in scheduling hearings and in disposition as determined by the court. When an action is brought to determine whether the measure is subject to limited referendum or referendum, or whether a measure may be enacted by initiative, a decision shall be rendered by the court no later than five days prior to the election.

2-7.16.6 The provisions of this section relating to declaratory judgments shall not be construed as limiting but construed as supplemental and additional to other rights and remedies conferred by law.

(Neb. RS 18-2538)

Statutory reference:

Service of summons on political subdivisions, see Neb. RS 25-510.02

§ 2-7.17 SIGNATURE SHEETS.

2-7.17.1 Every signature sheet shall:

- 2-7.17.1.1 Contain the caption required in § 2-7.24.2.1.1;
- 2-7.17.1.2 Be part of a complete and authorized petition when presented to potential signatories; and
- 2-7.17.1.3 Comply with the requirements of Neb. RS 32-628;
(Neb. RS 18-2516)

2-7.17.2 Signers and circulators shall comply with Neb. RS 32-629 and 32-630.
(Neb. RS 18-2517)

§ 2-7.18 PETITION NOTIFICATION; VERIFICATION.

2-7.18.1 Signed petitions shall be filed with the Clerk for signature verification. Upon the filing of a petition, and passage of a resolution by the City Council, the city and the County Clerk or Election Commissioner of the county in which such city is located may by mutual agreement provide that the County Clerk or Election Commissioner shall ascertain whether the petition is signed by the requisite number of voters. The city shall reimburse the County for any costs incurred by the County Clerk or Election Commissioner. When the verifying official has determined that 100% of the necessary signatures required by this section have been obtained, he or she shall notify the City Council of that fact and shall immediately forward to the City Council a copy of the petition.

2-7.18.2 In order for an initiative or referendum proposal to be submitted to the City Council and the voters, the necessary signatures shall be on file with the Clerk within six months from the date the prospective petition was authorized for circulation. If the necessary signatures are not obtained by such date, the petition shall be void.
(Neb. RS 18-2518)

§ 2-7.19 FREQUENCY OF OCCURRENCE.

The same measure, either in form or in essential substance, may not be submitted to the people by initiative petition, either affirmatively or negatively, more often than once every two years. No attempt to repeal or alter an existing measure or portion of such measure by referendum petition may be made within two years from the last attempt to do the same. Such prohibition shall apply only when the subsequent attempt to repeal or alter is designed to accomplish the same, or essentially the same purpose as the previous attempt.
(Neb. RS 18-2519)

§ 2-7.20 DIRECT VOTE.

The executive officer and City Council of the city may at any time, by resolution, provide for the submission to a direct vote of the electors of any measure pending before it, passed by it, including an override of any veto, if necessary, or enacted by the electors under this section and may provide in such resolution that such measure shall be submitted at a special election or the next regularly scheduled primary or general election. Immediately upon the passage of any such resolution for submission, the Clerk shall cause such measure to be submitted to a direct vote of the electors, at the time specified in such resolution and in the manner provided in this section for submission of measures upon proposals and petitions filed by voters. Such matter shall become law if approved by a majority of the votes cast.
(Neb. RS 18-2520)

§ 2-7.21 INITIATIVE AND REFERENDUM; ELECTIONS.

2-7.21.1 The Clerk shall call elections under this section, either at a special election or regularly scheduled primary or general election. No special election to be conducted by the Election Commissioner or County Clerk shall be held within 30 days, prior to the statewide primary or general election, or within 60 days after the statewide primary or general election. He or she shall cause notice of every such election to be printed in one or more newspapers of general circulation in such city at least once not less than 30 days prior to such election and also posted in the office of the Clerk and in at least three conspicuous places in such city at least 30 days prior to such election. The notice shall be substantially as follows:

“Notice is hereby given that on Tuesday, the _____ day of _____,
20____,__, at _____
_____ (identify polling
place or precinct) of the city of _____, Nebraska, an election will
be held at which there will be submitted to the electors of the city for their approval or
rejection, the following measures, propositions, or issues:

(naming measures, propositions, or issues)

_____ .
which election will be open at 8:00 a.m. and will continue open until 8:00 p.m.,
of the same day.

Dated this _____ day of _____, 20_____.

Clerk of the City of _____, Nebraska.”

2-7.21.2 The Clerk shall make available for photocopying a copy in pamphlet form of measures initiated or referred. Such notice provided in this section shall designate where such a copy in pamphlet form may be obtained.

(Neb. RS 18-2521)

§ 2-7.22 BALLOTS

All ballots for use in special elections under this section shall be prepared by the Clerk and furnished by the City Council, unless the City Council contracts with the county for such service and shall be in form the same as provided by law for election of the executive officer and City Council. When ordinances under such sections are submitted to the electors at a regularly scheduled primary or general election, they shall be placed upon the official ballots as provided in this section.

(Neb. RS 18-2522)

Statutory reference:

Ballots for municipal elections, see Neb. RS 19-3018, 19-3019

Election costs see Neb. RS 32-1201 through 32-1208

Notice, publication, and printing of ballots for statewide elections, see Neb. RS 32-801 through 32-822

§ 2-7.23 INITIATIVE.

2-7.23.1 The power of initiative allows citizens the right to enact measures affecting the governance of the city. An initiative proposal shall not have as its primary or sole purpose the repeal or modification of existing law except if such repeal or modification is ancillary to and necessary for the adoption and effective operation of the initiative measure.

2-7.23.1.1 An initiative shall not be effective if the direct or indirect effect of the passage of such initiative measure shall be to repeal or alter an existing law, or portion thereof, which is not subject to referendum or subject only to limited referendum pursuant to § 2-7.40.
(Neb. RS 18-2523)

2-7.23.2 Whenever an initiative petition bearing signatures equal in number to at least 15% of the qualified electors of the city has been filed with the Clerk and verified, it shall be the duty of the City Council to consider passage of the measure contained in the petition, including an override of any veto, if necessary. If the City Council fails to pass the measure without amendment, including an override of any veto, if necessary, within 30 days from the date it received notification, the Clerk shall cause the measure to be submitted to a vote of the people at the next regularly scheduled primary or general election held within the city. If the City Council desires to submit the measure to a vote of the people at a special election prior to the next regularly scheduled primary or general election held within the city, the City Council shall by resolution direct the Clerk to cause the measure to be submitted at a special election. Such resolution shall not be subject to referendum or limited referendum.
(Neb. RS 18-2524)

2-7.23.3 Whenever an initiative petition bearing signatures equal in number to at least 20% of the qualified electors which requests that a special election be called to submit the initiative measure to a vote of the people has been filed with the Clerk and verified pursuant to § 2-7.34, it shall be the duty of the City Council to consider passage of the measure contained in the petition, including an override of any veto, if necessary. If the City Council fails to pass the measure, without amendment, including an override of any veto, if necessary, within 30 days from the date it received notification, the Clerk shall cause the measure to be submitted to a vote of the people at a special election called for such purpose. Subject to the provisions of this chapter, the date of such election shall not be less than 30 nor more than 60 days from the date the City Council received notification pursuant to § 2-7.34.
(Neb. RS 18-2525)

2-7.23.4 If a majority of voters voting on the initiative measure shall vote in favor of such measure, it shall become a valid and binding measure of the city 30 days after certification of the election results, unless the City Council by resolution orders an earlier effective date or the measure itself provides for a later effective date, which resolution shall not be subject to referendum or limited referendum. A measure passed by such method shall not be amended or repealed except by two-thirds majority of the members of the City Council. No such attempt to amend or repeal shall be made within one year from the passage of the measure by the electors.
(Neb. RS 18-2526)

§ 2-7.24 REFERENDUM; LIMITATIONS.

2-7.24.1 The power of referendum allows citizens the right to repeal or amend existing measures, or portions thereof, affecting the governance of the city.
(Neb. RS 18-2527)

2-7.24.2 The following measures shall not be subject to referendum or limited referendum:

2-7.24.2.1 Measures necessary to carry out contractual obligations including, but not limited to, those relating to the issuance of or provided for in bonds, notes, warrants, or other evidences of indebtedness, for projects previously approved by a measure which was, or is, subject to referendum or limited referendum or previously approved by a measure adopted prior to July 17, 1982;

2-7.24.2.2 Measures relating to any industrial development projects, subsequent to measures giving initial approval to such projects;

2-7.24.2.3 Measures adopting proposed budget statements following compliance with procedures set forth in the Nebraska Budget Act;

2-7.24.2.4 Measures relating to the immediate preservation of the public peace, health, or safety which have been designated as urgent measures by unanimous vote of those present and voting of the City Council and approved by the Mayor;

2-7.24.2.5 Measures relating to projects for which notice has been given as provided for in division 2-7.24.5 of this section for which a sufficient referendum petition was not filed within the time limit stated in such notice or which received voter approval after the filing of such petition;

2-7.24.2.6 Resolutions directing the City Clerk to cause measures to be submitted to a vote of the people at a special election as provided in division (2-7.24.3) and division (2-7.24.1) of this section;

2-7.24.2.7 Resolutions ordering an earlier effective date for measures enacted by initiative as provided in division (2-7.24.5); and

2-7.24.2.8 Measures relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act by the city and which are necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidence of indebtedness;

2-7.24.2.9 Measures that amend, supplement, change, modify, or repeal a zoning regulation, restriction, or boundary and are subject to protest as provided in Neb. RS 19-905; and

2-7.24.2.10 Measures relating to personnel issues, including, but not limited to, establishment, modification, or elimination of any personnel position, policy, salary, or benefit and any hiring, promotion, demotion, or termination of personnel.
(Neb. RS 18-2528(1))

2-7.24.3 The following measures shall be subject to limited referendum:

2-7.24.3.1 Measures in furtherance of a policy of the city or relating to projects previously approved by a measure which was subject to referendum or which was enacted by initiative or has been approved by the voters at an election, except that such measures shall not be subject to referendum or limited referendum for a period of one year after any such policy or project was approved at a referendum election, enacted by initiative, or approved by the voters at an election;

2-7.24.3.2 Measures relating to the acquisition, construction, installation, improvement, or enlargement, including the financing or refinancing of the costs of public ways, public property, utility systems, and other capital projects, and measures giving initial approval for industrial development projects;

2-7.24.3.3 Measures setting utility system rates and charges, except for measures necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidences of indebtedness, and pay rates and salaries for municipal employees other than the members of the City Council and the Mayor; and

2-7.24.3.4 Measures relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act by the city except for measures necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidence of indebtedness.
(Neb. RS 18-2528(2))

2-7.24.4 Measures subject to limited referendum shall ordinarily take effect thirty days after their passage by the City Council, including an override of any veto, if necessary. Referendum petitions directed at measures subject to limited referendum shall be filed for signature verification pursuant to § 2-7.20 within 30 days after such measure's passage by the City Council, including an override of any veto, if necessary, or after notice is first published pursuant to division (2-7.26.5.3) of this section. If the necessary number of signatures as provided in this section has been obtained within the time limitation, the effectiveness of the measure shall be suspended unless approved by the voters.
(Neb. RS 18-2528(3))

2-7.24.5 For any measure relating to the acquisition, construction, installation, improvement, or enlargement of public ways, public property, utility systems, or other capital projects or any measure relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act, the city may exempt all subsequent measures relating to the same project from the referendum and limited referendum procedures provided for in this section by the following procedure:

2-7.24.5.1 By holding a public hearing on the project, the time and place of such hearing being published at least once not less than five days prior to the date set for hearing in a newspaper of general circulation within the City Council's jurisdiction;

2-7.24.5.2 By passage of a measure approving the project, including an override of a veto, if necessary, at a meeting held on any date subsequent to the date of hearing; and

2-7.24.5.3 After passage of such measure, including an override of a veto, if necessary, by giving notice as follows:

2-7.24.5.3.1 For those projects for which applicable statutes require an ordinance or resolution of necessity, creating a district or otherwise establishing the project, notice shall be given for such project by including either as part of such ordinance or resolution or as part of any publicized notice concerning such ordinance or resolution a statement that the project as described in the ordinance or resolution is subject to limited referendum for a period of 30 days after the first publication of such notice and that, after such 30-day period, the project and measures related to it will not be subject to any further right of referendum; and

2-7.24.5.3.2 For projects for which applicable statutes do not require an ordinance or resolution of necessity, notice shall be given by publication of a notice concerning such projects stating in general terms the nature of the project and the engineer's estimate of costs of such project and stating that the project

described in the notice is subject to limited referendum for a period of 30 days after the first publication of such notice and that, after such 30-day period, the project and measures related to it will not be subject to any further right of referendum. The notice required by this subdivision shall be published in at least one newspaper of general circulation within the city and shall be published not later than 15 days after passage by the City Council, including an override of a veto, if necessary, of a measure approving the project.

The right of the city to hold such a hearing prior to the passage of the measure by the City Council and give such notice after passage of such measure by the City Council to obtain exemption for any particular project in a manner described in this subsection is optional, and the city shall not be required to hold such a hearing or give such notice for any particular project.

(Neb. RS 18-2528(4))

2-7.24.6 All measures, except as provided in divisions (2-7.26.2), (2-7.26.3), and (2-7.26.5) of this section, shall be subject to the referendum procedure at any time after such measure has been passed by the City Council, including an override of a veto, if necessary, or enacted by the voters by initiative.

(Neb. RS 18-2528(5))

(Neb. RS 18-2528)

§ 2-7.25 REFERENDUM PASSAGE.

2-7.25.1 Whenever a referendum petition bearing signatures equal in number to at least 15% of the qualified electors of the city has been filed with the Clerk and verified pursuant to § 2-7.18, it shall be the duty of the City Council to reconsider the measure or portion of such measure which is the object of the referendum. If the City Council fails to repeal or amend the measure or portion thereof in the manner proposed by the referendum, including an override of any veto, if necessary, within 30 days from the date the City Council receives notification pursuant to § 2-7.18, the Clerk shall cause the measure to be submitted to a vote of the people at the next regularly scheduled primary or general election held within the city. If the City Council desires to submit the measure to a vote of the people at a special election prior to the next regularly scheduled primary or general election held within the city, the City Council shall, by resolution, direct the Clerk to cause the measure to be submitted at a special election. Such resolution shall not be subject to referendum or limited referendum.

(Neb. RS 18-2529)

2-7.25.2 Whenever a referendum petition bearing signatures equal in number to at least 20% of the qualified voters of the city which requests that a special election be called to submit the referendum measure to a vote of the people has been filed with the Clerk and verified, it shall be the duty of the City Council to reconsider the measure or portion of such measure which is the object of the referendum. If the City Council fails to repeal or amend the measure or portion thereof, in the manner proposed by the referendum, including an override of any veto, if necessary, the Clerk shall cause the measure to be submitted to a vote of the people at a special election called for such purpose within 30 days from the date the City Council received notification. Subject to the provisions § 2-7.21, the date of such special election shall not be less than 30 nor more than 60 days from the date the City Council received notification.

(Neb. RS 18-2530)

2-7.25.3 If a majority of the electors voting on the referendum measure shall vote in favor of such measure, the law subject to the referendum shall be repealed or amended. A measure repealed or amended by referendum shall not be reenacted or returned to its original form except by a two-thirds majority of the members of the City Council. No such attempt to reenact or return the measure to its original form shall be made within one year of the repeal or amendment of the measure by the electors. If the referendum measure does not receive a majority vote, the ordinance shall immediately become effective or remain in effect.

(Neb. RS 18-2531)

§ 2-7.26 APPLICABILITY.

2-7.26.1 The Election Act, so far as applicable and when not in conflict with Neb. RS 18-2501 to 18-2531, shall apply to voting on ordinances by the registered voters pursuant to this section.
(Neb. RS 18-2536)

2-7.26.2 Nothing in this section shall apply to procedures for initiatives or referendums provided in Neb. RS 18-412 and 18-412.02 relating to municipal light and power plants, Neb. RS 70-504 and 70-650.01, relating to public power districts, and Neb. RS 80-203 to 80-205 relating to soldiers and sailors monuments.
(Neb. RS 18-2537)

Statutory reference:

Statutory penalties for violation of state initiative and referendum laws, see Neb. RS 18-2532 to 18-2535 Election Act

CHAPTER 3: PUBLIC WORKS & DEPARTMENTS

ARTICLE

3-1. GENERAL PROVISIONS

3-2. WATER

3-3. SEWERS

3-4. SOLID WASTE

ARTICLE 3-1: GENERAL PROVISIONS

Section

- 3-1.1 Definitions
- 3-1.2 Discontinuance of service
- 3-1.3 Notice and disconnect procedure
- 3-1.4 Offense
- 3-1.5 Civil action

Statutory reference:

Authority, see Neb. RS 70-1602 to 70-1615

§ 3-1.1 DEFINITIONS.

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

DELINQUENT UTILITY SERVICE BILL. Any bill for utility service, all or any portion of which is not paid during the normal billing cycle; provided that, where an installment payment plan is in effect, ***DELINQUENT UTILITY SERVICE BILL*** shall mean any bill for utility service, of which all or any portion of the scheduled payment is not paid during the normal billing cycle.

EMPLOYEE. An employee of the city who is employed for the purpose of conducting hearings for the city, and who may otherwise be employed by the city or by another.

SUBSCRIBER or PATRON. Any natural persons, and where relevant, a corporation, partnership or unincorporated association, who is a subscriber or patron of a utility owned or operated by the city.

UTILITY. Any enterprise, facility or service provided under the ownership, direction or control of the city; provided that, the Oshkosh Municipal Airport is specifically excluded from the meaning of ***UTILITY*** as used in this article.

§ 3-1.2 DISCONTINUANCE OF SERVICE.

3-1.2.1 It is the policy of the city to require timely payment of bills for utility services by the subscribers or patrons of such services, and compliance with all federal, state and municipal laws, ordinances, rules and regulations pertaining to utility services. The city may disconnect a utility service and remove its property for any one or more of the following reasons:

- 3-1.2.1.1 Nonpayment of a delinquent utility service bill within 30 days after the date that same is due;
- 3-1.2.1.2 Theft, diversion or unauthorized use of utility service;
- 3-1.2.1.3 Molesting any meter, seal or other equipment controlling or regulating the supply of utility service;

- 3-1.2.1.4 Wasting water, or causing or allowing water to be wasted, as set forth in this article;
- 3-1.2.1.5 Abandonment by the subscriber or patron of the premises served by a utility service; or
- 3-1.2.1.6 Failure to comply with any federal, state or municipal law, ordinance, rule or regulation pertaining to utility service.

§ 3-1.3 NOTICE AND DISCONNECT PROCEDURE.

3-1.3.1 In the event there is one or more reasons to disconnect a utility service, the city shall give notice to the subscriber or patron of the city's intention to disconnect that utility service, and the reason or reasons for the disconnection.

3-1.3.2 The notice shall contain the following information:

- 3-1.3.2.1 The utility service to be disconnected and the reason or reasons for the disconnection;
- 3-1.3.2.2 A statement of intention to disconnect unless the subscriber or patron pays, or makes arrangements with the city to pay, the subscriber's or patron's bill where the reason, or one of the reasons, for disconnection is a delinquent utility service bill, and take appropriate action to remove the reason or reasons for disconnection where the reason or one or more of the reasons, for disconnection is a reason other than a delinquent utility service bill.
- 3-1.3.2.3 The date upon which the service will be disconnected unless the subscriber or patron takes action as required by this article.
- 3-1.3.2.4 The name, address and telephone number of the employee or office to whom the subscriber or patron may direct inquiry or make complaint.
- 3-1.3.2.5 The right of the subscriber or patron to request, prior to disconnection, a conference regarding any dispute or special consideration concerning the disconnection.
- 3-1.3.2.6 A statement that the city may not disconnect service during the pendency of such conference.
- 3-1.3.2.7 A statement of the cost that will be borne by the subscriber or patron for the restoration of service.
- 3-1.3.2.8 A statement that the subscriber or patron may request at the discretion of the city for an installment payment plan with the city.
- 3-1.3.2.9 For domestic or residential users only, a statement to the effect that disconnection maybe postponed or prevented upon the presentation of a duly licensed physician's statement which shall certify that the subscriber or a resident of his or her 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' service to that household. Such certificate shall be filed with the City Clerk within five days of receiving the notice of disconnection by the subscriber and such filing shall prevent the city from disconnecting service for a period of 30 days from the date of filing. Only one postponement under this subsection shall be allowed for the reason set forth in the notice.

3-1.3.2.10 For domestic or residential users, a statement that welfare recipients may qualify for assistance in the payment of their bill and that they should contact the caseworker in that regard.

3-1.3.2.11 Any additional information not inconsistent with this section which has received prior approval from the Council.

3-1.3.3 The notice to the subscriber or patron shall be given in person, by first class mail, or by certified or registered mail. If notice is given by mail it shall be in an envelope marked "IMPORTANT" and sent to the address shown upon the subscriber's or patron's application for utility service, or by personal service to the subscriber or patron. No disconnection shall be undertaken until a minimum of ten days, exclusive of weekends and holidays, shall have elapsed since the date of the mailing or giving of the notice. The city shall provide for the giving of notice to a third party if such third-party notice is requested by the subscriber or patron upon the subscriber's or patron's application for utility service, or if requested by the subscriber or patron at any time subsequent to the application. In the case of a domestic or residential welfare recipient who has given notice of that status to the city or about whom the city is on notice by the social services office serving the county, or about whose status the city is otherwise made aware, the city shall in addition to the notice to the subscriber give notice to the social services office by regular first class mail, postage prepaid, or personally.

3-1.3.4 The subscriber or patron may request a conference in regard to the dispute over a proposed disconnection of service before an employee designated to hear such matters. Such request for conference shall be filed with the City Clerk within ten days, exclusive of weekends and holidays, of the mailing or giving of the notice.

3-1.3.5 Upon request for conference, the city shall notify the subscriber or patron in writing of the time, place and date scheduled for the conference, and hold a conference within 14 days of the receipt of the subscriber's or patron's request. Such conference shall be informal and not governed by the Nebraska Rules of Evidence. If the city determines at the conference that the subscriber or patron did not receive proper notice, the city shall recess the conference until such time as all notice provisions have been complied with. Failure of the subscriber or patron to attend a scheduled conference shall relieve the city of any further action prior to disconnection. If the subscriber or patron shall contact the city prior to the scheduled conference and demonstrate that failure to attend would be for a legitimate reason, the city shall make a reasonable effort to reschedule the conference. Only one rescheduling shall be afforded the subscriber, and in no case shall the conference be postponed more than ten days, except for good cause shown.

3-1.3.6 The city shall, based on the evidence presented at the conference, affirm, reverse or modify the decision to disconnect utility service. The city shall allow termination only as a last resort and only after all less drastic remedies have been exhausted. The decision of the city shall be in writing and filed with the city, and a copy shall be provided to the subscriber or patron.

3-1.3.7 The subscriber or patron may appeal an adverse decision of the employee to the Mayor and City Council by filing with the City Clerk a notice of appeal within ten days, exclusive of weekends and holidays, of the filing of the employee's decision. The notice shall contain the part or parts of the decision appealed from, together with any other matter pertaining to the proposed disconnection which the subscriber or patron may desire the Mayor and Council to consider. No disconnection shall be allowed until such appeal is heard by the Mayor and Council, and such appeal shall be heard at the next regular meeting of the City Council after the filing of the appeal. The City Clerk shall notify the subscriber or patron of the time, place and date scheduled for such hearing, in the manner set forth in division (3-1.3.3). At such hearing, the subscriber or patron may be represented by legal counsel or other representative or spokesperson; examine and copy, not less than three business days prior to the hearing, the records and files of the city having reference to the determination to disconnect or in any manner used by the city to determine to disconnect or take other action which is the subject matter of the hearing; present witnesses and offer evidence; confront and cross-examine such other witnesses as may appear and testify at the hearing; and make or have made a record of the proceedings at the subscriber's or patron's own expense.

§ 3-1.4 OFFENSE.

3-1.4.1 Any person who obtains utility services, which he or she knows are available only for compensation, by deception or threat or by false token or other means to avoid payment for the service commits an unlawful act.

3-1.4.2 A person commits an unlawful act if, having control over the disposition of services of utilities of others to which he or she is not entitled, he or she diverts such services to his or her own benefit or to the benefit of another not entitled thereto.

3-1.4.3 Any person deemed guilty of an unlawful act of this article shall be subject to § 1-1.19.

3-1.4.4 The remedy provided in this section is an additional remedy and not a limitation of any other civil, criminal statutory or common law remedies.

Statutory reference:

General authority, see Neb. RS 17-505

§ 3-1.5 CIVIL ACTION.

3-1.5.1 The city may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts bypassing, tampering, or unauthorized metering when such act results in damages to a city utility. The city 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.

3-1.5.2 In any civil action brought pursuant to this section, the city shall be entitled, upon proof of willful or intentional bypassing, tampering, or unauthorized metering, to recover as damages:

3-1.5.2.1 The amount of actual damage or loss if the amount of the damage or loss is susceptible of reasonable calculation; or

3-1.5.2.2 Liquidated damages of \$750, if the amount of actual damage or loss is not susceptible of reasonable calculation.

(Neb. RS 86-331.02)

3-1.5.3 In addition to damage or loss under division (3-1.5.2) of this section, the city 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 86-331.02)

3-1.5.4 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 such bypassing, tampering, or unauthorized metering if the tenant or occupant 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 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.

3-1.5.5 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 such 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 86-331.03)

3-1.5.6 The remedies provided by this section shall be deemed to be supplemental and additional to powers conferred by existing laws, and 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 86-331.04)

Statutory reference:

Definitions related to diversion of utility services, see Neb. RS 86-331.01

ARTICLE 3-2: WATER

Section

General Provisions

- 3-2.1 Definitions
- 3-2.2 Provisions part of consumer's contract

Service Connect

- 3-2.3 Fee
- 3-2.4 Utility deposit
- 3-2.5 Connection
- 3-2.6 Plumbing required

Use Regulations

- 3-2.7 Pipes
- 3-2.8 Unsafe connection prohibited
- 3-2.9 Backflow prevention devices required
- 3-2.10 Resale Prohibited
- 3-2.11 Tampering prohibited
- 3-2.12 Repairs
- 3-2.13 Excavations
- 3-2.14 Shut-off boxes
- 3-2.15 Contamination prohibited
- 3-2.16 Water use by construction contractors
- 3-2.17 Waste prohibited
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Rates and Billing

- 3-2.19 Rates
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Wellhead Protection

- 3-2.21 Prohibition of Drilling of Private Wells within corporate city limits
- 3-2.22 Procedure to obtain permit
- 3-2.23 Drilling or installation of other facilities within designated distances from City water sources:
Prohibited
- 3-2.24 Contamination sources
- 3-2.25 Where regulations apply
- 3-2.26 Authority in relation to other regulations or ordinances
- 3-2.27 Penalty and abatement procedure
- 3-2.28 Penalty
- 3-2.29 Wellhead protection area

GENERAL PROVISIONS

§ 3-2.1 DEFINITIONS.

3-2.1.1 For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Where no definition is specified, the normal dictionary usage of the word shall apply.

BACKFLOW. The flow of water or other liquids into the distributing system of the city from any source other than its intended source.

MAIN. Any pipe other than a supply or service pipe that is used for the purpose of carrying water to, and dispersing the same in, the city.

SEPARATE PREMISES. More than one consumer procuring water from the same service or supply pipe. The second premises may be a separate dwelling, apartment, building, or structure used for a separate business.

SERVICE PIPE. Any pipe extending from the shut-off, stop box, or curb cock at or near the lot line to and beyond the property line of the consumer to the location on the premises where the water is to be dispersed.

SUPPLY PIPE. Any pipe tapped into a main and extending from there to a point at or near the lot line of the consumer's premises where the shut-off, stop box, or curb cock is located.

WASTE. Any one or more of the following events:

3-2.1.1.1 Where one or more property line of the premises abuts the right-of-way of a paved city street, waste shall occur in the event that water in any quantity observable by the human eye shall run, flow or fall onto the paved portion of the city street.

3-2.1.1.2 Where one or more property line of the premises abuts the right-of-way of a city alley or an unpaved city street, waste shall occur in the event that water in any quantity observable by the human eye shall run, flow or fall onto a city alley or onto the traveled portion of an unpaved city street.

3-2.1.1.3 Where one or more property line of the premises abuts the right-of-way of a state highway or a county road, waste shall occur in the event that water in any quantity observable by the human eye shall run, flow or fall onto the right-of-way of the state highway or county road.

WATER. Water supplied through the city waterworks.

§ 3-2.2 PROVISIONS PART OF CONSUMER'S CONTRACT.

The provisions of this article shall be considered a part of the contract by which any person, firm, partnership, association, corporation or other customer is supplied with water through the city waterworks; and any person, firm, partnership, association, corporation or other customer who receives water through the city waterworks shall be considered and held to be bound thereby.

SERVICE CONNECT

§ 3-2.3 FEE.

Applications to make water connection with the city water system shall be made in writing to the City Clerk upon forms provided by the City Clerk and shall contain an agreement by the applicant to abide by and accept all of the provisions of this article as conditions governing the use of city water by the applicant. The applications must be signed by the owner or authorized agent of the owner of the property to be served and be filed in the office of the City Clerk.

§ 3-2.4 UTILITY DEPOSIT.

A deposit in such amount as shall be set by the Mayor and City Council from time to time by resolution shall be made with each such application; and the deposit shall be retained by the city until service to the applicant is discontinued permanently or until one year has elapsed, whichever shall occur first, at which time the deposit shall be returned to the applicant, less any amount still due the city for water service.

§ 3-2.5 CONNECTION.

No connection with a city water main shall be made without a permit being issued and 24 hours- notice having been given to the City Clerk, whose duty it shall be to notify the proper city employee. All such connections shall be made and all such work shall be done at the expense of the applicant, and in accordance with city specifications. All such connections shall be made under the supervision of the City Superintendent, or such other city employee as the City Superintendent shall designate; and no connections shall be covered until the City Superintendent, or such other city employee as the City Superintendent shall designate, has inspected and approved the work. Applications for such connections must be made to the City Clerk, and a fee in such amount as shall be set by the Mayor and City Council from time to time by resolution shall be paid for each connection. Applicants for water service whose property is located outside the city limits but within one mile of the city limits may contract with the city for water service to the property; provided that, if in the judgment of the Mayor and Council the projected amount of water which would be furnished to the applicant's property may cause the city to exceed its allocation for water as established by the Upper Republican Natural Resources District, or may cause the capacity of the city's water distribution to be exceeded, then such applicant shall not be permitted to contract with the city for water service; and provided further that, the applicant shall first have installed all necessary water lines and connections from the applicant's property to the city water main, which shall be done at the expense of the applicant, and in accordance with city specifications. The City may apply to the Upper Republican Natural Resources District for an increased allocation to fulfill the applicant's projected water usage. Applicants for water service whose property is located more than one mile outside the city limits shall not be permitted to contract with the city for water service. The city shall not incur any cost or expense beyond its commercial mains in providing the means of such service inside and outside its corporate limits.

§ 3-2.6 PLUMBING REQUIRED.

No water from the city waterworks shall be turned on for service in premises in which the plumbing does not comply with city ordinances; provided that, water may be turned on for construction work in unfinished buildings, subject to the provisions of this article.

USE REGULATIONS

§ 3-2.7 PIPES.

3-2.7.1 All service pipes from the mains to the premises served shall be installed by, and at the cost of, the owner of the property to be served or the applicant for the service. Such installations shall be made under the inspection of the City Enforcement Officer.

3-2.7.2 No service shall be installed unless it conforms to Oshkosh City Ordinances, rules and regulations.

§ 3-2.8 UNSAFE CONNECTION PROHIBITED.

No customer or any other person shall cause, allow or create any physical connection between the city waterworks and any pipe, pump, hydrant, tank, steam condensate return, engine jacket, heat exchanger, lawn sprinkler, other water supply or any other connection, whereby potentially unsafe or contamination materials may be discharged or drawn into the city waterworks.

§ 3-2.9 BACKFLOW PREVENTION DEVICES REQUIRED.

3-2.9.1 Upon determining that a potential backflow or back-siphonage hazard exists, the City Superintendent may require the customer to install and maintain at the customer's expense a properly located backflow prevention device appropriate to the potential hazard and approved by the City Superintendent. The customer shall make application to the City Superintendent to install the backflow prevention device. The application shall contain at a minimum the name and address of the applicant, the type of potential backflow or back-siphonage hazard requiring protection, and the type of backflow prevention device to be installed including brand and model number.

3-2.9.2 The City Superintendent shall approve or disapprove the application based upon his or her opinion as to whether such device will protect the city waterworks from potential backflow and back-siphonage hazards.

3-2.9.3 The installation of any backflow prevention device shall be done in accordance with all provisions of this article.

3-2.9.4 The City Superintendent shall, at least one time every year, certify that the backflow prevention device has been tested by a Nebraska Department of Health Grade VI Certified Water Operator if the device is equipped with a test port.

3-2.9.5 Any decision of the City Superintendent may be appealed to the Mayor and City Council.

§ 3-2.10 RESALE PROHIBITED.

No water from the city waterworks shall be resold or distributed by the recipient thereof to any premises other than that for which application has been made except in case of emergency.

§ 3-2.11 TAMPERING PROHIBITED.

It shall be unlawful for any person not authorized by the city to tamper with, alter or injure any part of the city waterworks or supply system.

§ 3-2.12 REPAIRS.

All repairs of service pipes and plumbing systems of buildings shall be made by and at the expense of the owner or owners of the premises served; provided that, repairs of that part of any water service pipe which extends from the city main to the shut-off box or the edge of the city right-of-way, whichever is the lesser distance, shall be made by and at the expense of the city, except that the city may at its election install a new water service pipe from the closest water main to the shut-off box, including the cost of the shut-off box, rather than repair the existing line. The city may in case of an emergency, repair any part of any service pipe; and if this is done on that part of any pipe which is not the city's responsibility, the cost of such repair work shall be repaid to the city by the owner or owners of the premises served.

§ 3-2.13 EXCAVATIONS.

Excavations for installing service pipes or repairing the same shall be made in compliance with the ordinance provisions relating to making excavations in streets; provided that, it shall be unlawful to place any service pipe in the same excavation with, or directly over, any drain pipe or sewer pipe.

§ 3-2.14 SHUT-OFF BOXES.

Shut-off boxes or service boxes shall be placed on every new or updated service pipe, and it shall be located between the curb line and the sidewalk line where this is practicable. Such boxes shall be so located that they are easily accessible and shall be protected from frost.

§ 3-2.15 CONTAMINATION PROHIBITED.

No person shall place in or near or around the city waterworks system any dirt, filth, impure substance or other substance or fluid by which the water shall be rendered impure, unpalatable or dangerous for human or animal consumption.

§ 3-2.16 WATER USE BY CONSTRUCTION CONTRACTORS.

During the construction of any building and before any water is installed as provided in this article, the contractor so constructing such building may be permitted to use city water by making application therefor and paying the fee prescribed by the Mayor and City Council.

§ 3-2.17 WASTE PROHIBITED.

It shall be unlawful for any owner, lessee, tenant, occupant, manager or any other person in possession of premises supplied with water to waste, or cause or allow to be wasted, water supplied to that premises.

§ 3-2.18 FIRE HYDRANTS.

All hydrants for the purpose extinguishing fires are hereby declared to be public hydrants, and it shall be unlawful for any person other than members of the City Fire Department under the orders of the Fire Chief, or Assistant Fire Chief; or members of the Water Department to open or attempt to open any of the hydrants and draw water from the same, or in any manner to interfere with the hydrant.

RATES AND BILLINGS

§ 3-2.19 RATES.

All property upon which any building has been or may hereafter be erected having a connection with any mains or pipes which are or may hereafter be constructed and used in connection with the city waterworks system shall pay such rates as the Mayor and City Council may from time to time prescribe by resolution.

§ 3-2.20 LIEN.

Charges for water shall be a lien upon the premises as provided by statute. If the consumer of water whose bill is unpaid is not the owner of the premises, and the City Clerk has notice of this, then notice may be mailed by regular mail to the owner of the premises, if his or her address is known, to the City Clerk, whenever such bills remain unpaid for a period of 60 days after it has been rendered. The failure of the City Clerk to mail any notice, or the failure of the owner to receive such notice, shall not affect the right to foreclose the lien for unpaid water bills as set forth in § 3-2.20.1.

3-2.20.1 FORECLOSURE OF LIEN. Property subject to a lien for unpaid charges shall be sold for nonpayment of the same, and the proceeds of such sale shall be applied to pay the charges, after deducting costs, as is the case in the foreclosure of statutory liens. The City Attorney, upon direction of the Mayor and City Council, shall be authorized and directed to institute legal proceedings, in the name of the city, in any court having jurisdiction over such matters, against any property for which the water bill has remained unpaid 60 days after it has been rendered.

WELLHEAD PROTECTION

§ 3-2.21 PROHIBITION OF DRILLING OF PRIVATE WELLS WITHIN THE CORPORATE CITY LIMITS

The Mayor and City Council declare that unregulated private domestic water wells within the corporate limits of Oshkosh, Nebraska pose a serious and substantial risk of harm to the public health of the residents of Oshkosh. Further, these wells may be interconnected at unknown points with the public water supply system. Further, unregulated domestic water wells are frequently accessible for human consumption despite no regulation requiring proof of safety. It is declared to be the public policy of the City of Oshkosh to prohibit the construction of private domestic water supplies so as to protect the public health and safety of the City of Oshkosh, as authorized by Neb. RRS § 17-529.

3-2.21.1 Private wells already in existence at the time of passage of this Ordinance may remain but shall be subject to inspection and regulation which may require the installation of backflow protectors and testing of water in accordance with NHHS safety requirements.

3-2.21.2 Any person or entity may apply for a permit to drill a private well solely for the purpose of geothermal energy. Such permit shall be approved or denied by City Council following their review and investigation to determine if public health and safety concerns can be met. If approved, geothermal wells shall be subject to monitoring and regulation by the City of Oshkosh.

3-2.21.3 Any person or entity, including any well contractor, who commences or engages in construction of a private domestic water well within City of Oshkosh shall be guilty of a misdemeanor, and upon conviction shall be fined in an amount not exceeding one thousand (\$1,000.00) dollars for each such offense.

§ 3-2.22 PROCEDURE TO OBTAIN PERMIT

In order to obtain a permit to drill and/or operate any of the facilities listed in Section 2, the owner of the property on which the proposed Quality is to be located must make application on the proper form provided by the governing body of the City of Oshkosh. Such application must be presented to the City Council at any -regular or special meeting. After reviewing the application of any person desiring to drill or operate any of the above described facilities, the City Council shall approve or deny said permit.

§ 3-2.23 DRILLING OR INSTALLATION OF OTHER FACILITIES WITHIN DESIGNATED DISTANCES FROM MUNICIPAL WATER SOURCES: PROHIBITED

Under no circumstances shall the City Council approve any permit to drill or operate any of the below described (facilities within the indicated number of feet from any City of Oshkosh municipal water well)

CATEGORY	DISTANCE
Water Well	1,000 feet
Sewage lagoon	1,000 feet
Land application of municipal/industrial waste material	1,000 feet
Feedlot or Feedlot Runoff	1,000 feet
Underground disposal system (septic system, cesspool, etc.)	500 feet
Corral	500 feet
Pit Toilet/vault toilet	500 feet
Wastewater holding tanks	500 feet
Sanitary Landfill/Dump	500 feet
Chemical or Petroleum Product Storage	500 feet
Sewage Treatment Plant	500 feet
Sewage Wet Well	500 feet
Sanitary Sewer Connection	100 feet
Sanitary Sewer Manhole	100 feet
Sanitary Sewer Line	100 feet

3-2.24 CONTAMINATION SOURCES

Any person desiring to erect or construct a new contamination source or enlarge an existing one shall file an application for a permit with the Utilities Superintendent on a form furnished by the City for that purpose. The Utilities Superintendent may approve a permit which conforms to the distance requirements of this section. If, however, in the opinion of the Utilities Superintendent, the proposed use poses a risk of contaminating a City water supply well, he shall deny the permit. The applicant may appeal the decision of the Utilities Superintendent to the City Council by filing an appeal with the City Clerk within 30 days of the Utilities Superintendent's decision. Appeal of the decision of the Governing Body shall be to the District Court of Garden County, Nebraska within 30 days of the Governing Body's decision.

The City Council may consider location of potential contaminant sources in a closer proximity than the minimum distances listed above. Approval for such location will be given when circumstances require such location and when in the opinion of the City Council and the Nebraska State Department of Health, a professional engineer,

retained by the applicant, demonstrates that such location will not constitute a pollution hazard to the City's water supply.

Fees for contamination source permits shall be established by resolution of the City Council.

§ 3-2.25 WHERE REGULATIONS APPLY

The provisions of these regulations shall apply to all land within the corporate limits of the City of Oshkosh, Nebraska; and that portion of the unincorporated area within one mile of the corporate limits of the City of Oshkosh.

§ 3-2.26 AUTHORITY IN RELATION TO OTHER REGULATIONS OR ORDINANCES

The provisions of this section shall supersede any land use regulation which allows the installation of a potential contaminant source on a parcel of land. Nothing in this section shall be construed to allow the installation of any category of contamination source which is restricted or prohibited by any federal, state or local law, statute, regulation, or ordinance.

§ 3-2.27 PENALTIES AND ABATEMENT PROCEDURE

In the event any of the above described facilities are installed or operated without first having obtained a permit from the City Of Oshkosh and/or within the designated number of feet from any municipal water supply, then such facilities shall be deemed a nuisance and the City Council shall abate such facility as a public nuisance, In addition thereto, any person violating any of the terms of this ordinance is hereby determined to be "guilty" of a class 3 misdemeanor as the same is defined by Nebraska Statute. The penalty for such violation shall be that, as defined by Nebraska law for the violation of a Class 3 misdemeanor.

§ 3-2.28 PENALTY.

3-2.28.1 Any person violating or refusing to obey any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined the amount of \$500 for a first offense, the amount of \$500 for a second offense, and the amount of \$500 for a third or subsequent offense. Upon conviction of any person for an offense at any premises, the city may disconnect the water service to that premises in accordance with the procedure set forth in Article 10; and water service shall not be reconnected to that premises until application has been made in writing to the City Clerk, and payment in full has been made of any fee or deposit required by city ordinance for connecting or reconnecting the water service.

3-2.28.2 If any person wastes, or causes or allows to be wasted, water supplied to any premises outside the city limits, the city may disconnect the water service to that premises in accordance with the procedure set forth in this article; and water service shall not be reconnected to that premises for the benefit of that person until application has been made in writing to the City Clerk and the application for reconnection has been approved by the Mayor and City Council. In the event the Mayor and Council vote to approve the application for reconnection, water service shall not be reconnected to that premises for the benefit of that person until payment in full has been made by that person of any fee or deposit required by city ordinance for connecting or reconnecting the water service, payment in full has been made by that person for the purchase and installation of a water meter on the

premises, and an agreement has been signed by that person so that person shall be billed for water at that premises at the city rate for metered water use outside the city limits.

('92 Code, § 6-524(b)

§ 3-2.29 WELLHEAD PROTECTION AREA.

3-2.29.1 Wellhead Protection Area means the surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water or wellhead.

3-2.29.2 The City of Oshkosh designates a Wellhead Protection Area Boundary for the purpose of protection the public water supply system. The boundaries of the Wellhead Protection Area are Groundwater Section Wellhead Protection Program, 2002 Map. This delineation is based upon the map prepared by the Nebraska Department of Environmental Quality (NDEQ) presented to the City of Oshkosh on December 20, 2002 and is on file in the offices of the City of Oshkosh.

ARTICLE 3-3: SEWERS

Section

- 3-3.1 Definition
- 3-3.2 Sewer Commissioner
- 3-3.3 Sewer construction; repairs
- 3-3.4 Rates
- 3-3.5 Lien
- 3-3.6 Foreclosure of lien

§ 3-3.1 DEFINITION.

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

PERSON. Any natural person, corporation, partnership or unincorporated association.

§ 3-3.2 SEWER COMMISSIONER.

3-3.2.1 *Duties, bond not required.* The Enforcement Officer shall be City Sewer Commissioner.

3-3.2.2 *Additional duties.* The duties of the Enforcement Officer shall also be as follows:

- 3-3.2.2.1 To keep an accurate and complete record of connections made to the city sewerage system and keep posted to date a sectional map of Y branches furnished him or her for this purpose.
- 3-3.2.2.2 To keep the city sewerage system and appurtenances clean and in good working order.
- 3-3.2.2.3 To issue permits for sewer connections.
- 3-3.2.2.4 To inspect sewer connections.
- 3-3.2.2.5 To enforce all laws, ordinances, rules and regulations relating to sewer construction, repair and operation.
- 3-3.2.2.6 To prepare rules and regulations governing sewer services with respect to privies, cesspools or septic tanks, when permitted; construction of house drains; specifications for construction of all old plumbing work; gas water heaters, including those of the instantaneous, automatically controlled type; quality of connection, separate connections, house drains, soil pipes, waste pipes, sand traps, steam exhaust, blow-off or drip pipe, urinal troughs, bar wastes, grease traps, garage wastes, drain, soil waste or vent pipes, water closets in buildings, old or condemned plumbing, openings for future use; minor repairs; and any or all other matters relevant to plumbing which affect the public health or safety.
- 3-3.2.2.7 To submit the rules and regulations thus prepared for consideration of the Mayor and City Council; and when adopted by the Mayor and Council, such rules and regulations shall be promulgated according to law and thereafter be deemed and considered a part of this section.

§ 3-3.3 SEWER CONSTRUCTION; REPAIRS.

All private property within the city located upon any street or alley through which, opposite or abutting said property, runs or hereafter shall run any main, belt line or lateral sanitary sewer shall be equipped with a proper connection to said main, belt line or lateral sanitary sewer for the disposal of all sewage. It shall be the duty of the owner of any such private property so situated, upon ten days- notice as hereinafter provided, to make or cause to be made or to maintain or repair proper connection with the sewer main, belt line or lateral and to install or cause to be installed or to maintain or to repair proper sewer pipe connections to convey such refuse into the main, belt line or lateral; provided that, repairs of that part of any connection to any sewer main, belt line or lateral which extends from the main, belt line or lateral to the edge of the city right-of-way shall be made by and at the expense of the city. If the owner of such property shall fail or neglect for ten days after the service of notice to comply with the notice, then the City Sewer Commissioner, or his or her agent, shall cause the same to be done, and the cost thereof when certified by the City Sewer Commissioner to the Mayor and City Council shall be assessed by the Mayor and Council against the property as a special assessment, the same to be collected as other special assessments and special taxes as provided by law, or the cost may be recovered by civil suit brought by the City Attorney, upon the direction of the Mayor and Council, in the name of the city against the owner. The notice hereinbefore referred to shall be in writing and shall be served by the City Superintendent upon the owner or owners of record of such property, either by personal service, certified mail service or constructive service. Constructive service may be had with respect to the notice by causing its publication to be made once in a legal newspaper published in and of general circulation in the city. The notice shall describe the real estate involved and the action required to be taken and shall notify the owner or owners that the owner or owners are required to comply with the notice within ten days after the service or publication thereof, and that if the owner or owners fail to comply with the notice, the City Sewer Commissioner will cause the work to be done and will certify the cost thereof to the Mayor and Council.

§ 3-3.4 RATES.

All property upon which any building has been or may hereafter be erected having a connection with any lines or pipes which are or may hereafter be constructed and used in connection with the city sewer system shall pay such rates as the Mayor and City Council may from time to time prescribe by resolution.

§ 3-3.5 LIEN.

Use fees for the furnishing of sanitary sewer service shall be a lien upon the property served as provided by statute. Whenever a use fee remains unpaid for a period of 30 days after it has been rendered, notice shall be mailed by regular mail to the consumer whose use fee is unpaid; and if the consumer is not the owner of the property, and the Clerk has notice of this, then notice shall also be mailed by regular mail to the owner of the property, if the owner's address is known to the Clerk. The failure of the Clerk to mail any such notice, or the failure of any person to receive such notice, shall not affect the right to foreclose the lien for unpaid use fees as set forth in this article.

§ 3-3.6 FORECLOSURE OF LIEN.

Property subject to a lien for unpaid use fees for the furnishing of sanitary sewer service may be sold for nonpayment of the same, and the proceeds of such sale shall be applied to pay the unpaid use fees, after deducting costs, as is the case in the foreclosure of statutory liens. Such foreclosure shall be by action brought in the name of the city. The City Attorney is authorized, upon direction of the Mayor and City Council, to institute such action in any court having jurisdiction over such matters, against any property for which the use fee for the furnishing of sanitary sewer service has remained unpaid 60 days after it has been rendered.

ARTICLE 3-4: SOLID WASTE

Section

- 3-4.1 Definitions
- 3-4.2 Collection service; fees
- 3-4.3 Containers
- 3-4.4 Unauthorized use of containers prohibited
- 3-4.5 Prohibited accumulation and disposal
- 3-4.6 Dead animals
- 3-4.7 Burning
- 3-4.8 Liquids and hazardous materials

§ 3-4.1 DEFINITIONS.

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

LANDFILL. A landfill which is licensed with the Nebraska Department of Environmental Quality which the city has designated for city dumping.

GARBAGE, REFUSE and TRASH. Their ordinary meaning except where specifically stated otherwise.

GARBAGE. Rejected food wastes, including waste accumulation of animal, fruit or vegetable matter used or intended for food or that attend the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruit or vegetables, and dead animals rejected by rendering plants.

REFUSE. Putrescible and non-putrescible solid wastes, except body wastes, and including garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings and solid market and industrial waste.

RUBBISH. Non-putrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes such as paper, tin cans, garbage, yard clippings, wood, glass, bedding, crockery or litter of any kind that will be a detriment to the public health and safety.

§ 3-4.2 COLLECTION SERVICE; FEES.

The city provides for the collection of garbage, rubbish, trash, and waste on a city-wide basis. Every owner, lessee, tenant, occupant, manager or other person in possession of a residence, place of business, factory, medical facility or other institution, or other tract of land located inside the city limits shall pay to the city a use fee for the removal by the city of garbage, refuse and trash. Every owner, lessee, tenant, occupant, manager or other person in possession of a residence, place of business, factory, medical facility or other institution, or other tract of land located outside the city limits but within one mile of the city limits may contract with the city and pay the city a use fee for the removal by the city of garbage, refuse and trash. The use fees shall be in such amounts as the Mayor and City Council shall set by resolution. The use fees provided for herein shall be charged to each property served.

Statutory reference:

General authority, see Neb. RS 17-121, 17-123, 17-123.01 and 19-2106

§ 3-4.3 CONTAINERS.

3-4.3.1 No person shall dispose of any item of garbage, refuse or trash in the city except as provided in this article.

3-4.3.2 The city shall place containers at various locations inside the city limits for the collection of garbage, refuse and trash from those properties served which are located inside the city limits. The city shall also place containers at various locations outside the city limits for the collection of garbage, refuse and trash from those properties served which are located outside the city limits. The Mayor and City Council, by resolution, shall designate the types of garbage, refuse and trash which persons may dispose of by putting in the city containers. No person shall put any other type of garbage, refuse or trash in the city containers.

3-4.3.3 No person shall dispose of any garbage, refuse or trash which is not permitted to be disposed of by putting in the city containers, except by:

- 3-4.3.3.1 Contacting the City Clerk to have the city haul such garbage, refuse or trash to the city landfill and paying to the city such use fee as the Mayor and Council shall set by resolution; or
- 3-4.3.3.2 Hauling such garbage, refuse or trash to the city landfill at that person's expense.

3-4.3.4 *Do's and don'ts for dumpster use.*

3-4.3.4.1 Do place these items in the dumpster:

- 3-4.3.4.1.1 Normal non-animal and non-vegetable household items. You can put paper, cans, plastic and cardboard in the dumpster, however, it is preferred that you help the environment by taking these items that can be recycled to the trailer at 1st and Hancock.
- 3-4.3.4.1.2 Animal and vegetable items wrapped in paper or plastic. Your sealed trash bag is considered wrapping.
- 3-4.3.4.1.3 Garden material and plant trimmings that are smaller than three feet in length and three inches in diameter

3-4.3.4.2 Do not place these items in the dumpster:

- 3-4.3.4.2.1 Grass clippings and leaves. There is a collection area in the southwest corner of the fairgrounds for clippings and leaves. Please do not pile grass clippings or leaves in the alley. If you compost, please contain it in way.
- 3-4.3.4.2.2 Construction materials, demolition or remodeling debris.
- 3-4.3.4.2.3 Concrete, dirt, sod, plaster or other heavy materials.
- 3-4.3.4.2.4 Flammable liquids, cleaning fluid, waste oil, gasoline, paint, and paint cans that are still wet.
- 3-4.3.4.2.5 Tree limbs larger than three feet in length and three inches in diameter, along with large bushes.
- 3-4.3.4.2.6 Furniture, carpet and large appliances.
- 3-4.3.4.2.7 Engines.
- 3-4.3.4.2.8 Wire or wire fencing.
- 3-4.3.4.2.9 Tires.
- 3-4.3.4.2.10 Hot ashes.
- 3-4.3.4.2.11 Metal or wood.

§ 3-4.4 UNAUTHORIZED USE OF CONTAINERS PROHIBITED.

No person shall deposit in any city collection container any item of garbage, refuse or trash generated on any tract of land for which a use fee, as provided in § 3-4.02, has not been paid to the city.

§ 3-4.5 PROHIBITED ACCUMULATION AND DISPOSAL.

3-4.5.1 It shall be unlawful for any person to keep in, on, or about any dwelling, building, or premises, or any other place in the city, garbage, refuse, rubbish, or waste of any kind that may be injurious to the public health or offensive to the residents of the city unless the same is kept in receptacles not exceeding a 55-gallon capacity and as nearly airtight as may be practical. It shall be unlawful to throw or sweep into the streets, alleys, parks, or other public grounds any dirt, paper, nails, pieces of glass, refuse, garbage, waste, or rubbish of any kind. All persons shall have the contents of their garbage cans removed at least once a week.

3-4.5.2 It shall be unlawful for any person to throw, deposit, or cause to be thrown or deposited any refuse, rubbish, waste, or garbage on any vacant lot, public thoroughfare, street, alley, or public property.

Statutory reference: General authority, see Neb. RS 17-121, 17-123, 17-123.01 and 19-2106

§ 3-4.6 DEAD ANIMALS.

All dead animals shall be immediately removed and buried by the owner of such animals, and if the owner of such animal cannot be found, then such animal shall be removed by the city and buried by and at the expense of the city. Dead animals shall not be buried within the corporate limits of the city, nor within one mile thereof, nor in or above the course of groundwater that is used for drinking purposes by the city or its inhabitants.

Statutory reference:

General authority, see Neb. RS 17-121, 17-123, 17-123.01 and 19-2106

§ 3-4.7 BURNING.

3-4.7.1 It shall be unlawful for any person, firm, or corporation to burn any garbage, rubbish, refuse, or waste on any lot, tract of land, street, or alley within the corporate limits, except as otherwise provided in this section.

3-4.7.2 (3-4.7.2.1) This section shall not be construed to prohibit:

3-4.7.2.2 Fire set in performance of any official duty of any public officer if the fire is necessary for one or more of the following reasons or purposes:

3-4.7.2.2.1 For the prevention of a fire hazard which cannot be abated by any other means.

3-4.7.2.2.2 For the instruction of public firefighters or industrial employees under supervision of the City Fire Department.

3-4.7.2.2.3 For the protection of the public health and welfare.

§ 3-4.8 LIQUIDS AND HAZARDOUS MATERIALS.

No person shall deposit liquids and hazardous materials, contaminated or polluted liquids, or hazardous substances, except at such times and in such locations as may be specified by the operator of the city disposal ground; and all such deposits shall be immediately covered.

CHAPTER 4: TRAFFIC CODE

ARTICLE

4-1. GENERAL PROVISIONS

4-2. TRAFFIC REGULATIONS

4-3. PARKING REGULATIONS

4-4. OFFENSES AGAINST PUBLIC ORDER

4-5. OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

4-6. WEAPONS OFFENSES

ARTICLE 4-1: GENERAL PROVISIONS

Section

Administration and Enforcement

- 4-1.1 Criminal Code Incorporated By Reference
- 4-1.2 Enforcement
- 4-1.3 Procedures applicable to violations
- 4-1.4 Summons destruction

Statutory reference:

Regulation of highways by local authorities, see Neb. RS 60-680

Powers and duties of peace officers, see Neb. RS 60-683

Powers and duties of state patrol, see Neb. RS 81-2005

ADMINISTRATION AND ENFORCEMENT

§ 4-1.1 CRIMINAL CODE INCORPORATED BY REFERENCE.

Except for the penalty sections, the Nebraska Criminal Code, including the statutes generally found in Neb. RS Chapter 28, together with all subsequent amendments thereto, as adopted by the State of Nebraska relating to crimes and punishments are incorporated by reference into this section and made a part of this chapter as though spread at large herein, except those provisions in conflict with this chapter when the City Council has the authority to alter such regulations. One copy of the Nebraska Criminal Code and amendments shall be on file with the Municipal Clerk and shall be available for public inspection at any reasonable time.

Penalty, see § 1-1.19

§ 4-1.2 ENFORCEMENT.

The city's contracted law enforcement officer(s) are hereby authorized, empowered, and ordered to exercise all powers and duties, with relation to the management of street traffic and to direct, control, stop, restrict, regulate, and, when necessary, temporarily divert or exclude in the interest of public safety, health, and convenience the movement of pedestrian and animal and vehicular traffic of every kind in streets, in parks and on bridges. The driver of any vehicle shall stop upon the signal of any Law Enforcement officer, and that officer is authorized to issue a citation to the alleged offender.

Statutory reference:

Duty of peace officers to enforce rules and laws, see Neb. RS 60-683

§ 4-1.3 PROCEDURES APPLICABLE TO VIOLATIONS.

Whenever any person is arrested for a violation of any provision of this Article 4, the procedures set out in state law shall, except as otherwise provided by this title, govern.

§ 4-1.4 SUMMONS DESTRUCTION. It shall be unlawful for any person to tear up or destroy a parking tag placed upon any vehicle by an enforcement officer or to disregard the summons contained on such tag and fail to appear in court as directed by said tag. Penalty, see § 1-1.19

ARTICLE 4-2: TRAFFIC REGULATIONS

Section

General Provisions

- 4-2.1 Adoption of State Statutes; Definitions
- 4-2.2 Jay walking
- 4-2.3 Crosswalks
- 4-2.4 Signs; signals
- 4-2.5 Truck routes
- 4-2.6 Riding on outside of vehicle

Turning

- 4-2.7 U-turns

Speed Limits

- 4-2.8 General speed limit

School Crossing Zones

- 4-2.9 Designation

Bicycles and Toy Vehicles

- 4-2.10 Definitions
- 4-2.11 Operation
- 4-2.12 Limitation

All Terrain and Utility Type Vehicles

- 4-2.13 Definitions and operation

Statutory reference:

Regulation of highways by local authorities, see Neb. RS 60-680

GENERAL PROVISIONS

§ 4-2.1 ADOPTION OF STATE STATUTES; DEFINITIONS.

Except for the penalty provisions, the city hereby adopts Neb. RS Chapter 39, Article 6 “Highways and Bridges” and Neb. RS Chapter 60, Article 6 – “Nebraska Rules of the Road” (as they may be amended) as though same were fully restated in this section in their entirety. The words and phrases used in this title, pertaining to or hereafter amended. If not defined in the designated statutes, the word or phrase shall have its common meaning. Ordinance reference to any statute in these Articles is made by stating “Oshkosh Code Section _____”

(restate the Nebraska Section). For example, a violation referenced as “Oshkosh Code No 60-6,131” is an Oshkosh Code violation defined in Neb. Stat §60-6,131 and involves driving on the right half of roadway. (Neb. RS 60-606 through 60-676)

§4-2.2 JAY WALKING.

No pedestrian shall cross any street between adjacent intersections with traffic signals or any street designated and posted by the City Council at a place other than a crosswalk, nor shall any pedestrian cross any street intersection diagonally, provided that every pedestrian who crosses any other street at any point other than a crosswalk shall yield the right-of-way to vehicles.

Penalty, see § 1-1.19

Statutory reference:

Similar provisions, see Neb. RS 60-6,154

§ 4-2.3 CROSSWALKS.

The City Council may, by resolution, establish and maintain, by appropriate devices, markers, or lines upon the street, crosswalks, at intersections where there is danger to pedestrians crossing the street, and at such other places as they may deem necessary.

§ 4-2.4 SIGNS; SIGNALS.

The City Council may, by resolution, provide for the placing of stop signs, or other signs, signals, standards, or mechanical devices in any street or alley under the municipality's jurisdiction for regulating or prohibiting traffic thereon. Such resolution shall describe the portion of the street or alley wherein traffic is to be regulated or prohibited, the regulation or prohibition, the location where such sign, signal, standard, or mechanical device shall be placed, and the hours when such regulation or prohibition shall be effective. It shall be unlawful for any person to fail, neglect, or refuse to comply with such regulation or prohibition.

(Am. Ord. 00-05, passed 3-28-00) Penalty, see § 1-1.19

Statutory reference:

Traffic-control devices, see Neb. RS 60-6,118 through 60-6,121 RS Neb.

§ 4-2.5 TRUCK ROUTES.

The City Council may, by resolution, designate certain streets in the municipality that trucks shall travel upon, and it shall be unlawful for persons operating such trucks to travel on other streets than those designated for trucks, unless to pick up or deliver goods, wares, or merchandise, and in that event, the operator of such truck shall return to such truck routes as soon as possible in traveling through or about the municipality. The City Council shall cause notices to be posted or shall erect signs indicating the streets so designated as truck routes.

Penalty, see § 1-1.19

Statutory reference:

Truck routes authorized, see Neb. RS 60-681

§ 4-2.6 RIDING ON OUTSIDE OF VEHICLE.

It shall be unlawful for the operator of any vehicle to permit any person to ride on the running board, hood, top or fenders of any motor vehicle, and it shall be unlawful for any person to ride on the running board, hood, top or fenders of any motor vehicle.

Penalty, see §1-1.19

TURNING

§ 4-2.7 U-TURNS.

No vehicle shall be turned so as to proceed in the opposite direction, except at a street intersection. No vehicle shall be turned so as to proceed in the opposite direction at any intersection where an automatic signal is in operation, or where a sign is posted indicating that U-turns are prohibited.

Penalty, see § 1-1.19

SPEED LIMITS

§ 4-2.8 GENERAL SPEED LIMIT.

4-2.8.1 No person shall operate a motor vehicle on any street, alley, or other place within the corporate limits at a rate of speed greater than 25 miles per hour, unless a different rate of speed is specifically permitted by ordinance. Whenever such ordinance is passed, signs shall be erected indicating the speed zones clearly.

4-2.8.2 No person shall operate a motor vehicle at a speed greater than the following:

- 4-2.8.2.1 Main Street between “A” and “H” Avenues – 20 miles per hour
- 4-2.8.2.2 Highway 26 in City Limits–45 miles per hour
- 4-2.8.2.3 Alleys-10 miles per hour
- 4-2.8.2.4 Vehicles approaching railway stations, churches, public buildings, or crowded spaces must do so in a cautious manner and always on the proper side of the street and in no case shall the speed be greater than 20 miles per hour when entering such an area. Penalty, see § 1-1.19

Statutory reference:

Basic speed rule, see Neb. RS 60-6,185

General speed limit, see Neb. RS 60-6,186

State, county, and local authority, see Neb. RS 60-6,190

SCHOOL CROSSING ZONES

§ 4-2.9 DESIGNATION.

The City Council may, by resolution, designate to the public any area of a roadway, other than a freeway, 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 on Uniform Traffic Control Devices*. Any school crossing zone so designated 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)

BICYCLES AND TOY VEHICLES.

§ 4-2.10 DEFINITIONS.

For purposes of this Article:

“**BICYCLE**” shall mean every device propelled solely by human power, upon which any person may ride, and having two tandem wheels either of which is more than fourteen inches in diameter;

“**TOY VEHICLE**” shall mean skate boards; coasters; roller skates; sleds; skis; self-propelled scooters; self-propelled electric and gas propelled vehicles which are built and designed for children less than 10 years of age; and vehicles having two tandem wheel vehicles which have a total wheel and tire diameter of less than fourteen inches, an electric engine which is capable of producing a maximum speed of less than 10 miles per hour and which is not designed for off-road use. Toy vehicles do not include motorcycles, motor scooters whose engine allows speeds exceeding 10 miles per hour or which are designed for other than child use, self-propelled chairs used by persons who are disabled, personal mobility devices, or vehicles running upon rails.

Statutory reference:

Neb RS 60-636, 60-637, 60-638, 60-639, 60-640, 60-6354

§4-2.11 OPERATION.

4-2.11.1 No person shall operate a bicycle or toy vehicle on a street or highway within the Municipality with another person on the handlebars or in any position in front of the operator.

4-2.11.2 No bicycle or toy vehicle shall be operated faster than is reasonable and proper;

4-2.11.3 Every bicycle or toy vehicle shall be operated with reasonable regard to the safety of the operator and any other persons upon the streets and highways.

4-2.11.4 Persons operating bicycles or toy vehicles shall observe all traffic signs and stop at all stop signs.

4-2.11.5 No bicycle or toy vehicle shall be operated on any street or highway from sunset to sunrise without a headlight visible from the front thereof for not less than 500 feet on a clear night and a red reflector on the rear of a type which shall be visible on a clear night from all distances between 100 feet and 600 feet to the rear when directly in front of lawful lower beams of headlights on a motor vehicle. A red light visible from a distance of 500 feet to the rear may be used in addition to such red reflector.

(Neb. RS 60-6,318)

4-2.11.6 All bicycles and toy vehicles operated in the Municipality shall be equipped with a brake which is able to stop the movement of the bicycle and toy vehicle within a reasonable distance.

4-2.11.7 Any person who operates a bicycle or toy vehicle upon a street or highway shall not ride more than single file except on parts of streets or highways set aside for the exclusive use of bicycles.

4-2.11.8 Any person who operates a bicycle or toy vehicle upon a roadway at less than the normal speed of traffic at the time and place and under conditions then existing shall ride as near to the right-hand curb or right-hand edge of the roadway as practicable except when:

- 4-2.11.8.1 Overtaking and passing another vehicle proceeding in the same direction;
- 4-2.11.8.2 Preparing for a left turn onto a private road or driveway or at an intersection;
- 4-2.11.8.3 Reasonably necessary to avoid conditions that make it unsafe to continue along the right-hand curb or right-hand edge of the roadway, including fixed or moving objects, stopped or moving vehicles, bicycles, pedestrians, animals, or surface hazards;
- 4-2.11.8.4 Riding upon a lane of substandard width which is too narrow for a bicycle or toy vehicle and a vehicle to travel safely side by side within the lane, or
- 4-2.11.8.5 Lawfully operating a bicycle or toy vehicle on the paved shoulders of a highway included in the state highway system as provided in Neb. RS 60-6,142.
- 4-2.11.9 No person shall operate a bicycle or toy vehicle on the sidewalks within the business district.
- 4-2.11.10 No package, article or bundle shall be carried on any bicycle or toy vehicle, if said object prevents the rider from correctly operating the vehicle (i.e. keeping both hands upon the handle bars).
- 4-2.11.11 No person riding upon any bicycle or toy vehicle shall attach the same or himself to any moving vehicle upon any roadway, and it shall be unlawful for the driver of any vehicle to suffer or permit any person traveling upon any bicycle or toy vehicle to cling to or attach himself or his bicycle or toy vehicle to such vehicle so driven and operated by him. (Ref. 39-689 RS Neb.)

Penalty, see § 1-1.19

Statutory reference:

Neb RS 60-680, 60-6,315, 60-6,317

§ 4-2.12 LIMITATIONS.

Nothing in this Article shall allow the operation of bicycles or toy vehicles in violation of the Nebraska Rules of the Road (NRS §60-601 *et. seq.*), including the operation or actual physical control of a motorized vehicle while under the influence of alcohol or drugs. (Neb. RS §60-6,196 *et. seq.*) except as specifically allowed within this Section.

§ 4-2.13 ALL-TERRAIN AND UTILITY-TYPE VEHICLES

4-2.13. 1 Definitions

4-2.13.1.1 All-terrain vehicle means any motorized off-highway vehicle which (a) is fifty inches or less in width, (b) has a dry weight of nine hundred pounds or less, (c) travels on three or more low-pressure tires, (d) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger, (e) has a seat or saddle designed to be straddled by the operator, and (f) has handlebars or any other steering assembly for steering control. (*Neb. Rev. Stat. 6-624*)

4-2.13.1.2 Street or highway means the entire width between the boundary lines 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.

4-2.13.1.3 Utility-type vehicle means any motorized off-highway vehicle which (a) is not less than forty-eight inches nor more than seventy-four inches in width, (b) is not more than one hundred thirty-five inches, including the bumper, in length, (c) has a dry weight of not less than nine hundred pounds nor more than two thousand pounds, (d) travels on four or more low-pressure tires, and (e) is equipped with a steering wheel and bench or bucket-type seating designed for at least two people to sit side by side. (f) Utility type vehicle does not include golf carts or low speed vehicles. (*Neb. Rev. Stat. 60-6,355*)

- 4-2.13.2 An all-terrain vehicle or utility-type vehicle may be operated on streets and highways within the corporate limits of the city only if the operator and the vehicle comply with the provisions of this section.
- 4-2.13.3 An all-terrain vehicle or a utility-type vehicle may be operated only between the hours of sunset and sunrise and shall not be operated at a speed in excess of the posted speed limit. When operating an all-terrain vehicle or utility-type vehicle as authorized in subsection 4-2.13.2 of this section the headlight and taillight of the vehicle shall be on and the vehicle shall be equipped with a bicycle safety flag which extends not less than five feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches and shall be day-glow in color. If the vehicle is issued with safety belts, the belts shall be utilized by the operator in motion.
- 4-2.13.4 Any person operating an all-terrain vehicle or utility-type vehicle as authorized in subsection 4-2.13.2 of this section shall have proof upon their person of (a) a valid Class O operator's license or a farm permit as provided by Neb. Rev. Stat. 60-4,126; and (b) liability insurance coverage for the all-terrain vehicle or utility-type vehicle while operating the vehicle on a street or highway. The person operating such vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days of such request; and (c) operator must be at least twenty-one years of age.
- 4-2.13.5 All-terrain vehicle and utility type vehicles may be operated without complying with subsections 4-2.13.3 and 4-2.13.4 of this section on streets and highways in parades which have been authorized by the State of Nebraska or any department, board, commission, or political subdivision of the state.
- 4-2.13.6 An all-terrain vehicle or utility-type vehicle shall not be operated on any controlled-access highway with one than two marked traffic lanes, and the crossing of any controlled-access highway with more than two marked traffic lanes shall not be permitted. Subsections 4-3.13.2 through 4-3.13.4 and 4-3.13.7 of this section authorize and apply to operation of all-terrain or utility-type vehicles only on a street or highway other than a controlled-access highway with more than two marked traffic lanes.

- 4-2.13.7 Subject to subsection 4-2.13.6 of this section, the crossing of a street or highway shall be permitted by an all-terrain vehicle or utility-type vehicle without complying with subsections 4-2.13.3 and 4-2.13.4 of this section only if: (a) the crossing is made at an angle of approximately ninety degrees to the direction of the street or highway at a place where no obstruction prevents a quick and safe crossing; (b) the vehicle is brought to a complete stop before crossing the shoulder or roadway of the street or highway; (c) the operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard; (d) in crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and (e) Both the headlight and taillight of the vehicle are on when crossing is made. (*Neb. Rev. Stat. 60-6,356*)
- 4-2.13.8 A person who violates any provision of this sections shall be punished as provided in Section 1-1.19 of the municipal code.

ARTICLE 4-3: PARKING REGULATIONS

Section

General Provisions

- 4-3.1 Angle and parallel parking
- 4-3.2 No parking areas
- 4-3.3 Angle parking prohibited for certain vehicles
- 4-3.4 Obstructing traffic
- 4-3.5 Curb painted
- 4-3.6 Repair
- 4-3.7 Time limit
- 4-3.8 Certain vehicles prohibited; exceptions

Persons With Disabilities

- 4-3.9 Definitions
- 4-3.10 Designation of on-street parking spaces; display of permits
- 4-3.11 Designation of off-street parking stalls or spaces
- 4-3.12 Permit issuance
- 4-3.13 Motor vehicle permit issuance
- 4-3.14 Permits; prohibited issuance; duplicate permits
- 4-3.15 Period valid; renewal; fee
- 4-3.16 Permits nontransferable; violations; suspension

Administration and Enforcement

- 4-3.17 Removal of illegally parked vehicles
- 4-3.18 Schedule of fines; violations
- 4-3.19 Failure to pay within five days; notice
- 4-3.20 Failure to pay after notice; prosecution
- 4-3.21 Presumption
- 4-3.22 Citation

Statutory reference:

Regulation of highways by local authorities, see Neb. RS 60-680 and 60-6,167

GENERAL PROVISIONS

§ 4-3.1 ANGLE AND PARALLEL PARKING.

4-3.1.1 Except as hereinafter provided, in all parts of the city where parking is permitted, all vehicles shall be parked heading in the direction of traffic with the right-hand side thereof parallel with the curb and not more than one foot from the curb, leaving at least four feet between parked vehicles.

4-3.1.2 The Mayor and City Council may by resolution designate any street or portion of any street upon which vehicles shall be parked at any angle with the curb. In those areas vehicles shall be parked at an angle with the curb. All vehicles parked upon any such designated street or portion thereof shall be parked with the right front wheel at the curb. The angle of the parking and parking stalls or spaces for the parking of vehicles shall be indicated by lines painted upon the pavement or curb by the city; and when so indicated, vehicles shall be parked within such stalls.

§ 4-3.2 NO PARKING AREAS.

The City Council may, by resolution, set aside any street, alley, public way, or portion thereof where the parking of a particular kind or class of vehicle shall be prohibited, or where the parking of any vehicle shall be prohibited. No vehicle prohibited from parking thereon shall stand or be parked adjacent to the curb of said street, alley, public way, or portion thereof, longer than a period of time necessary to load and unload freight or passengers.

§ 4-3.3 ANGLE PARKING PROHIBITED FOR CERTAIN VEHICLES.

Vehicles having an overall length, including load, of 18 feet or more shall not be allowed to park in any location where angle parking is designated.

§ 4-3.4 OBSTRUCTING TRAFFIC.

No vehicle shall, except in case of an accident or emergency, stop within any street intersection, alley entrance, or any such location as to obstruct any street, crosswalk, or alley entrance, provided, however, that vendor type vehicles shall be permitted to park straddling the center line of the street for the purpose only of unloading their product for no longer than is actually required to complete such unloading, but in any event for no longer period of time than 30 minutes.

§ 4-3.5 CURB PAINTED.

4-3.5.1

4-3.5.1.1 The use of red paint upon the curb of any street shall indicate that parking and stopping of vehicles is entirely prohibited within such area as provided in § 72.04.

4-3.5.1.2 The use of yellow or orange paint upon the surface of the streets at crosswalks shall indicate pedestrian lanes and the location of crosswalks.

4-3.5.2

It shall be the duty of the City to cause the curb space to be painted and keep the same painted as provided in this article. No person, firm, or corporation shall paint the curb of any street or in any manner set aside or attempt to prevent the parking of vehicles in any street, or part thereof, except at such places where the parking of vehicles is prohibited by the provisions of this article. The marking or designating of portions of streets or alleys where the parking of vehicles is prohibited or limited shall be done only by the municipality through its proper officers, at the direction of the City Council. Nothing in this section shall limit the City's authority to grant permission to paint house numbers on curb.

§ 4-3.6 REPAIR.

No person shall adjust or repair any automobile or motorcycle, or race the motor of same, while standing on the public streets or alleys of this municipality, except in case of breakdown or other emergency requiring same. No person or employee connected with a garage or repair shop shall use sidewalks, streets, or alleys in the vicinity of such garage or shop for the purpose of working on automobiles or vehicles of any description.

§ 4-3.7 TIME LIMIT.

The City Council may, by resolution, entirely prohibit or fix a time limit for the parking and stopping of vehicles on any street, streets, or district designated by such resolution, and the parking, or stopping, of any vehicle in any such street, streets, or district, for a period of time longer than fixed in such resolution shall constitute a violation of this article.

§ 4-3.8 CERTAIN VEHICLES PROHIBITED; EXCEPTIONS.

4-3.81 Certain Vehicle Prohibited: Exceptions: It shall be unlawful for the owner or operator of an overall length of 25 feet or more to stop or park such vehicle of any street when angle parking is permitted, except for the purpose of loading or unloading freight; and, within the congested district no such vehicle shall be stopped or parked, except in alleys for the purpose of loading and unloading freight between the hours of 8:30 a.m. and 6:30 p.m., unless permission is granted from a Law Enforcement official.

4-3.8.2 It shall be unlawful for the operator of any motor vehicle used for the purpose of vending merchandise, meats, vegetable or confectionary, or other vehicle commonly known as peddler's car or wagon, to park or stand on any street longer than ten minutes on Central Avenue.

4-3.8.3 It shall be unlawful for the operator or owner of any truck tractor, semi-trailer, petroleum transport truck, or automobile with attached trailer with an overall length of 25 feet or more including load, whether loaded or unloaded, except while loading or unloading its contents, to park or leave such truck standing within 75 feet of any building, of which any portion is used for dwelling purposes.

4-3.8.4 Recreational Equipment such as boats, boat trailers, travel trailers, pick up camper or coaches, motor homes, tent trailers, and the like shall be parked on any city street for not to exceed forty-eight (48) hours.

4-3.8.4.1 No major recreational equipment such as boats, boat trailers, travel trailers, pick up campers, coaches, motor homes, tent trailer, and the like, shall be parked or stored on any lot in a residential or commercial district except in a carport or enclosed building or behind the nearest portion of a building to the street; provided such equipment may be parked anywhere on a residential or commercial premise for not to exceed forty-eight (48) hours during loading or unloading. No such equipment shall be used for living, sleeping, or housekeeping purposes when parked or stored on a residential or commercial lot, nor on any city street, or in any location not approved for such use.

4-3.8.4.2 Any person in violation of the provision of this Ordinance shall be deemed guilty of a misdemeanor and be fined as provided by Section 1-1.19 of the municipal code of the City of Oshkosh, Nebraska.

PERSONS WITH DISABILITIES

§ 4-3.9 DEFINITIONS.

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

4-3.9.1 ***HANDICAPPED OR DISABLED PERSON.*** Any individual with a severe visual or physical impairment which limits personal mobility and results in an inability to travel unassisted more than 200 feet without the use of a wheelchair, crutch, walker, or prosthetic, orthotic, or other assistant device; any individual whose personal mobility is limited as a result of respiratory problems; any individual who has a cardiac condition to the extent that his or her functional limitations are classified in severity as being Class III or Class IV, according to standards set by the American Heart Association; and any individual who has permanently lost all or substantially all the use of one or more limbs.

4-3.9.2 ***HANDICAPPED PARKING INFRACTION.*** The violation of any section of this section regulating:

4-3.9.2.1 The use of parking spaces designated for use by
handicapped or disabled persons; or

4-3.9.2.2 The obstruction of any wheelchair ramps constructed or
created in accordance and in conformity with the Federal Americans with
Disabilities Act of 1990.

4-3.9.3 ***TEMPORARILY HANDICAPPED OR DISABLED PERSON.*** Any handicapped or disabled person whose personal mobility is expected to be limited in such manner for no longer than one year.

(Neb. RS 18-1738)

Statutory reference:

Infractions defined; citations issued, see Neb. RS 18-1741.01

§ 4-3.10 DESIGNATION OF ON-STREET PARKING SPACES; DISPLAY OF PERMITS.

4-3.10.1 The City Council may designate parking spaces, including access aisles, for the exclusive use of handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to handicapped or disabled persons pursuant to Neb. RS 60-311.14, handicapped or disabled persons whose motor vehicles display a distinguishing license plate issued to a handicapped or disabled person by another state, such other handicapped or disabled persons or temporarily handicapped or disabled persons, as certified by the city, whose motor vehicles display the permit specified in Neb. RS 18-1739, and such other motor vehicles, as certified by the city, which display such permit. All such permits shall be displayed by hanging the permit from the motor vehicle's rearview mirror so as to be clearly visible through the front windshield. The permit shall be displayed on the dashboard only when there is no rearview mirror.

- 4-3.10.2 If the City Council so designates a parking space or access aisle, it shall be indicated by posting aboveground and immediately adjacent to and visible from each space or access aisle a sign as described in Neb. RS 18-1737. In addition to such sign, the space or access aisle may also be indicated by blue paint on the curb or edge of the paved portion of the street adjacent to the space or access aisle.
(Neb. RS 18-1736)

§ 4-3.11 DESIGNATION OF OFF-STREET PARKING STALLS OR SPACES.

- 4-3.11.1 The City Council and any person in lawful possession of any off-street parking facility may designate stalls or spaces in such facility for the exclusive use of:
- 4-3.11.1.1 Handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to such individuals pursuant to Neb. RS 60-311.14;
 - 4-3.11.1.2 Such other handicapped or disabled persons or temporarily handicapped or disabled persons, as certified by the municipality, whose vehicles display the permit specified in Neb. RS 18-1739;
 - 4-3.11.1.3 Such other motor vehicles, as certified by the municipality, which display such permit.

- 4-3.11.2 Such designation shall be made by posting aboveground and immediately adjacent to and visible from each stall or space a sign which is in conformance with the *Manual on Uniform Traffic Control Devices*.
(Neb. RS 18-1737(1))

§ 4-3.12 PERMIT ISSUANCE.

- 4-3.12.1 The City Clerk shall take an application from a handicapped or disabled person or temporarily handicapped or disabled person, or his or her parent, legal guardian, or foster parent for a permit which will entitle the holder thereof or a person driving a motor vehicle for the purpose of transporting such holder to park in those spaces provided for by this section when the holder of the permit will enter or exit the motor vehicle while it is parked in such spaces. For purposes of this section, the handicapped or disabled person or temporarily handicapped or disabled person shall be considered the holder of the permit.
- 4-3.12.2 The City Clerk shall not accept the application for a permit of any person making application contrary to the provisions of Neb. RS 18-1738.02.
- 4-3.12.3 A person applying for a permit or for the renewal of a permit shall complete an application, shall provide proof of identity, and shall submit a completed medical form containing the statutory criteria for qualification and signed by a physician, physician assistant, or advance practice registered nurse certifying that the person who will be the holder meets the definition of handicapped or disabled person or temporarily handicapped or disabled person. In the case of a temporarily handicapped or disabled person, the certifying physician, physician assistant, or advance practice registered nurse shall indicate the estimated date of recovery or that the temporary handicap or disability will continue for a period of six months, whichever is less.

4-3.12.4 A person may hold only one permit under this section and may hold either a permit under this section or a permit under §72.34, but not both.

4-3.12.5 The City Clerk shall submit to the Department of Motor Vehicles the name, address, and license number of all persons applying for a permit pursuant to this section.
(Neb. RS 18-1738)

Statutory reference:

Application procedure, see Neb. RS 18-1738.02

§ 4-3.13 MOTOR VEHICLE PERMIT ISSUANCE.

4-3.13.1 The City Clerk shall take an application from any person for a motor vehicle permit which will entitle the holder thereof or a person driving the motor vehicle for the purpose of transporting handicapped or disabled persons or temporarily handicapped or disabled persons to park in those spaces provided for by this section if the motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. The parking permit shall be used only when the motor vehicle for which it was issued is being used for the transportation of a handicapped or disabled person or temporarily handicapped or disabled person, and such person will enter or exit the motor vehicle while it is parked in such designated spaces.

4-3.13.2 The City Clerk shall not accept the application for a permit of any person making application contrary to Neb. RS 18-1738.02.

4-3.13.3 A person applying for a permit or for the renewal of a permit pursuant to this section shall apply for a permit for each motor vehicle used for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, shall complete such forms as are provided to the City Clerk by the Department of Motor Vehicles, and shall demonstrate to the City Clerk that each such motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. A copy of the completed application form shall be given to each applicant.

4-3.13.4 No more than one such permit shall be issued for each motor vehicle. A person may hold either a permit under this section or a permit under § 72.33, but not both.

4-3.13.5 The City Clerk shall submit to the Department of Motor Vehicles the name, address, and license number of all persons applying for a permit pursuant to this section.
(Neb. RS 18-1738.01)

§4-3.14 PERMITS; PROHIBITED ISSUANCE; DUPLICATE PERMITS.

4-3.14.1 No permit shall be issued to any person or for any motor vehicle if any parking permit has been issued to such person or for such motor vehicle and such permit has been suspended pursuant to § 72.37. At the expiration of such suspension, a permit may be renewed upon the payment of the permit fee.

4-3.14.2 A duplicate permit may be provided without cost if the original permit is destroyed, lost, or stolen. Such duplicate permit shall be issued in the same manner as the original

permit, except that a newly completed medical form need not be provided if a completed medical form submitted at the time of the most recent application for a permit or its renewal is on file with the City Clerk. A duplicate permit shall be valid for the remainder of the period for which the original permit was issued.

(Neb. RS 18-1739)

§ 4-3.15 PERIOD VALID; RENEWAL; FEE.

4-3.15.1 Upon the expiration of a permanent permit, it may be renewed pursuant to the provisions of this section and §§ 72.33 and 72.34. After September 9, 1995, all permanently issued permits authorized by this section shall be issued for a period ending September 30 of the third year following the date of issuance and shall expire on that date, except that an application for the renewal of a permit filed with the City Clerk within 30 days of the date after its expiration shall be deemed to have been filed prior to the date of its expiration. The possession of an expired but otherwise valid handicapped parking permit within 30 days following the date of its expiration shall serve as a full and complete defense in any action for a handicapped parking infraction resulting from the absence of a handicapped parking permit arising during that 30-day period.

4-3.15.2 All permits authorized under this section after September 9, 1995, for temporarily handicapped or disabled parking shall be issued for a period ending not more than six months after the date of issuance but may be renewed for a one-time period not to exceed six months. For the renewal period, there shall be submitted an additional application with proof of a handicap or disability.

(Neb. RS 18-1740)

§ 4-3.16 PERMITS NONTRANSFERABLE; VIOLATIONS; SUSPENSION.

A permit issued under this section shall not be transferable and shall be used only by the party to whom issued or for the motor vehicle for which issued and only for the purpose for which it is issued. No person shall alter or reproduce in any manner a permit issued pursuant to this section. No person shall knowingly hold more than one permit or knowingly provide false information on an application for a permit. Any violation of this section shall be cause for suspension of such permit for a period of six months. At the expiration of such period, a suspended permit may be renewed upon payment of the permit fee.

(Neb. RS 18-1741)

ADMINISTRATION AND ENFORCEMENT

§ 4-3.17 REMOVAL OF ILLEGALLY PARKED VEHICLES.

4-3.17.1 Whenever any law enforcement officer shall find a vehicle standing upon a street or alley in violation of any of the provisions of the article, such individual may remove or 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 such street or alley or from such street or alley.

4-3.17.2 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 such 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 such vehicle until such charges are paid. The lien provided for in this section shall not apply to the contents of any vehicles.

(Neb. RS 60-6,165)

§ 4-3.18 SCHEDULE OF FINES; VIOLATIONS.

4-3.18.1 Any violator of this article appearing at the city hall and desiring to plead and waive court appearance shall present the official citation and pay the City Clerk according the following schedule, based upon elapsed time from the occurrence of the violation:

- 4-3.18.1.1 one to five days, excluding weekends and legal holidays: \$5.00
- 4-3.18.1.2 over five days, excluding weekends and legal holidays: \$10.003

§4-3.19 FAILURE TO PAY WITHIN FIVE DAYS; NOTICE.

Should any such fine and administrative costs not be paid within the five-day period as noted in § 72.61, the City Clerk shall send to the owner of the motor vehicle to which the official Law Enforcement citation was affixed a written notice informing the owner of the violation and warning that he or she will be held responsible for the fine and that in the event that the violator or owner of the vehicle to which the official Law Enforcement citation was attached fails to appear at the City Clerk's Office within ten days, excluding weekends and legal holidays, after the date of issuance of such written notice, a complaint will be issued.

4-3.20 FAILURE TO PAY AFTER NOTICE; PROSECUTION.

In the event that a violator fails to appear in response to notice within ten days of the notice, excluding weekends and legal holidays, the violator or the owner of the offending motor vehicle shall be liable to prosecution in county court for the offense or offenses charged and subject to the penalty provided for in §1-1.19.

§ 4-3.21 PRESUMPTION.

In any prosecution charging a violation of any provision of this article, proof that the particular vehicle described in the citation was parked in violation of this article, together with proof that the defendant named in the complaint was at the time of the parking the registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who parked or placed the vehicle at the point where and for the time during which the violation occurred.

§ 4-3.22 CITATION.

It shall be the duty of the law enforcement officers of the city, whenever they observe a violation of this article, to attach to the vehicle at the time the vehicle is found in violation, a citation to the owner or operator thereof that the vehicle is or has been parked in violation of a provision of this article. The citation shall describe the violation and instruct the owner or operator to report to the City Clerk's office in regard to the violation.

ARTICLE 4-4: OFFENSES AGAINST PUBLIC ORDER

Section

- 4-4.01 Soliciting alms
- 4-4.02 Disorderly conduct
- 4-4.03 Street games
- 4-4.04 Obstruction of public ways
- 4-4.05 Obstructing water flow
- 4-4.06 Curfew; duty of parent or guardian; defenses
- 4-4.07 Loitering and vagrants
- 4-4.08 Prize fights

§ 4-4.01 SOLICITING ALMS.

It is hereby declared unlawful for any person to solicit upon the public streets or in any private residences alms, gifts, or contributions for private benefit unless the person so soliciting shall have first secured a permit from the Municipal Clerk authorizing him or her to conduct such operations within the corporate limits.

Penalty, see § 1-1.19

Statutory reference:

Authority to regulate public safety, see Neb. RS 17-556

§ 4-4.02 DISORDERLY CONDUCT.

It shall be unlawful for any person to engage in conduct or behavior which disturbs the peace and good order of the municipality by clamor or noise, intoxication, drunkenness, fighting, or using of obscene or profane language in the streets or other public places or which is otherwise indecent or disorderly conduct or lewd or lascivious behavior.

Penalty, see § 1-1.19

Statutory reference:

Authority to prevent intoxication, see Neb. RS 17-129

Authority to regulate noise, riots, and routs, see Neb. RS 17-556

§ 4-4.03 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 municipal 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 § 1-1.19

Statutory reference:

Authority to regulate, excavation and obstruction of streets, see Neb. RS 17-142

Additional authority, see Neb. RS 17-555 and 17-557

§ 4-4.04 OBSTRUCTION OF PUBLIC WAYS.

It shall be unlawful for any person to erect, maintain, or suffer to remain on any street, alley or public sidewalk a stand, wagon, display, or other obstruction inconvenient to or inconsistent with the public use of the same.

Penalty, see § 1-1.19

Statutory reference:

Authority to regulate excavation and obstruction of streets, see Neb. RS 17-142

Additional authority, see Neb. RS 17-555 and 17-557

Penalties for injuring or obstructing roads, see Neb. RS 39-301 and 39-302

§ 4-4.05 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 § 1-1.19

Statutory reference:

Authority to abate nuisances, see Neb. RS 17-555

Authority to prevent water obstruction, see Neb. RS 17-920

§ 4-4.06 CURFEW; DUTY OF PARENT OR GUARDIAN; DEFENSES.

4-4.06.1 It shall be unlawful for any minor under the age of 18 years to loiter, idle, wander, stroll, or play in or upon any of the streets, roads, alleys or parks of the municipality, or other places of public amusement or recreation therein after the hour of 11:00 p.m. and until the hour of 5:00 a.m. of the following day on Sunday through Thursday, and after the hour of 12:30 a.m. and until the hour of 5:00 a.m. on Saturday and Sunday.

4-4.06.2 It shall be unlawful for any parent, guardian, or any adult person having the legal care, custody, or control of any minor under the age of 18 years to allow or permit such minor to loiter, wander, stroll, idle or play in or about any of the places designated in division (4-4.06.1) of this section after the hour of 11:00 p.m. and until the hour of 5:00 a.m. of the following day on Sunday through Thursday, and after the hour of 12:30 a.m. and until the hour of 5:00 a.m. on Saturday and Sunday.

4-4.06.3 It is a defense to prosecution under divisions 4-4.06.1 and 4-4.06.2 that the minor was:

- 4-4.06.3.1 Accompanied by a parent, guardian, or other adult person having the legal care, custody, or control of such minor;
- 4-4.06.3.2 On an errand at the direction of the minor's parent, guardian, or other adult person having the legal care, custody, or control of such minor and was using a direct route;
- 4-4.06.3.3 In a motor vehicle involved in interstate travel;
- 4-4.06.3.4 Engaged in an employment activity, including but not limited to newspaper delivery, and was using a direct route;
- 4-4.06.3.5 Involved in an emergency;
- 4-4.06.3.6 On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the Law Enforcement officer about the minor's presence;
- 4-4.06.3.7 Attending an official school or religious activity or returning home by a direct route from an official school or religious activity;

- 4-4.06.3.8 Exercising first amendment rights protected by the United States constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
- 4-4.06.3.9 Married or had been married or had disabilities of minority removed in accordance with the laws of the State of Nebraska.

Penalty, see § 1-1.19

Statutory reference:

General ordinance making authority, see Neb. RS 17-505

§ 4-4.07 LOITERING AND VAGRANTS.

It shall be unlawful for any person to loiter on the streets, in the park, on the sidewalk, or on any other public ways and property at unreasonable hours, and those persons who are unable to give a good and satisfactory reason why they should be there, including all vagrants and persons found without means of support or some legitimate business, shall be deemed to be guilty of loitering.

Penalty, see § 1-1.19

Statutory reference:

Authority to abate public safety nuisances, see Neb. RS 17-556

§ 4-4.08 PRIZE FIGHTS.

It shall be unlawful for any person within the municipality to sponsor or engage in any fight by agreement either as principal or second, provided that nothing herein shall be construed to prohibit boxing exhibitions duly licensed by the State of Nebraska.

Penalty, see §1-1.19

Statutory reference:

Jurisdiction of State Athletic Commissioner, see Neb. RS 81-8,129

Penalty for violations of statutes, see Neb. RS 81-8,142

CHAPTER 4-5: OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

Section

Tobacco

- 4-5.1 Possession of tobacco by minors
- 4-5.2 Smoking in prohibited areas

Sexual Predator

- 4-5.3 Sexual Predator Residency Restrictions

TOBACCO

§ 4-5.1 POSSESSION OF TOBACCO BY MINORS.

4-5.1.1 It shall be unlawful for any person under the age of 18 years of age to possess any tobacco products, provided that the possession by a person under the age of 18 years under the direct supervision of the parent or guardian of such person in the privacy of the parent's or guardian's home shall not be prohibited.

4-5.1.2 **TOBACCO PRODUCTS** shall be defined to mean any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco.

§ 4-5.2 SMOKING IN PROHIBITED AREAS.

No person shall smoke in a public place or at a public meeting except in designated smoking areas, provided that this prohibition shall not apply in cases in which an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of such room or hall.

Statutory reference:

Penalty for violation of state law, Neb. RS 71-5712

SEXUAL PREDATOR

§ 4-5.3 SEXUAL PREDATOR RESIDENCY PROHIBITED AREAS.

Sec. 4-5.3.1 DEFINITIONS

- (1) Child care facility means a facility licensed pursuant to the Child Care Licensing Act;
- (2) School means a public, private, denominational, or parochial school which meets the requirements for state accreditation or approval;
- (3) Reside means to sleep, live, or dwell at a place, which may include more than one location and may be mobile or transitory;

- (4) Residence means a place where and individual sleeps, lives, or dwells, which may include more than one location, and may be mobile or transitory;
- (5) Sex offender means an individual who has been convicted of a crime listed in Neb. Rev. Stat. Section 29-4003 and who is required to register as a sex offender pursuant to the Sex Offender Registration Act; and
- (6) Sexual offender means and individual who is required to register under the Sex Offender Registration Act, who has been classified as Level3 because of a high risk of recidivism as determined by the Nebraska State Patrol under Nebr. Rev. Stat. Section 29-4013 and who has victimized a person eighteen years of age or younger.

Sec. 4-5.3.2 Sexual Predator Residency Restrictions; Penalties; Exceptions.

- A. PROHIBITED LOCATION OF RESIDENCE. It is unlawful for any sexual predator to reside within five hundred feet from a school or child care facility.
- B. MEASURE OF DISTANCE. For purposes of determining the minimum distance shall be measured by following a straight line from the outer property line of the residence to the nearest outer boundary line of the school or child care facility.
- C. PENALTIES. A person who violates this section shall be punished as provided generally in the code.
- D. EXCEPTIONS. This ordinance shall not apply to a sexual predator who: (1) Resides within a prison or correctional or treatment facility operated by the state of a political subdivision; (2) Established a residence before July 1, 2006 and the school or child care facility triggering the restriction was established after the initial date of the sexual predator's residence at that location.

(Statutory Reference: The Sexual Predator Residence Restriction Act, Laws 2006, LB 1199, 27 to 29; Neb. Rev. Stat. Sec. 29-4003 and Section 29-4013)

CHAPTER 4-6: WEAPONS OFFENSES

Section	4-6.1	Discharge of firearms
	4-6.2	Slingshots, air guns, BB guns

§ 4-6. DISCHARGE OF FIREARMS.

It shall be unlawful for any person, except an officer of the law in the discharge of official duty, to discharge a slingshot, air gun, BB gun, paint ball gun, or the like loaded with rock or other dangerous missiles or arrows, or fire or discharge any gun, pistol, or other fowling piece within the municipality, 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.

Statutory reference:

Authority to regulate, see Neb. RS 17-556

§ 4-6.02 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 municipality.

Statutory reference:

Authority to regulate, see Neb. RS 17-556

CHAPTER 5: GENERAL REGULATIONS

ARTICLE

- 5-1 LEISURE AND RECREATION**
- 5-2 FIRE REGULATIONS**
- 5-3 HEALTH AND SAFETY**
- 5-4 PUBLIC WAYS AND PROPERTY**
- 5-5 ANIMALS**

ARTICLE 5-1: LEISURE AND RECREATION

Section

Library

- 5-1.1 Operation and funding
- 5-1.2 General powers and duties
- 5-1.3 Grounds and building
- 5-1.4 Sale and conveyance of real estate
- 5-1.5 Mortgages; release or renewal
- 5-1.6 Cost of use
- 5-1.7 Discrimination prohibited
- 5-1.8 Annual report
- 5-1.9 Penalties; recovery; disposition
- 5-1.10 Donations
- 5-1.11 Improper book removal

City Swimming Pool

- 5-1.12 Operation and funding
- 5-1.13 Rules and regulations

Parks

- 5-1.14 Duties of City Administrator
- 5-1.15 Care of park property; conduct prohibited
- 5-1.16 Hours of operation

City Auditorium

- 5-1.17 Ownership
- 5-1.18 Rentals
- 5-1.19 Rules and regulations

LIBRARY

§ 5-1.1 OPERATION AND FUNDING.

5-1.1.1 The city owns and manages the municipal library through the Library Board.

5-1.1.2 The City Council, for the purpose of defraying the cost of the management, purchases, improvements, and maintenance of the library may each year levy a tax not exceeding the maximum limit prescribed by State law, on the taxable value of all the taxable property within the city. The amount collected from the levy shall be known as the Library Fund.

(Neb. RS 51-201)

5-1.1.3 The fund shall also include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the municipal library.

5-1.1.4 All taxes levied or collected and all funds donated or in any way acquired for the erection, maintenance, or support of the municipal 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.
(*Neb. RS 51-209*)

Statutory reference:

Authority to create; powers and duties, see Neb. RS 51-201 through 51-219

§ 5-1.2 GENERAL POWERS AND DUTIES.

5-1.2.1 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*)

5-1.2.2 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*)

5-1.2.3 The Library Board shall have the power to appoint a suitable librarian and assistants, to fix their compensation, and to remove such appointees at pleasure. It shall have the power to 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. It shall have the power to 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*)

§ 5-1.3 GROUNDS AND BUILDING.

5-1.3.1 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*)

5-1.3.2 The Board may erect, lease, or occupy an appropriate building for the use of the library.
(*Neb. RS 51-211*)

§ 5-1.4 SALE AND CONVEYANCE OF REAL ESTATE.

The Library Board may, by resolution, direct the sale and conveyance of any real estate owned by the Board or by the municipal 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 and as otherwise provided in Neb. RS 51-216.
(Neb. RS 51-216)

§ 5-1.5 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)

§ 5-1.6 COST OF USE.

5-1.6.1 Except as provided in division (5-1.5) of this section, the municipal library and reading room shall be forever free to 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 such 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)

5-1.6.2 The library shall make its basic services available without charge to all residents of the City. The Library Board may fix and impose reasonable fees, not to exceed the library's actual cost, for non-basic services.
(Neb. RS 51-211)

5-1.6.3 For purposes of this section:

5-1.6.3.1 Basic services shall include, but not be limited to, free loan of circulating print
and
nonprint materials from the local collection and general reference and
information

services; and

5-1.6.3.2 Non-basic services shall include, but not be limited to, use of:

5-1.6.3.2.1 Photocopying equipment;

5-1.6.3.2.2 Telephones, facsimile equipment, and other telecommunications
equipment;

5-1.6.3.2.3 Media equipment;

5-1.6.3.2.4 Personal computers; and

5-1.6.3.2.5 Videocassette recording and playing equipment.

(Neb. RS 51-201.01)

§ 5-1.7 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*)

§ 5-1.8 ANNUAL REPORT.

The Library Board shall, on or before the second Monday in June in each year, make a report to the City Council of the condition of its trust on June 1 of such year, showing all money received or expended; the number of books and periodicals on hand; newspapers and current literature subscribed for or donated to the reading room; the number of books and periodicals ordered by purchase, gift, or otherwise obtained during the year, and the number lost or missing; the number of and character of books loaned or issued, with such statistics, information, and suggestions as it may deem of general interest, or as the City Council may require, which report shall be verified by affidavit of the President and Secretary of the Library Board.
(*Neb. RS 51-213*)

§ 5-1.9 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 municipality to the credit of the Library Fund. Attorney's fees collected pursuant to this section shall be placed in the treasury of the municipality and credited to the budget of the City Attorney's office.
(*Neb. RS 51-214*)

§ 5-1.10 DONATIONS.

Any person may make donation of money, lands, or other property for the benefit of the municipal 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 municipal library.
(*Neb. RS 51-215*)

§ 5-1.11 IMPROPER BOOK REMOVAL.

It shall be unlawful for any person not authorized by the regulations made by the Library Board to take a book or any other material from the library, without the consent of the Librarian or an authorized employee of the library. Any person removing a book or other material from the library without properly checking it out shall be deemed to be guilty of an offense.

CITY SWIMMING POOL

§ 5-1.12 OPERATION AND FUNDING.

The City owns and manages the City Swimming Pool. The City Council, for the purpose of defraying the cost of the management, maintenance, and improvements of the Swimming Pool may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the City that is subject to taxation. The revenue from the said tax shall be known as the Swimming Pool Fund and shall include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the Swimming Pool. The Swimming Pool Fund shall at all times be in the custody of the City Treasurer. The City Administrator shall manage the Swimming Pool. The City Administrator shall have the power and authority to hire and supervise the Swimming Pool Manager and such employees as he may deem necessary and shall pass such rules and regulations for the operation of the Swimming Pool as may be proper for its efficient operation. All actions by the City Administrator shall be under the supervision and control of the City Council.

(Neb. RS 17-948, 17-951, 17-952)

§ 5-1.13 RULES AND REGULATIONS.

The City Administrator shall have the power and authority to enact bylaws, rules, and regulations for the protection of those using the Swimming Pool and for the efficient management thereof. They may provide suitable penalties for the violation of such by-laws, rules, and regulations subject to the review and supervision of the City Council.

(Neb. RS 17-040)

PARKS

§ 5-1.14 DUTIES OF CITY ADMINISTRATOR.

5-1.14.1 *Supervision.* All city parks shall be operated and maintained under the supervision of the City Administrator.

5-1.14.2 *Employees.* The City Administrator shall have supervision over all employees concerning the maintenance of the city parks, and they shall perform their duties under his or her supervision.

5-1.14.3 *Enforcement of ordinances.* The City Administrator shall see to the enforcement of all ordinances relating to the city parks. He or she shall enforce all rules relating to the use of the city parks.

§ 5-1.15 CARE OF PARK PROPERTY; CONDUCT PROHIBITED.

No person in a city park shall:

5-1.15.1 Willfully mark, deface, disfigure, injure, tamper with, displace or remove any building, bridge, table, bench, fireplace, railing, fence, paving or paving material, water line or other public utility or part thereof, sign or notice, placard, monument, stake, post or other boundary marker, or any other structure, equipment, facility or park property whatsoever, either real or personal.

5-1.15.2 Fail to cooperate in maintaining rest rooms and wash rooms in a neat and sanitary condition. No person over five years of age shall use any rest room or wash room designated for the opposite sex.

5-1.15.3 Throw, discharge or otherwise place or cause to be placed in the water of any fountain, pond, lake, stream or other body of water in or adjacent to any city park or any tributary, stream, storm sewer or drain going into said waters, any substance, liquid or solid, which will or may result in the pollution of said waters.

5-1.15.4 Have brought in or dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage, refuse or other trash. No such refuse or trash shall be placed in any waters in or contiguous to any city park or left anywhere on the grounds thereof, but shall be placed in the proper receptacles, where receptacles are provided; and where receptacles are not provided, all such refuse or trash shall be carried away by the person responsible for its presence and properly disposed of elsewhere. No person shall commit any waste on or litter the municipal parks or other public grounds.

5-1.15.5 May maliciously or willfully cut down, injure, or destroy any tree, plant, or shrub. 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 the city parks and recreational areas.

Statutory reference:

Littering of public and private property, see Neb. RS 28-523

§ 5-1.16 HOURS OF OPERATION.

5-1.16.1 Minors under the age of 16 years are not to be allowed in the city parks from the hours of 11:00 p.m. to 5:00 a.m. The city parks shall be open to the public during such hours as the Mayor and City Council shall from time to time determine by resolution. It shall be unlawful for any person or persons, other than city personnel conducting city business, to occupy or be present in a city park during any hours in which the park is not open to the public. Any section or part of a city park may be declared closed to the public by the City Administrator at any time and for any interval of time, either temporarily or at regular or stated intervals.

5-1.16.2 The City Administrator and/or pool manager may close the swimming pool during inclement weather, where unsanitary water conditions exist or for special events

CITY AUDITORIUM

§ 5-1.17 OWNERSHIP.

The City owns and manages the City Auditorium through the City Council. The City Council, for purpose of defraying the cost of the management, maintenance, and improvements on the City Auditorium may create a fund known as the Auditorium Fund and shall include all gifts, grants, deed of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the City Auditorium. The Auditorium Fund shall at all times be in the custody of the City Treasurer. The City Administrator shall have the power to hire and supervise such employees as he may deem necessary and shall pass such rules and regulations for the operation of the Auditorium as may be proper for its efficient management.
(Neb. RS 17-953 thru 17-955)

§ 5-1.18 RENTALS.

The City Council may, for the purpose of defraying the expenses involved in maintaining, improving, managing, and beautifying the Auditorium, make a reasonable rental charge for the use by any person or organization of the Auditorium. The City Administrator shall prescribe rules and regulations for such rentals subject to the review of the City Council. Rental rates may be structured for classes of persons and organizations in a reasonable manner; Provided, that nothing herein shall be construed to permit or allow discrimination on the basis of race, creed, color, or national origin in the classification of persons and organizations for rental purposes.
(Neb. RS 17-953)

§ 5-1.19 RULES AND REGULATIONS.

The City Administrator shall have the power and authority to enact by-laws, rules, and regulations for the protection of the City Auditorium and the safety of those using the Auditorium facilities. They may provide suitable penalties for the violation of such by-laws, rules, and regulations subject to the supervision and review of the City Council. All damage suffered by the Auditorium during any rental shall be assessed against the person or organization responsible for the rental thereof or shall be deducted from the damage deposit which the City Administrator may in his discretion have required prior to the said rental. All rental fees, rules, and regulations shall be on file for public inspection at the office of the City Clerk at any reasonable time.
(Neb. RS 17-953)

ARTICLE 5-2: FIRE REGULATIONS

Section

General Provisions

- 5-2.1 City fire protection
- 5-2.2 Notice of Violation

Fire Prevention

- 5-2.3 Fire prevention code
- 5-2.4 Fire code enforcement

Fireworks

- 5-2.5 Definitions
- 5-2.6 Fireworks prohibition

GENERAL PROVISIONS

§ 5-2.1 CITY FIRE PROTECTION.

Fire protection within the city is provided by way of Garden County Rural Fire District #2 as established by joint resolution of the City of Oshkosh and the Garden County Rural Fire District #2, adopted June 14, 2007. Garden County Rural Fire District #2 provides all statutory obligations required fire protection, firefighting, and fire investigations within the city, and the is granted full authority and power of a fire department of a Class 2 City.

§ 5-2.2 NOTICE OF VIOLATION

Upon the finding that the Municipality 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 said premise. Whenever it may be necessary to serve such and order upon the owner, such order may be served personally, or by mailing a copy to the owner's last know post office address if the said owner is absent from the jurisdiction. Any such order shall be immediately complied with by the owner, occupant, or manager or the premise or building. The owner, occupant, or manager may, within five (5) days after such order by the Chief of the Fire Department or his agent, appeal the order with the Governing Body requesting a review and it shall be the duty of the Governing Body to hear the same within not less than five (5) days nor more than ten (10) days from the time when the request was filed in writing with the Municipal Clerk. The Governing Body shall the affirm, modify, or rescind the said 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 said 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.

FIRE PREVENTION

§ 5-2.3 FIRE PREVENTION CODE.

The rules and regulations promulgated by the office of the State Fire Marshal of the State of Nebraska relating to fire prevention are incorporated by reference into this code and made a part of this article as though spread at large herein together with all subsequent amendments thereto. One copy of the Uniform Fire Code shall be on file with the City Clerk and shall be available for public inspection at any reasonable time.

Statutory reference:

Authority to adopt, see Neb. RS 18-132

Zoning and building regulations authorized, see Neb. RS 19-901 through 19-933

Powers and duties of State Fire Marshal, see Neb. RS 81-502

§ 5-2.4 FIRE CODE ENFORCEMENT.

It shall be the duty of all municipal officials to enforce the incorporated fire code provisions and all infractions shall be immediately brought to the attention of the Fire Chief.

Statutory reference:

Authority to regulate, see Neb. RS 17-549

FIREWORKS

§ 5-2.5 DEFINITIONS.

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

5-2.5.1 ***PERMISSIBLE FIREWORKS.*** Sparklers, vesuvius fountains, spray fountains, torches, colored forecones, star and comet type color aerial shells without explosive charges for the purpose of making a noise, color wheels, toy cap pistols, and toy caps each of which does not contain more than 35 hundredths of one gram of explosive material, any other fireworks approved by regulation of the Nebraska State Fire Marshal.
(Neb. RS 28-1241)

Statutory reference:

Authority, see Neb. RS 17-556

5-2.5.2 ***PUBLIC EXHIBITIONS.*** Upon application to the Mayor and City Council a permit may be issued from the Mayor and City Council to except public exhibitions of fireworks and pyrotechnics from this section. (Neb. RS 28-1241(7))

Statutory Reference:

Authority, see Neb. RS 17-556

Unlawful fireworks, see Neb RS 28-1244

Prohibitions not applicable, see Neb.RS 28-1245

§ 5-2.6 FIREWORKS PROHIBITION.

5-2.6.1 It shall be unlawful for any person to give, sell or offer for sale any fireworks or pyrotechnics in the city without an occupation tax; provided that, permissible fireworks may be sold at retail only between June 24 and July 5 of each year.

5-2.6.2 It shall be unlawful for any person to ignite or cause to be exploded fireworks or firecrackers of any description whatsoever, except that permitted fireworks may be ignited between June 24 and July 5 of each year.

5-2.6.3 Upon application to the Mayor and City Council a permit may be issued from the Mayor and City Council to except public exhibitions of fireworks and pyrotechnics from this section.
(*Neb. RS 28-1241(7)*)

Statutory reference:

Authority, see Neb. RS 17-556

Unlawful fireworks, see Neb. RS 28-1244

Prohibitions not applicable, see Neb. RS 28-1245

ARTICLE 5-3: HEALTH, SAFETY AND NUISANCES

General Provisions

- 5-3.1 Purpose
- 5-3.2 Definitions

Abatement Services & Notice Procedure

- 5-3.3 Nuisance Officer
- 5-3.4 Identifying Nuisances
- 5-3.5 Confirming, Documenting and Presenting Nuisances

Enforcement Procedures

- 5-3.6 Enforcement Procedure
- 5-3.7 Administrative Procedure
- 5-3.8 Penal Court Enforcement Procedure
- 5-3.9 Civil Court Procedure

Special Procedures

- 5-3.10 Special Procedures for Unsafe Buildings and Trees
- 5-3.11 Special Procedure for Vehicle Nuisance Abatement

Expenses

- 5-3.12 Costs & Fees

GENERAL PROVISIONS

§ 5-3.1 PURPOSE.

The City of Oshkosh by this Article, defines its authority to define, regulate, suppress and prevent nuisances, and to declare what shall be a nuisance for its jurisdiction and to provide services to abate same for the health and sanitation of the City, (NRS§17-1720)

§ 5-3.2 DEFINITIONS

- 5-3.2.1 **NUISANCE.** A nuisance consists in doing any unlawful act or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing:
 - 5-3.2.1.1 Injures or endangers the comfort, repose, health or safety of others;
 - 5-3.2.1.2 Offends decency;
 - 5-3.2.1.3 Is offensive to the senses;

- 5-3.2.1.4 Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the municipality;
 - 5-3.2.1.5 In any way renders other persons insecure in life or the use of property;
 - 5-3.2.1.6 Essentially interferes with the comfortable enjoyment of life and property, or;
 - 5-3.2.1.7 Tends to depreciate the value of the property of others.
- 5-3.2.2 **Nuisance** includes, but is not limited to, the maintaining, using, placing, depositing, leaving ,or permitting of any of the following, specific acts, omissions, places, conditions, and things of:
- 5-3.2.2.1 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;
 - 5-3.2.2.2 The emission of smoke, dust, fumes, gases, mists, odors, or polluted air from any source that is injurious or dangerous to human health and safety;
 - 5-3.2.2.3 Privies, vaults, cesspools, dumps, pits, or like places which are not securely protected from flies or rats or other insects and rodents, or which are foul or malodorous;
 - 5-3.2.2.4 Filthy, littered, or trash-covered cellars, house yards, barnyards, stable yards, factory yards, mill yards, vacant areas in rear of stores, granaries, vacant lots, houses, buildings or premises;
 - 5-3.2.2.6 Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any ordinance of the municipality;
 - 5-3.2.2.7 Hauling any garbage, waste, or refuse matter through the streets, alleys, and public ways except when the same is loaded and conveyed in such a way when none of the contents shall be spilled;
 - 5-3.2.2.8 Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish, or any waste vegetal or animal matter in any quantity. Nothing herein contained shall prevent the temporary retention of waste in receptacles nor the dumping of non-putrefying waste in a place and manner approved by the municipality;
 - 5-3.2.2.9 Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, and all trash or abandoned material, unless the same be kept in covered bins or galvanized iron receptacles;
 - 5-3.2.2.10 Trash, litter, rags, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber not neatly piled, scrap iron, tin or other metal not neatly pied, 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 or other insects or rodents may breed or multiply, or which may be a fire danger, or which are so unsightly as to depreciate property values in the vicinity;
 - 5-3.2.2.11 Any unsafe building, unsightly building, billboard , or other structure, or any old abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished, which buildings, billboards or other structures are a fire hazard, or a menace to the public health or safety, or are so unsightly as to depreciate the value of the property in the vicinity;

- 5-3.2.2.12 All places used or maintained as junk yards, or dumping grounds, or for the wrecking and disassembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property of others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof;
- 5-3.2.2.13 Stockyards, granaries, mills, pig pens, cattle pens, chicken pens or any other place, building or enclosure, in which animals or fowls of any kind are confined or on which 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 municipality or are maintained and kept in such a manner as to be injurious to the public health;
- 5-3.2.2.14 Dead or diseased trees within the right-of-way of Streets within the corporate limits of the City, or on private property within the one-mile zoning jurisdiction beyond the corporate limits (NRS § 17-555);
- 5-3.2.2.15 Undrained lots which hold or may hold stagnant water or any other nuisance;
- 5-3.2.2.16 Any condition which allows the perpetuating of insects and rodents;
- 5-3.2.2.17 Storage, accumulation, keeping, placing or allowing to remain trash, garbage, scrap and wrecked, worn-out, broken or inoperative, or partially destroyed or disassembled personal or real property of any kind, including any junk or abandoned motor vehicles, tractors, trailers, machinery, and equipment;
- 5-3.2.2.18 Any vehicle which is not properly registered, or is inoperable, wrecked, junked or partially dismantled and remaining longer than thirty (30) days on private property. This does not apply to a vehicle in an enclosed building, a vehicle on the premises of a business enterprise operated in a lawful place and manner, when necessary to the lawful operation of such business enterprise (such as a licensed salvage dealer, motor vehicle dealer or farm implement dealer), or a vehicle in an appropriate storage place or depository maintained in a lawful place and manner, **and** so long as the premises which said vehicle is located is not a nuisance and is maintained in a healthful and safe condition;
- 5-3.2.2.19 Any lots, pieces of ground, or adjoining streets and alleys with growth of weeds, grasses and worthless vegetation (as defined by the Nebraska Department of Agriculture) that are twelve (12) inches or more in height;
- 5-3.2.2.20 To reside in a building without operational electrical, heating and ventilation, and plumbing systems that have been approved by the building official as compliant with applicable codes. Operational shall also mean active service from the utility provider that is necessary to make the system operate. A ten day grace period before enforcement shall be in effect if utility service is temporarily disconnected for nonpayment of utility bill.
- 5-3.2.2.21 The use of an engine brake or retarder within the city limits or one mile extra-territorial jurisdiction.
- 5-3.2.2.20 All other things specifically designated as nuisances elsewhere in the City Code. (NRS §18-1720)

ABATEMENT SERVICES & NOTICE PROCEDURE FOR NUISANCES

§ 5-3.3 NUISANCE OFFICER.

The City may appoint an individual or organization to identify and enforce abatement of nuisances with the City. Said individual or organization shall be identified as the "Nuisance Officer" and said appointment shall be identified by resolution of the City. If a Nuisance Officer is not appointed the Health Board shall fulfill the duties herein assigned to then Nuisance Officer.

§ 5-3.4 IDENTIFYING NUISANCES.

- 5-3.4.1 The City may identify suspected nuisances, in which case the City Clerk, shall upon direction of the City Council, notify Nuisance Officer of the suspected location, person or persons in violation of any provision of this chapter and provide the address of such alleged nuisance.
- 5-3.4.2 The City may request that the Nuisance Officer audit the City for nuisances in the City as defined by the City Code. The Nuisance Officer shall then view the property or area for any violations of the nuisances of the City. Nuisance Officer shall not go upon private property for said audit unless granted permission by the resident/owner of suspected property.

§ 5-3.5 CONFIRMING, DOCUMENTING AND PRESENTING NUISANCES.

Nuisance Officer shall identify and confirm that in his or her opinion a nuisance exists as defined by Federal, State or City law.

- 5-3.5.1 Upon confirming that a nuisance appears to exist the Nuisance Officer shall document said nuisance with photographs and other evidence pertinent to the situation. Nuisance Officer will also obtain the legal description of the property and identify the current owners and, if possible, the occupants of the property upon which the nuisance exists.
- 5-3.5.2 Nuisance Officer shall then present this information to the City governing board at a regular or special meeting for its confirmation that a nuisance exists.

ENFORCEMENT PROCEDURES

§ 5-3.6 ENFORCEMENT PROCEDURE.

The nuisance, health and/or sanitation violation is brought to the Governing Body by the City Nuisance Officer, or the Board of Health or upon the Governing Body's own action. The Governing Body then may declare by resolution a nuisance, health and/or sanitation violation. The nuisance, health, and/or sanitation ordinances may be enforced by: (1) City administrative procedures; (2) Penal prosecutions through the Courts, and/or; (3) by the civil procedures in the Courts. Any of these procedures or any combination of these procedures may be used to enforce the nuisance, health and/or sanitation ordinances of the City.

§ 5-3.7 ADMINISTRATIVE PROCEDURE.

The City may proceed with abatement of the nuisance, sanitation, and/or health violation with or without court involvement after the following procedure is followed:

- 5-3.7.1 After a nuisance is declared the City Clerk notifies the City Attorney to serve notice upon the violator(s).
- 5-3.7.2 The City Attorney shall prepare and serve notice which shall describe the found nuisance and state the required date of abatement and removal of the nuisance shall be accomplished. The notice shall also provide information as to how the interested parties may request a hearing before the Governing Body described in paragraph 4 herein.
- 5-3.7.3 The notice shall be given to each owner or owner's duly authorized agent and to the occupant, if any by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, said notice shall be given by a single publication in a newspaper of general circulation in the City or county of the City, and by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. The date of service is determined by the later of certified mail receipt, personal service or publication date.
- 5-3.7.4 The accused violator (owner/agent/occupant) may request in writing a hearing before the Governing Body of the City within five (5) days after notice of violation is served or published. For tree nuisance violations the period for requesting a hearing is extended to thirty (30) days after service.
- 5-3.7.5 If no request for a hearing is received in the required time period, The Governing Body may cause a hearing to be held. This option is at the sole discretion of the Governing Body to be used in exceptional cases.
- 5-3.7.6 If a hearing is requested, the City Clerk shall fix date of said hearing to be no later than 15 days from receipt of the request for the hearing. Notice of said hearing and with the date and time shall be served upon the agent, owner, and of the nuisance property by certified and regular mail.
- 5-3.7.7 The Hearing shall be a "show cause" hearing in which the agent, owner, occupant of the nuisance property (objecting property) shall provide evidence why the alleged condition should not be found to be a public nuisance and remedied. This hearing shall be heard before a quorum of the governing body. The presiding official of the Governing Body may conduct the hearing or said presiding official may appoint another person as the hearing officer to conduct the hearing (said hearing officer may be the City Attorney or the Enforcement Officer). At the hearing the hearing officer shall mark and receive evidence which was presented when the finding of a nuisance was made, relevant evidence of the nuisance since that time and evidence that the notices were properly given. The objecting party shall then provide its evidence. The rules of evidence are not required at said hearing, but all evidence must be relevant to the particular nuisance being heard. Testimony shall be under oath as administered by the hearing officer or any person so designated by the hearing officer, and the person providing the testimony is subject to the laws of perjury. Evidence may be submitted in writing by affidavit.
- 5-3.7.8 No later than 14 days after the hearing and consideration of the evidence, the Governing Board may by majority vote rescind the resolution of violation. If the resolution of violation is not rescinded, it shall stand. Furthermore, if the Objector or its designated agent fails to appear at the hearing or does not provide evidence, the nuisance shall stand. If the resolution is not rescinded, the Governing Board may by resolution, extend the date that owner, occupant, lessee, or mortgagee shall abate and remedy the said public nuisance, but in no

case shall his time exceed 60 days. The findings of the Governing Board shall be made no later than 14 days after the hearing and notice of its finding shall be served upon the Objecting party by regular US Mail within 5 days of the finding. The finding of this hearing is final, provided that an interested party or parties may appeal such decision to the appropriate court for adjudication.

5-3.7.9 If the Nuisance Officer determines the nuisance is not remedied and abated within the time period designated, the City shall cause the abatement of the nuisance.

5-3.7.10 If an interested party properly appeals to an appropriate court the findings and orders of the City, the City actions shall be stayed during until such time that the legal proceedings are completed or dismissed. In cases of appeal from an action of the City condemning real property as a nuisance or as dangerous under the police powers of the municipality, the owners of the adjoining property may intervene in the action at any time before trial (Neb RS 19-710)

§ 5-3.8 PENAL COURT ENFORCEMENT PROCEDURE.

If the declared nuisance, health, and/or sanitation is not abated within fifteen (15) days that the notice is served upon the owner and/or occupant, and the City Clerk has not received a request for hearing, the City Attorney or Nuisance Officer may cause issue of a citation for code violation by the hearing officer or any person so designated by the hearing officer, and the person providing the testimony is subject to the laws of perjury. Evidence may be submitted in writing by affidavit.

5-3.8.1 The citation shall be prosecuted to the appropriate court by the City Attorney or other designated prosecutor for the City. A person or persons found guilty of these violations shall be guilty of a misdemeanor and fined up to \$500.00 per each offense.

5-3.8.2 Each day that the nuisance as identified in the nuisance resolution and notice, is not abated shall be separate offense and subject to a separate fine.

§ 5-3.9 CIVIL COURT PROCEDURE.

The Governing Board may instruct by resolution the City Attorney to file a civil action for the abatement of a nuisance. Said civil suit may commence after fifteen (15) days-notice has been served in accordance with Sections 5-3.7 and 5-3.8 of this Article, and may be filed and prosecuted at the same time any other enforcement procedure has commenced, terminated or in progress.

SPECIAL PROCEDURES

§ 5-3.10 SPECIAL PROCEDURES FOR UNSAFE BUILDINGS AND TREES

5-3.10.1 **UNSAFE BUILDINGS.** If the Nuisance Officer or designated official of the governing body determines that any building, shed, fence, or other manmade structure which is dangerous to the public health because of its condition, and which may cause or aid in the spread of diseases or injury to the health of the occupants of it or neighboring structures; which because of faulty construction, age, lack of proper repair or any other cause is liable to cause injury or damage by the collapse or fall of all or any part of such structure, the written

determination shall be filed with the City Clerk. Unsafe building is also any building that is declared unsafe by the City or one that is defined as unsafe by the International Property Maintenance Code (in its amended and current form), and any structure declared by the City to be dangerous to the public health of the residents of the City.

The City Attorney shall thereupon serve the owner and occupant of the premises notice. The violator is given **thirty (30) days** to remedy the nuisance. The Clerk or Nuisance Officer shall also cause the property to be posted of the violation and shall file a copy of such determination in the office of the Garden County Register of Deeds. If the unsafe building or structure is 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, the City may summarily repair or demolish and remove such building or structure.

5-3.10.2 **NUISANCE TREES.** Notice to abate and remove tree violations and notice of a 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 by personal service or certified mail. Within **thirty (30) days** after the receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing or fails to comply with the order to abate and remove the nuisance, the City may have such work completed by the City or by a third-party, and the owner or occupant shall be responsible for any charges or fees related to such work.

§5-3.11 SPECIAL PROCEDURE FOR VEHICLE NUISANCE ABATEMENT.

5-3.11.1 **NOTICE TO REMOVE FOR PRIVATE PROPERTY.** Notice of removal may be given to the owner or occupant of the private property upon which such vehicle is located and such notice shall request that said vehicle be removed from said property within thirty (30) days of the date of said notice and notice shall advise that upon failure to comply with the notice to remove, the City or its designee may issue a citation or shall undertake such removal with the cost of removal to be levied against the owner of the vehicle or the owner or occupant of the property.

5-3.11.2 **REMOVAL AFTER NOTICE.** (1) Upon the notice to remove, the owner of the vehicle and the owner or occupant of the private property on which the same is located, either or all of them, shall be responsible for its removal. In the event of removal and disposition by the City, the owner, or occupant of the private property, where the same is located, shall be liable for the expenses incurred. (2) If the violation described in the notice has not been remedied within the thirty (30) day period of compliance, the Nuisance Officer or his designee shall have the right to take possession of said vehicle and remove it from the premises. It shall be unlawful for any person to interfere with, hinder, or refuse to allow such person or persons to enter upon private property for the purpose of removing a vehicle under the provisions of this article.

5-3.11.3 REMOVAL OF VEHICLES FROM PUBLIC PROPERTY. Any motor vehicle, livestock trailer, farm trailer, flatbed trailer, homemade trailer, or pick-up bet trailer, licensed or unlicensed, left parked on public property for more than 72 hors shall be deemed an abandoned vehicle, and as such a nuisance. After notice affixed to vehicle for 5 days it shall be subject to removal and impoundment by the City until lawfully claimed or disposed of in accordance with the laws of the state. In the event of a dangerous or emergency issue with any vehicle parked on public property the 72 hour limit and 5 day notice shall be suspended and immediate removal and impoundment authorized.

5-3.11.4 VALUATION AND TITLE. If an abandoned vehicle, at the time of abandonment, has no number plates of the current year affixed and is of a wholesale value, taking into consideration the condition of the vehicle, of one hundred dollars (\$100.00) or less, title shall immediately be vested in the City.

5-3.11.5 DUTIES OF THE NUISANCE OFFICER. Except for vehicles governed by 5-3.11.2 above, the Nuisance Officer or designated official shall:

5-3.11.5.1 Make an inquiry concerning the last registered owner of such vehicle;

5-3.11.5.1.1 Notify the last registered owner, if any, that the vehicle in question has been recovered as an abandoned vehicle and that, if unclaimed, it will be sold at public auction after five (5) days from the date such notice was mailed. (If the City is notified that a lien or mortgage exists on said vehicle, such notice shall also be sent the lien holder or mortgagee); and

5-3.11.5.1.2 Proceed to obtain title of the abandoned vehicle in the City's name pursuant to Nebraska Statute 60-1903

5-3.11.6 PROCEEDS OF SALE; DISPOSITION. Any proceeds from the sale of an abandoned vehicle less any expenses incurred by the City shall be held by the City without interest for the benefit of the owner of such vehicle for a period of two (2) years. If not claimed within such two-year period, such proceeds shall be paid into the general fund of the City.

5-3-11.6 LIABILITY FOR REMOVAL. Neither the owner, lessee nor occupant of the 8 premises from which any abandoned vehicle shall be 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, or as a result of any subsequent disposition.

5-3.11.7 COST OF REMOVAL AND STORAGE. The last registered owner of an abandoned vehicle shall be liable to the City for the costs of removal and storage of such vehicle.

5-3.11.8 REDEMPTION OF IMPOUNDED VEHICLES. The owner of any vehicle seized under the provisions of this article may redeem such vehicle at any time after its removal but prior to the sale or destruction thereof upon proof of ownership,

presentment of a valid registration certificate, current license plates, and payment to the City Clerk or designated official of such sum as said official may determine and fix for the actual and reasonable expense of removal, and any preliminary sale advertising expenses, including a reasonable amount for storage for each vehicle redeemed.

5-3.11.9 **EXCEPTION; HOBBYIST PERMIT.** A hobbyist permit for the restoration or repair of up to two non operating, wrecked, junked or partially dismantled vehicles on any premises used for residential purposes may be granted to the residents of such premises following procedure set forth.

5-3.11.9.1 Application for a hobbyist permit shall be filed with the City Clerk in a form provided by the City and shall contain the name and address of the applicant, and the make, model, year and VIN of each vehicle to be restored or repaired.

EXPENSES

§5-3.12 COSTS AND FEES.

- 5-3.12.1 When the City has effected the abatement of the nuisance, health and/or sanitation violation through either City employees or through contract with a third party and has incurred expenses and costs thereof, the actual cost thereof shall be charged to the owner, agent, occupant or person in possession, charge or control of such property. The billing shall be calculated at the actual cost of abating the nuisance plus a twenty-five-dollar (\$25.00) administrative fee.
- 5-3.12.2 This billing shall be submitted to the last known address of the Owner of the nuisance property as found in the County Treasurer's office by regular US Mail.
- 5-3.12.3 If said costs are not paid within two months after the work is done and one month after the expenses and costs are submitted to the owner and/or occupant, the City may levy and assess the expenses and costs upon the real estate benefited by the actions in the same manner as other special assessments are levied and assessed, and the City may collect said assessments in the same procedure as other special assessments are collected. The city may also recover said expenses and costs of abating the nuisance, health and/or sanitation violation(s) in a civil action in the courts of the appropriate county in Nebraska.

ARTICLE 5-4: PUBLIC WAYS AND PROPERTY

Section

Municipal Property

- 5-4.1 Maintenance and control
- 5-4.2 Purchase, acquisition, sale and conveyance
- 5-4.3 Improvement district; land adjacent
- 5-4.4 Special improvement district; assessment and creation procedure
- 5-4.5 Public works involving architecture or engineering; requirements
- 5-4.6 Obstructions prohibited; permitted exceptions
- 5-4.7 Protection from damage
- 5-4.8 Weeds

Sidewalks

- 5-4.9 Maintenance
- 5-4.10 Construction by owner
- 5-4.11 Duty of property owner to keep free from obstructions
- 5-4.12 New sidewalks; Council order
- 5-4.13 Repairing sidewalks; notice
- 5-4.14 Reconstructing sidewalks; notice
- 5-4.15 Sidewalk; failure to construct, reconstruct, repair or widen
- 5-4.16 Sidewalks; materials
- 5-4.17 Sidewalks; width, location
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Streets

- 5-4.20 Names and numbers
- 5-4.21 Construction notice
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- 5-4.24 Improvement districts; objections
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Curb and Gutter

5-4.30 Cutting curb

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- 5-4.31 Definitions
- 5-4.32 Interference with the enforcement agents
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- 5-4.38 Tree topping and stump removal
- 5-4.39 Dangerous trees and shrubs
- 5-4.40 Dead or diseased tree removal
- 5-4.41 Review by City Council

MUNICIPAL PROPERTY

§ 5-4.1 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 municipality and shall cause the same to be kept open and in repair and free from nuisances.

(Neb. RS 17-567(1))

5-4.1.1 Except when a special hazard exists that requires lower speed for compliance with the statutes of Nebraska and Ordinances of the City of Oshkosh or when otherwise posted, no person shall operate a motor vehicle on any street, alley, or other place within the City of Oshkosh at a rate of speed greater than:

- (a) Twenty five (25) miles per hour on any city street in any residential district;
- (b) Twenty five (20) miles per hour on any city street in any business district;
- (c) Ten (10) miles per hour on any alley-way.

§ 5-4.2 PURCHASE, ACQUISITION, SALE AND CONVEYANCE.

The purchase, acquisition, conveyance or sale of personal and real property by the city shall be conducted pursuant to the Nebraska statutes. The city is authorized to accept gifts of real and personal property.

(Neb. RS 17-503, 17-503.01, 17-953.01, 13-403 and 18-1755)

§ 5-4.3 IMPROVEMENT DISTRICT; LAND ADJACENT.

Supplemental to any existing law on the subject, a municipality may include land adjacent to such municipality when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The City Council shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby.

(Neb. RS 19-2427)

§ 5-4.4 SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCEDURE.

5-4.4.1 The City Council may, by ordinance, create a special improvement district for the purpose of replacing, reconstructing, or repairing an existing street, alley, water line, sewer line, or any other such improvement

5-4.4.2 Except as provided in Neb. RS 19-2428 to 19-2431, the City Council shall have power to assess, to the extent of such benefits, the costs of such improvements upon the properties found especially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the City Council shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law.
(Neb. RS 18-1751)

§5-4.5 PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS.

5-4.5.1 Except as provided in division 5-4.5.2 of this section, the city and its personnel 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.

5-4.5.2 Division 5-4.5.1 of this section shall not apply to the following activities:

5-4.5.2.1 Any public works project with contemplated expenditures for the contemplated expenditures for the completed project that does not exceed \$80,000;
(Neb. RS 81-3445, 81-3449(3), and 81-3453(3))

5-4.5.2.2 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;
(Neb. RS 81-3449(3) and 81-3453(4))

5-4.5.2.3 Performance of professional services for itself if the municipality appoints a municipal engineer or employs a full-time person licensed under the Engineers and Architects Regulation Act who is in responsible charge of architectural or engineering work;
(Neb. RS 81-3423, 81-3449(9), and 81-3453(6))

5-4.5.2.4 The practice of any other certified trade or legally recognized profession;
(Neb. RS 81-3449(11) and 81-3453(7))

- 5-4.5.2.5 Earthmoving and related work associated with soil and water conservation practices performed on any land owned by the municipality that is not subject to a permit from the Department of Natural Resources;
(Neb. RS 81-3449(13) and 81-3453(12))
- 5-4.5.2.6 The work of employees and agents of the municipality 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(14) and 81-3453(13))
- 5-4.5.2.7 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;
(Neb. RS 81-3453(10))
- 5-4.5.2.8 The construction of municipal water wells as defined in Neb. RS 46-1212, the installation of pumps and pumping equipment into municipal water wells, and the decommissioning of municipal water wells, unless such construction, installation, or decommissioning is required by the municipality to be designed or supervised by an engineer or unless legal requirements are imposed upon the municipality as a part of a public water supply; and
(Neb. RS 81-3453(15))
- 5-4.5.2.9 Any other activities described in Neb. RS 81-3449 to 81-3453.

Statutory reference:

Public service provider defined, see Neb. RS 81-3423

§ 5-4.6 OBSTRUCTIONS PROHIBITED; PERMITTED EXCEPTIONS.

5-4.6.1 Trees and shrubs growing upon or near the lot line, or upon public ground, and interfering with the use or construction of any public improvements shall be deemed an obstruction under this article. The roots may be removed by the city at the expense of the owner of the property upon which the tree is located should the owner fail, or neglect, after notice, to do so. It shall be unlawful for any person, persons, firm, or corporation to obstruct, or encumber, by fences, gates, buildings, structures, or otherwise, any of the streets, alleys, or sidewalks. The public ways and property shall be considered to be obstructed when the owner or occupant of the adjacent property shall permit or suffer to remain on any premise owned or controlled by him or her any hedge, shrubbery, bush, or similar growth within two feet adjacent to the lot line whether there is a sidewalk abutting or adjoining such premise or not. It shall be the duty of owners and occupants to at all times keep trimmed and pruned all such similar growth. Whenever any such growth is allowed to grow within two feet of the lot line contrary to the provisions of this article, the City Council may pass a resolution ordering the owner or occupant to remove such obstructions within five days after having been served with a copy of the resolution by the city stating that the city will do so and will charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided, or shall collect the same by civil suit brought in the name of the city against the owner or

occupant. It shall be the duty of an owner or occupant engaged in construction of any building or improvement upon or near the public ways and property to have all excavations or exposures of any kind protected and guarded by suitable guards or barricades by day and by warning lights at night. In the event of failure, neglect, or refusal to comply with the provisions of this section, it shall be the duty of the city to stop all work upon the buildings and improvements until suitable guards are erected and kept in the manner aforesaid. Trees and shrubs growing upon the lot line partially on public ground and partially upon the abutting property, or wholly upon the abutting property, but so close to the lot line as to interfere with the making of any public improvement or so that the roots thereof interfere with any utility wires or pipe shall be deemed an obstruction, and such trees, shrubs, and roots may be removed by the city pursuant to the procedure prescribed above. In the event the property owner is a nonresident of the county in which the property lies, the city shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

5-4.6.2 Persons 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 such building material and equipment as long as is necessary if such persons shall make application to and receive a permit in writing from the city official in charge of city streets to do so, provided that no permit for the occupancy of the sidewalk space and more than one-third of the roadway of the public space adjacent to the real estate on which the building is to be constructed, erected, reconstructed, wrecked, or repaired shall be granted, and provided further that a suitable passageway for pedestrians shall be maintained within the public space included in the permit which shall be protected and lighted in the manner required by the official issuing the permit.

Statutory reference:

Authority to remove obstructions, see Neb. RS 17-142 and 17-555

Authority to regulate and abate obstructions, see Neb. RS 17-557 and 17-557.01

7 PROTECTION FROM DAMAGE.

No person shall remove, destroy, or tear down any signal, barricade, fence, railing, or other device erected or constructed for the purpose of protecting paving, or any other work while in course of construction or after it has been constructed on any of the streets, alleys, or public grounds. No person shall drive over or upon or go upon any paving or other public works in any of the streets, alleys, or public grounds while the same is protected by any signal, barrier, fence, or railing, or until the same has been removed by the contractors or by the duly authorized officials of the city. It is declared to be unlawful for any person to mar, deface, destroy, remove, or carry away any street sign or highway marker erected either by authority of the municipality or by the state of Nebraska, within the corporate limits.

§ 5-4.8 WEEDS. It is the duty of the City Administrator or his or her duly authorized agent to view and inspect the sidewalk space within the corporate limits for growing weeds during the growing season, and if rank and noxious weeds are found growing thereon, he or she shall notify the owner or occupant thereof to cut down such weeds as close to the ground as can be practicably done and keep the weeds cut thereon in like manner during the growing season for weeds, provided that any weeds growing in excess of six inches on any sidewalk space shall be considered a violation of this section. In the event that the owner of the lot or parcel of land abutting the sidewalk space within the city is a nonresident of the city or cannot be found therein the notice may be given to any person having the care, custody, or control of such lot or parcel of land. In the event that there can be found no one within the city to whom notice can be given, it shall be the duty of the City Administrator or his or her agent to post a copy of the notice on the premise and then to cut or cause the weeds thereon to be cut as therein provided and report the cost thereof in writing to the Council. The cost shall then be audited and paid by the city and the amount thereof shall be assessed against the lot or parcel of land as a special tax thereon and shall

be collected as are other taxes of the city or may be recovered by civil suit brought by the city against the owner of the parcel of land. In the event the property owner is a nonresident of the county in which the property lies, the city shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

Statutory reference:

Authority, see Neb. RS 17-563

SIDEWALKS

§ 5-4.9 MAINTENANCE.

Every owner of any lot, lots, or piece of land within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to the lot, lots, or pieces of land, as the case may be, in good and proper repair, and in a condition reasonably safe for travel for all travelers thereon. In the event that the owner or owners of any lot, lots, or lands, abutting on any street, avenue, or part thereof shall fail to construct or repair any sidewalk in front of his, her, or their lot, lots, or lands, within the time and in the manner as directed and required herein after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the City Council shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property. In the event the property owner is a nonresident of the county in which the property lies, the municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

Statutory reference:

Authority to construct and repair, see Neb. RS 17-522

§ 5-4.10 CONSTRUCTION BY OWNER.

5-4.10.1 Any person desiring to construct, or cause to be constructed, any sidewalk shall do so only as herein provided. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit.

5-4.10.2 The owner shall make application in writing for a permit and file such application in the office of the Municipal Clerk. The permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed. The official in charge of sidewalks shall issue the desired permit unless good cause shall appear why the permit should be denied, provided that if it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, or elevation, the municipal official in charge of sidewalks shall submit the application to the City Council who shall determine whether the permit should be granted or denied. It shall be unlawful for any person to construct or cause to be constructed the sidewalk at any other location, grade, or elevation than so designated by the municipality. 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 municipal official in charge of sidewalks.

Statutory reference:

Authority to construct and repair, see Neb. RS 17-522

§ 5-4.11 DUTY OF PROPERTY OWNER TO KEEP FREE FROM OBSTRUCTIONS.

Every occupant of any lot(s) or parcel(s) or owner of any vacant lot(s) or parcel(s) within the corporate limits shall have the duty for the sidewalk adjoining the lot(s) or parcel(s) to provide an area free from obstructions, a minimum of a 48-inch width or the width of the sidewalk whichever is less.

§ 5-4.12 NEW SIDEWALKS; COUNCIL ORDER.

Whenever three-fourths of the City Council shall deem it necessary that a sidewalk be constructed in front of any lot or other parcel of land in the city, including crosswalks over railroad rights-of-way, in a place where there is no sidewalk, they shall so order by resolution. The notice of the Council's intention to construct such sidewalk shall be given by the City Clerk by publication of notice one time in a legal newspaper published in and of general circulation in the city. The notice shall notify such owner of the passage of the resolution, that the owner will have 30 days from and after the day of publication within which to construct the sidewalk so ordered by resolution or cause the same to be done, and that if the owner fails to construct the sidewalk or cause the same to be done within 30 days after the day of the publication of the notice, then the city will cause the sidewalk to be constructed and the cost thereof will be levied and assessed thereafter by the Mayor and Council as a special tax against the premises; provided that, the notice shall contain the engineer's estimate of the cost of the work, and no special assessment in excess of the amount of the estimate shall be assessed against the property. A copy of the notice so published shall also be either served by the City Administrator upon the occupant in possession of the property involved or posted by the City Administrator upon such premises ten days prior to the commencement of construction. The notice shall be in substantially the following form:

Resolution

Oshkosh, Nebraska

_____, 20____

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF OSHKOSH, NEBRASKA:

1. That within 30 days after the publication of this Resolution, a sidewalk be (constructed, reconstructed, repaired, widened) and laid to the established grade on the _____ side of _____ Street in the City of Oshkosh, adjoining the following described premises, to-wit: (Legal description and, where applicable, address); under the supervision of the City Administrator and in accordance with Article 5-4 of Section 5-4.9 of the Oshkosh Municipal Code.

2. That in the event of the failure of the owner to have such sidewalk (constructed, reconstructed, repaired, widened), the Mayor and Council will cause the same to be (constructed, reconstructed, repaired, widened) and the entire cost thereof will be taxed as a special assessment against the above described premises as provided by law.

3. The engineer's estimate for the work is \$_____.

SEAL

Mayor

Attest:

City Clerk

Return

I hereby certify that I served a copy of the foregoing Resolution on _____ by (personally delivering to _____, the occupant in possession of the property; posting on the property) a true and correct copy of the foregoing Resolution on ___ 20_____, said day being at least 10 days prior to the date of commencement of (construction, re-construction, repair, widening) of said sidewalk.

City Administrator

The publisher of such legal newspaper shall file with the City Clerk an affidavit of the publication of the resolution as soon as the publication herein required is completed. Such publication, together with the return of the City Administrator, shall be deemed to be good and sufficient notice to the owner of the property in front of, abutting or adjacent to which the sidewalk is to be constructed, reconstructed, repaired or widened.

§ 5-4.13 MAINTENANCE

Whenever the City Administrator shall deem it necessary that any sidewalk be repaired, or it shall be required by the Mayor and City Council, the City Administrator shall notify the owner of the lot or other parcel of land along and contiguous to which such sidewalk is situated, to repair the same within 30 days from and after the giving of such notice unless such time is extended in writing by the Council. Oral notice to the owner shall be deemed sufficient. If the owner is not found by the City Administrator, then a written notice left in the house situated on such lot or other parcel of land, or posted upon the owner's premises, shall be sufficient, and the 30 days, or such time as extended by the Council, shall begin to run from the leaving or posting of such notice as the case may be.

§ 5-4.14 RECONSTRUCTING SIDEWALKS; NOTICE.

Whenever the Mayor and City Council shall deem it necessary that an old sidewalk be reconstructed or widened, the City Clerk and City Administrator shall follow the procedure set forth in this section for the construction of new sidewalks.

§ 5-4.15 SIDEWALK; FAILURE TO CONSTRUCT, RECONSTRUCT, REPAIR OR WIDEN.

If any owner shall neglect or refuse, after notice has been given as provided in this section, to construct, reconstruct, repair or widen any sidewalk within the time limit in the notice given, the City Administrator shall proceed at once and without further notice to such owner to have such sidewalk constructed, reconstructed, repaired or widened, as the case may be; and the expense of such work shall be assessed to such lot or other parcel of land and collected as provided by law, if three-fourths of the City Council by vote shall have assented to the making of the sidewalk improvement.

§ 5-4.16 SIDEWALKS; MATERIALS.

All sidewalks in the city which shall be constructed, reconstructed, repaired or widened after June 21, 1967, shall be of concrete of at least the proportions of six-bag concrete and not less than 3 5/8 inches thick, poured upon a gravel fill of at least 1 inch, which concrete shall be float finished and cut in 4-foot blocks.

§ 5-4.17 SIDEWALKS; WIDTH, LOCATION.

All sidewalks in front of or along any lot or other parcel of land in the residential or agricultural districts of the city shall be constructed of a minimum 48 inches in width. All sidewalks in front of or along any lot or other parcel of land in the commercial or industrial districts of the city shall be constructed of a minimum eight feet in width, unless by special permit the Mayor and City Council shall allow a sidewalk of a different width. The inner edges of all sidewalks shall be such distance from the lot line as set forth in the permit referred to in § 93.021 and shall conform to such grade as set forth in the permit.

§ 5-4.18 SIDEWALKS; ASSESSMENT SHEETS, CITY ADMINISTRATOR AS CITY ENGINEER.

The City Engineer shall certify to the Mayor and City Council a detailed schedule of all sidewalks constructed, reconstructed, repaired or widened and the cost of same by which the Mayor and Council may be

aided in determining the amount to be assessed as a special assessment against each lot or other parcel of land; and the City Engineer shall certify such other facts as may be necessary to enable the Mayor and Council to make the proper special assessment. The City Engineer shall also certify to the Mayor and Council the acceptance of any sidewalk so improved and what other action he or she has taken with reference to such sidewalks. The City Engineer shall allocate the cost of sidewalk improvements to the adjoining lots or other parcels of land and prepare all necessary data for assessment sheets. If there is no City Engineer, the City Administrator shall perform all the duties required of the City Engineer with relation to any sidewalk improvement contemplated by this section.

§ 5-4.19 SIDEWALKS; TAX NOTICE FOR IMPROVEMENTS, PROCEDURE.

The cost of constructing, reconstructing, repairing or widening any sidewalk shall be levied, by resolution, upon the lot or other parcel of land fronting and adjoining which such sidewalks are constructed, reconstructed, repaired or widened, which resolution shall specify the street upon which such sidewalk has been so constructed, reconstructed, repaired or widened, and the length and width of each sidewalk constructed, reconstructed, repaired or widened fronting on any lot or other parcel of land. Such assessment shall be made by the Mayor and City Council at a meeting by resolution, fixing the valuation of the lots assessed, taking into account the benefits derived or injuries sustained in consequence of such improvement, and the amount charged against the same, which, with the vote thereon, by “yeas” and “nays,” shall be spread upon the minutes. Notice of the time and place of holding such meeting and the purpose for which it is to be held shall be published in a legal newspaper published 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 the person owning the property to be assessed. All such assessments shall be known as “Special Assessments for Improvement,” and shall be levied and collected as a separate tax in addition to the tax for general purposes, to be placed and collected in like manner as other city taxes. Whenever any such special tax is levied, the City Clerk shall forthwith deliver a certified copy of such resolution to the County Treasurer, who shall place the same on the tax list to be collected in the manner provided by law.

STREETS

§ 5-4.20 NAMES AND NUMBERS.

The City Council may at any time, by ordinance, provide a name for any new street. Buildings used for residence or business purposes and located along such streets shall retain such numbers as the City Council may require. It shall be the duty of the municipal official in charge of streets, upon the erection of any new building or buildings, to assign the proper numbers to the building or buildings and give notice to the owner or owners and occupant or occupants of the same.

Statutory reference:

Authority to improve, see Neb. RS 17-509

§ 5-4.21 CONSTRUCTION NOTICE.

The City Administrator shall notify the owners in fee simple of real estate abutting a street, alley, or a part thereof which is to be put under contract for paving or repaving. Notice shall also be given to all gas, electric service, and telephone companies. Notice shall also be given to all consumers of gas, water, and sewer services which will be discontinued during such construction. The notice shall be published one time in a legal newspaper at least 20 days prior to the beginning of such construction by the party undertaking such construction, and the notice shall state at what date connections must be made and excavation completed. All gas, water, sewer, and

underground connections must be made prior to the paving or repaving of the street under construction. After expiration of such time, permits for excavation will not be issued, nor will excavation be allowed, until after the completion of the pavement in the street or alley, and the formal final acceptance thereof by the proper officials of the municipality.

Statutory reference:

Notice required, see Neb. RS 17-522

§ 5-4.22 PIPE LINES AND WIRES.

Poles, wires, 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 municipality. Application for location of the above shall be made to the City Council in writing. Approval by that body shall be issued in writing. Any public service company granted a right-of-way for the erection and maintenance of poles, conduits, gas mains, pipe lines, and wires shall at all times erect and locate their poles, wires, gas mains, pipe lines, and other appurtenances at such places and in such manner as shall be designated by the City Council. Such poles, wires, 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 City Council. Any such relocation shall be ordered by resolution of the City Council, and the Municipal Clerk shall notify any and all companies affected. The companies shall, at their own expense, cause the poles, wires, gas mains, pipe lines, or other appurtenances to be removed. The City Council shall designate another location as closely as possible where the poles, wires, gas mains, pipe lines, or other appurtenances, may be reset or placed. All poles, wires, 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, sewerage system, poles, wires, and mains of any public utility, adjacent buildings, or with travel on the public ways and property. Whenever possible, all pole lines, wires, gas mains, pipe lines, or appurtenances shall be confined to the alleys of the city. The City Clerk shall keep records of the location of all poles, wires, gas mains, pipe lines or other appurtenances and applications within the city.

§ 5-4.23 CONSTRUCTION ASSESSMENT.

To defray the costs and expenses of street improvements, as may be authorized by law, the City Council shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, abutting upon, or especially benefiting from, the street, avenue, alley, or sidewalk in whole or in part opened, widened, curbed, curbed and guttered, graded, paved, repaired, graveled, macadamized, parked, extended, constructed, or otherwise improved or repaired.

Statutory reference:

Assessments, see Neb. RS 17-511 and 17-524

Agricultural land within improvement districts, see Neb. RS 19-2428 through 19-2431

Maximum interest rates, see Neb. RS 45-104.01

§ 5-4.24 IMPROVEMENT DISTRICTS; OBJECTIONS.

The City Council may proceed as it deems necessary to make improvements allowed by statute and fund same by a special assessment levy pursuant to the Nebraska statutes.

(Neb. RS 17-511)

§ 5-4.25 PETITION FOR IMPROVEMENTS.

Owners of property in the city may petition the City Council for the creation of an improvement district within the city pursuant to the Nebraska statutes. The City Council may approve or deny such request according to the statutes.

(Neb. RS 17-510)

§ 5-4.26 DEFERRAL FROM SPECIAL ASSESSMENTS.

Any landowner within a created improvement district upon which a special assessment has been levied may apply to the City Council for deferral from the assessment pursuant to the Nebraska statutes.
(*Neb. RS 19-2428 through 19-2431(2)*)

§ 5-4.27 DRIVEWAY APPROACHES.

5-4.27.1 The Utilities Superintendent 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.

5-4.27.2 The Municipal Clerk shall give the property owner notice by registered letter or certified mail, directed to the last-known address of such owner or the agent of such owner, directing the repair or replacement of such driveway approach. If within 30 days of mailing such notice the property owner fails or neglects to cause such repairs or replacements to be made, the Utilities Superintendent may cause such work to be done and assess the cost upon the property served by such approach.
(*Neb. RS 18-1748*)

§ 5-4.28 VACATING PUBLIC WAYS.

The city may vacate streets, avenues, alleys, lanes or other similar public property pursuant to the Nebraska statutes.

Statutory reference:

Authority, see Neb. RS 17-558 and 17-559

§ 5-4.29 SNOW, DEBRIS, AND THE LIKE ON STREET PROHIBITED.

It shall be unlawful to place, push, or deposit any debris, including leaves, grass, and branches, from private property on the streets of the municipality.

Statutory reference:

Authority to regulate, see Neb. RS 17-557

CURB AND GUTTER

§ 5-4.30 CUTTING CURB.

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.

Statutory reference:

Authority, see Neb. RS 17-567

TREES

§ 5-4.31 DEFINITIONS.

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

STREET TREES. Trees, shrubs, bushes, other woody vegetation on land lying between property lines on either side of all streets, avenues, alleys or other ways within the city.

PARK TREES. Trees, shrubs, bushes, and all other woody vegetation on in public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

PUBLIC COMMUNITY FOREST. All street and park trees, and other trees owned by the City as a total resource.

CITY TREE MANAGER. The official (public employee) representative of the Tree Board and as such is responsible for administration of the community forestry program.

§ 5-4.32 INTERFERENCE WITH ENFORCEMENT AGENTS.

It shall be unlawful for any person to prevent, delay or interfere with the City Tree Advisory Board, or any agents or contractor with the city, while planting, cultivating, mulching, pruning, spraying, or removing of any within the public community forest.

§ 5-4.33 STREET SPECIES TO BE PLANTED.

The City of Oshkosh, Nebraska, shall maintain an extensive list of recommended trees for planting in public areas. The purpose of this listing will be to maintain diversity in the total tree population. This list shall be available to residents of the City upon request to aid in the selection of trees for private and public properties. The list of recommended trees shall be updated periodically to reflect new developments or species that will affect the population of the community forest.

§ 5-4.34 DISTANCES AND CLEARANCES FOR PLANTING.

5-4.34.1 Street trees may be planted in the tree lawn where there is more than eight feet between the edge of the sidewalk and the curb of the street. Street trees shall be planted no closer than four feet from a sidewalk, driveway or street.

5-4.34.2 No street tree shall be planted closer than twenty-five (25') feet from any street corner, measured from the point of the nearest intersection of curb or curb lines.

5-4.34.3 Special permission must be obtained from the City Tree Manager when planting street trees within ten (10') feet of any point on a line on the ground immediately below any overhead utility wire.

§ 5-4.35 PUBLIC TREE CARE.

5-4.35.1 The city shall have the right to plant, prune, maintain, and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

5-4.35.2 The City Tree Advisory Board shall make recommendations to the City Council for the removal or cause or order to be removed, any part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. This section does not prohibit the planting of street trees by adjacent property owners providing that the selection and location of the trees is in accordance with §§ 93.092 and 93.093.

5-4.35.3 The City Tree Advisory Board will direct the City Administrator to notify in writing the owners of such trees which violate any provision of this article.

5-4.35.4 Removal or trimming, shall be done by the owners at their own expense within 60 days after the date of service of the notice. If the owners fail to comply with such provisions, the city shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice.

§ 5-4.36 PERMITS REQUIRED.

No person shall plant a tree on public property without first obtaining a permit from the City Administrator. There will be no fee for such permit.

§ 5-4.37 PRUNING; CORNER CLEARANCE.

5-4.37.1 Every owner of any tree overhanging any street, alley, or other right-of-way within the city shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the light from any street intersection and so that there shall be a clear space of eight feet above the surface of the street or sidewalk. The owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public.

5-4.37.2 The city shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign.

§ 5-4.38 TREE TOPPING AND STUMP REMOVAL.

5-4.38.1 *Tree topping.*

5-4.38.1.1 It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or other tree on public property.

5-4.38.1.2 Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

5-4.38.1.3 Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempt from this section at the determination the City Tree Advisory Board.

5-4.38.1.4 *Removal of stumps.* All stumps of street park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

§ 5-4.39 DANGEROUS TREES AND SHRUBS.

The city shall have the right to cause any tree or shrub which overhangs any street, sidewalks, alley or other public place in such a way as to impede or interfere with traffic or travel, or within ten feet in height of a street level or seven feet of any sidewalk level, to be trimmed by the owner of the premises abutting or of the premises on which such tree or shrub grows so that the obstruction shall cease. Any tree or limb of a tree which has become likely to fall on or across any public street, alley, sidewalk or other public way or place shall be removed by the owner of the premises on which such tree grows or stands.

Statutory reference:

Authority to regulate, see Neb. RS 17-577 and 17-557.01

§ 5-4.40 DEAD OR DISEASED TREE REMOVAL.

The city shall have a right to cause the removal of any dead or diseased trees on private property within the city, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the city.

§ 5-4.41 REVIEW BY CITY COUNCIL.

5-4.41.1 The City Council shall have the right to review the conduct, acts and decisions of the City Tree Advisory Board.

5-4.41.2 Any person may appeal from any decision of the City Tree Advisory Board to the City Council which may hear the matter and make the final decision.

ARTICLE 5-5: ANIMALS

Section

General Provisions

- 5-5.1 Definitions
- 5-5.2 Duties of Animal Control Officer
- 5-5.3 Care of Animals
- 5-5.4 Dogs and Cats Running at Large
- 5-5.5 Excessive Animal Noise
- 5-5.6 Limitation on Number of Dogs and Cats
- 5-5.7 Dangerous Animals; Prohibited Animals in Residential Area
- 5-5.8 Dog and Cat License and Tag
- 5-5.9 Animals: Killing And Poisoning
- 5-5.10 Impounding
- 5-5.11 Animals and Fowl Banned From the Municipality
- 5-5.12 Animal Cruelty
- 5-5.13 Violation; Penalty

GENERAL PROVISIONS

§ 5-5.1 DEFINITIONS

The following words, terms and phrases, when used in this article shall have the meanings described to them in this section, except where the context clearly indicates a different meaning.

Adequate care means normal and prudent attention to the needs of an animal, including that care which is normally necessary to maintain good health in a specific species of animal.

Adequate control means that control necessary to restrain or govern an animal so that the animal does not injure or pose a threat to itself, any person, any other animal or property.

Adequate food means wholesome foodstuffs suitable for the species provided at suitable intervals in a sanitary manner in quantities sufficient to maintain good health in an animal considering its age and condition.

Adequate health care means the provision to each healthy animal of all immunizations and preventative care required to maintain good health, and space adequate to allow the animal rest and exercise sufficient to maintain good health, and the provision to each sick, diseased or injured animal of necessary veterinary care or humane death.

Adequate shelter means a structurally sound, properly ventilated, sanitary and weatherproof shelter for the species, condition and age of the animal which provides access to shade from direct sunlight and regress

from exposure to inclement weather conditions.

Adequate water means a constant access to or access at suitable intervals to a supply of clean, fresh, potable water provided in a sanitary manner suitable for the species, condition and age of the animal in sufficient amounts to maintain good health in the animal.

Animal means any live vertebrate creature, domestic or wild, other than a human, including but not limited to the following:

- 5-5.1.1 Domestic animal means an animal which is tame or domesticated or adapted to live in intimate association with man, such as a pet.
- 5-5.1.2 Farm animal means an animal raised on a farm or ranch and used or intended for use in farm or ranch production, or as food or fiber
- 5-5.1.3 Fowl means any and all fowl, domesticated and wild, male and female, singular or plural.
- 5-5.1.4 Large animal means any swine, bovine, goat, sheep or beast of burden, or any other domestic or wild animal of similar or larger size.
- 5-5.1.5 Small animal means any animal not within the definition of large animal but including all dogs without reference to size.
- 5-5.1.6 Wild animal means any animal which is predominantly free-roaming as opposed to domesticated.

Animal shelter means the facilities operated by the City or its authorized agents for the purpose of impounding or caring for animals held under the authority of this article or state law.

Cat means any domestic feline animal (*Felis domesticus*), male or female, sexed or neutered.

Commercial animal establishment means any pet shop, grooming shop, animal exhibit, rodeo, auction, riding school, stable, carriage horse service, cattery, kennel, patrol, sentry or guard dog service, animal trainer, or business keeping animals in stock for retail or wholesale trade, or any establishment performing one or more of the principal activities of such establishments.

Cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal;

Dog means any domestic canine animal (*Canis familiaris*), male or female, sexed or neutered. Any cross or hybrid which is part dog and part wild animal shall be considered a wild animal for the purposes of this article.

Harbor means to feed or shelter an animal at the same location for three or more consecutive days.

Humane killing means the destruction of any animal accomplished by a method approved by the American Veterinary Medical Association's Committee on Euthanasia.

Neighbor shall mean an individual residing in a residence structure which is within 100 yards of the property on which the animal is kept or harbored and who does in writing state that he will testify under oath to the animal making excessive noise.

Officer means any duly appointed Law Enforcement officer, humane officer or animal control officer of the city.

Owner, in addition to its ordinary meaning, also means any person who keeps or harbors an animal or professes to be owning, keeping or harboring an animal.

Pests means birds, rabbits or rodents which damage property or have an adverse effect on the public health.

Primary enclosure means any structure used to immediately restrict an animal to a limited amount of space, such as a room, pen, run, cage, compartment, pool or hutch

Private animal shelter means any facility which is used to house or contain dogs or cats, or both, and which is owned, operated or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection and humane treatment of such animals.

Sanitary means clean and free from infectious or deleterious influences.

Veterinarian means a person licensed by the state to engage in the practice of veterinary medicine.

Veterinary medical care facility means a facility which has the primary function of providing medical care for animals and is operated by a currently licensed veterinarian.

§ 5-5.2 DUTIES OF ANIMAL CONTROL OFFICER

It shall be the duty of the Animal Control Officer of the City to enforce the provisions of this Article.

§ 5-5.3 CARE OF ANIMALS

5-5.3.1 Required. It shall be unlawful for any person owning, keeping, harboring or otherwise in possession or control of any animal to fail to provide any or all of the following to the animal:

- 5-5.3.1.1 Adequate care;
- 5-5.3.1.2 Adequate control;
- 5-5.3.1.3 Adequate food;
- 5-5.3.1.4 Adequate health care;
- 5-5.3.1.5 Adequate shelter; or
- 5-5.3.1.6 Adequate water.

5-5.3.2 Responsibility of parents for animals owned by minors. Any parent, guardian or other person having custody of a minor child is deemed legally and criminally responsible for the adequate care of any animal owned by, in the control of or harbored by that minor child.

5-5.3.3 Penalty. Any person who violates the provisions of this section shall be guilty of a misdemeanor and shall be punished as provided for in section 5-5.13

§ 5-5.4 DOGS AND CATS RUNNING AT LARGE.

5-5.4.1 It shall be unlawful for any person owning, keeping or harboring any dog to permit, suffer or allow the dog to run at large within the city. For the purpose of this section, any dog shall be deemed to have been permitted, suffered or allowed by its owner, keeper or harborer to run at

large when outside of the property of the owner, keeper or harbinger and not effectively physically restrained on a chain or leash or behind a suitable fence or other proper method of physical restraint from which it cannot escape.

- 5-5.4.2 A legally blind person using a Seeing Eye dog or a deaf person using a hearing dog in the customary manner shall be deemed to be in compliance with this section.
- 5-5.4.3 Official use of dogs by a governmental unit shall be deemed in compliance with this section.
- 5-5.4.4 If an officer finds a dog running at large in violation of this section, the officer has the authority to pick up the animal and transport it to the City-designated place of impoundment. The owner or person claiming such animal shall pay an impoundment fee to the City in addition to any other fees or fines provided for in the City Code.
- 5-5.4.5 Any person owing, keeping or harboring any dog found to be running at large shall be guilty of a misdemeanor and punished, in addition to the impoundment fees.
- 5-5.4.6 The owner, keeper or person harboring any female dog or cat shall, during the period that such animal is in heat or in state of estrus, keep it securely confined within an area secure from access by male dogs and cats running at large, except when out upon such person's premises briefly for toilet purposes while on a leash or otherwise effectively physically restrained and under supervision.
- 5-5.4.7 In the case of cats, it shall be unlawful for any person owing, keeping or harboring any cat to permit, suffer or allow the cat to run at large within the city so that the cat poses a nuisance to the neighbors or the public welfare. A cat which poses a nuisance is one which interferes with the comfortable enjoyment of life and property or tends to depreciate the value of property of others. Any person found in violation of this section shall be punished as provided for in §5-5.13. If a cat is impounded at the animal shelter, the owner or person claiming such animal shall pay an impoundment fee to the City in addition to the other fees.
- 5-5.4.8 It shall be unlawful for any person owning, keeping or harboring any dog or cat to allow the animal to injure or destroy any personal or real property of any description belonging to another person. Any person found in violation of this section shall be punished as provided for in §5-5.13. The owner, keeper or person harboring any such dog or cat, in addition to the person's usual judgment upon conviction, may be made to be liable to the person so injured in an amount equal to the value of the damage sustained.

§ 5-5.5 EXCESSIVE ANIMAL NOISE.

- 5-5.5.1 It shall be unlawful for any person to own or keep any animal which, by making excessive noise, disturbs a neighbor. The following definitions and conditions shall be applicable to enforcement of this section:
 - 5-5.5.1.1 The phrase "excessive noise" shall mean and include any noise produced by an animal which is so loud and continuous as to disturb the peace and quiet of a neighbor.
 - 5-5.5.1.2 The term "neighbor" shall mean an individual residing in a residence structure which is within 100 yards of the property on which the animal is kept or harbored and who does in writing state that he will testify under oath to the animal making excessive noise. Nothing in this subsection shall be construed to prohibit an officer from filing a complaint for excessive noise based on his own observations and personal knowledge.
- 5-5.5.2 Any person who violates this section shall be guilty of a misdemeanor and shall be punished as provided for in §5-5.13

§ 5-5.6 LIMITATION ON NUMBER OF DOGS AND CATS.

5-5.6.1 Maximum number exceptions. It shall be unlawful and a public nuisance for any person in charge of a residence to keep or allow to be kept more than four (4) dogs or cats, or any combination of such animals exceeding four in number, over the age of 90 days at such residence, unless the residence or the owner of the dogs and cats kept there is within one or more of the following exceptions:

- 5-5.6.1.1 The residence is licensed as a commercial animal establishment; or
- 5-5.6.1.2 The owner of the dogs and cats over 90 days of age has applied for and received a permit to keep dogs and cats in excess of four as provided for under this section and, upon request of an officer, presents for inspection such permit.

5-5.6.2 Application for permit. Application for a permit for under this section shall be made in writing to the City Clerk. Such application shall state:

- 5-5.6.2.1 The name and address of the owner of the dogs or cats;
- 5-5.6.2.2 The breed, color, age and sex of the dogs or cats;
- 5-5.6.2.3 Whether such dogs or cats are licensed under this article;
- 5-5.6.2.4 Whether such dogs or cats are neutered, spayed or intact;
- 5-5.6.2.5 Such other information as may identify the dogs or cats; and
- 5-5.6.2.6 Such other information as the animal control commission may require.

The application shall certify to the information contained in such application under penalty of law for the willful making of any untrue statement. The application shall further state, by making and signing the application, that the applicant consents to an inspection of premises shall result in denial of application

5-5.6.3 Issuance of permit; revocation; expiration. Upon receipt of an application for a permit provided for under this section, the City Clerk shall notify the Animal Control Officer or a duly authorized representative to investigate the premises and the manner in which the dogs or cats are kept. A permit shall be issued only if the locating and the keeping of the dogs and cats is, in the opinion of the Animal Control Officer, such as not to be a health hazard or nuisance to the surrounding neighborhood. An attempt shall be made as a part of the application investigation to contact the neighbors in order to determine if they have any objection to the issuance of the permit. A permit issued under the provisions of this section may be revoked by the Council for the violation by the holder of such permit of any provision of this section or any other applicable provision of this article. All permits issued under the provisions of this section shall be valid for a period of two years of their issuance.

5-5.6.4 Violations. When animals in excess of the limit established in this section are found at a residence, the owner of the animals shall have 72 hours to comply with this section. Failure to comply within 72 hours shall constitute a violation of this section and shall be punished as provided for in §5-5.13 any combination of dogs or cats in excess of four in number shall be considered one violation of this section, but each day in violation shall constitute a separate offense.

5-5.6.5 Review of issuance or revocation of permit. The issuance or revocation of a permit shall be reviewable by the City Council upon request of any interested party. The request for the city council to review the issuance or revocation of a permit shall be in writing to the City Clerk,

requesting that it be included on the agenda of the next regularly scheduled meeting of the City Council. In reviewing the commission's action, the City council may approve, disapprove, or take no action at all, which in the latter case shall mean that the commission's action shall stand. As part of this review process, the council shall have the power to grant or revoke a permit.

§ 5-5.7 DANGEROUS ANIMALS; PROHIBITED ANIMALS IN RESIDENTIAL AREA.

5-5.7.1 Definitions. Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

5-5.7.1.1 Potentially dangerous dog means any dog that, when unprovoked, inflicts bites on a human or a domestic animal either on public or private property, or chases or approaches a person upon the streets, sidewalks or any public grounds in a menacing fashion or apparent attitude of attack; or any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury, or to otherwise threaten the safety of humans or domestic animals.

5-5.7.1.2 Dangerous dog or other dangerous animal means any dog or animal that, according to the records of the appropriate authority, has:

5-5.7.1.2.1 Inflicted severe injury on a human being without provocation on public or private property;

5-5.7.1.2.2 Killed a domestic animal without provocation while off the owner's property; or;

5-5.7.1.2.3 Been previously found to be potentially dangerous, the owner having received notice of such finding, and the dog or other animal again aggressively bites, attacks or endangers the safety of humans or domestic animals.

5-5.7.1.3 Proper enclosure of a potentially dangerous dog means that, while on the owner's property, a potentially dangerous dog shall or structure, suitable to prevent the entry of young be securely confined indoors or in a securely enclosed and locked pen children and designed to prevent the animal from escaping such pen or structure shall have secure sides and a secure top, shall also provide shall be securely embedded into the ground, and protection from the elements for the dog.

5-5.7.2 **Determination that dog is potentially dangerous dog.** If it is determined by the animal control officer, after investigation, that a dog is potentially dangerous dog, the animal control officer shall notify in writing the owner of the dog that it has been declared a potentially dangerous dog. If the owner of the dog disagrees with the animal control officer's determination, the owner may appeal in writing to the animal control commission within ten (10) days of receiving the notice. The hearing if requested, will be held before the Mayor and City Council of the City of Oshkosh, Nebraska. The owner of the dog shall bear the burden of proof. Any facts that the petitioner wishes to be considered shall be submitted under oath or affirmation, either in writing or orally at the hearing. The Mayor and City Council shall make a final determination as to whether the dog is potentially dangerous as herein defined. Such final determination shall be considered a final

order of the City. The determination that a dog is potentially dangerous dog shall be made by the concurrence of a majority of all members elected to the Council. During the procedure described in this subsection, a dog declared as potentially dangerous may be impounded pursuant to section 5-5.10 at the owner's expense or, if the Officer is assured by the owner's signed agreement of proper confinement and safeguards, and that the dog has a current rabies vaccination, the dog may be released to its owner pending a final determination.

- 5-5.7.3 **Certificate of registration for potentially dangerous dog.** The owner of a dog which has been declared as a potentially dangerous dog shall immediately apply for a certificate of registration from the animal control officer. A certificate of registration shall be issued by the clerk if the owner presents sufficient evidence of a proper enclosure to confine a potentially dangerous dog and the posting of the premises with clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog. A decision by the animal control officer not to issue the certificate of registration may be reviewed as provided for in subsection 5-5.7.2 of this section.
- 5-5.7.4 **Restraint of potentially dangerous dog.** It is unlawful for an owner of a potentially dangerous dog to permit the dog to be outside the proper enclosure and shall only be walked or exercised off the property of the owner, on a leash adequate to control the dog, by a person nineteen-years of age or older.
- 5-5.7.5 **Dangerous animal prohibited.** The owning, allowing, keeping or harboring of a dangerous dog or other dangerous animal within the corporate limits of the City is hereby prohibited and unlawful.
- 5-5.7.6 **Determination that dog is a dangerous dog.** It is determined by the animal control officer, after investigation that a dog is a dangerous dog as defined in §5-5.7.1.2, the animal control officer shall proceed as provided in §5-5.7.9 Procedure for Penalty, Impoundment, Destruction and Appeal
- 5-5.7.7 **Certain animals prohibited in residential areas.** Within any residential area the keeping, harboring or selling of any poisonous or venomous animal or any warm-blooded carnivorous or omnivorous animal, including but not limited to nonhuman primates, raccoons, skunks, foxes, leopards, panthers, tigers and lions, but excluding fowl, dogs, house cats, ferrets and small rodents of varieties commonly kept as household pets such as rats, mice, gerbils, guinea pigs and hamsters, is hereby prohibited. Nonpoisonous snakes shall be kept in locked escape-proof cages except when being handled. No snake shall be permitted by the owner, keeper or handler to escape from a cage or while being handled.
- 5-5.7.8 **Certain Breeds of Dogs Declared Dangerous and Ownership Prohibited.** The following breeds of dogs, or any mix of the following breeds of dogs, or any dog displaying the majority of the physical traits of any one or more of the following breeds of dogs, more so than any breed of dogs, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the following breeds: American Pit Bull Terrier, American Staffordshire Terrier or Staffordshire Bull Terrier, are hereby declared to be a dangerous dog and ownership of any such dog is prohibited within the City of Oshkosh, Nebraska.

Owner is defined as any person who owns, possesses, keeps, exercises control over, maintains, harbors, transports, or sells a dog within the City of Oshkosh, Nebraska

5-5.7.8.1 **Exceptions:** The owner of any dog of the breed declared dangerous by this ordinance which is currently licensed in the City of Oshkosh as of the date of publication of this Ordinance, shall be permitted to keep the dog in the City of Oshkosh, Nebraska, provided the owner of the dog maintains the dog at all times in compliance with the following requirements:

1. Maintain a current license issued by the City of Oshkosh:
2. Maintain and provide proof to City Clerk of at least \$300,000.00 in liability insurance covering any damage done by the dog. The policy shall contain a provision requiring the insurance company to provide written notice to the City Clerk not less than fifteen (15) days prior to any cancellation, termination or expiration of the policy; and
3. Dog shall be housed in a proper enclosure as defined in §5-5.7.1.3; and
4. Dog shall only be walked or exercised off the property of the owner, on a leash adequate to control the dog by a person nineteen-years of age or older; and
5. The owner shall at the owners own expense have the dog spayed or neutered and shall present to the City Clerk written proof from a licensed veterinarian that this sterilization has been performed.

5-5.7.8.2 It shall be unlawful to own, harbor, or license any offspring of any dog which is within the City of Oshkosh pursuant to the exceptions listed above.

§ 5-5.7.9 Violations, penalty, impoundment, destruction and appeal. Notwithstanding any provisions to the contrary, the animal control officer is authorized to immediately impound any dog found in the City of Oshkosh, Nebraska, as provided in 5-5.10 which does not fall within the exceptions listed and may house or dispose of such dog in such a manner as the animal control officer may deem appropriate.

When the animal control officer has impounded any dog pursuant to this ordinance and the owner of such dog disputes the classification of such dog as dangerous, the owner of the dog may file a written petition with the City Clerk for a hearing concerning such classification no later than seven (7) days after impoundment. Such petition shall include the name and address, including mailing address of the petitioner. The City Clerk will then issue a notice of hearing date by mailing a copy to the petitioner's address no later than ten (10) days prior to the date of the hearing. When no written request from the owner for a hearing is received by the City Clerk within seven (7) days of impoundment, the dog shall be humanely destroyed.

The hearing, if any, will be held before the Mayor and City Council of the City of Oshkosh Nebraska. The owner of the dog shall bear the burden of proof. Any facts that the petitioner wishes to be considered shall be submitted under oath or affirmation, either in writing or orally at the hearing. The Mayor and City Council shall make a final determination as to whether the dog is dangerous as herein defined. Such final determination shall be considered a final order of the City.

If the dog is found to be dangerous, it shall be humanely destroyed, unless the owner produces evidence deemed sufficient by the City Clerk that the dog is to be permanently taken out of the City of Oshkosh, Nebraska, and the owner pays for the cost of impoundment. If the dog is found not to be dangerous, the dog shall be released to the owner.

The procedures in this subsection shall not apply and the owner is not entitled to such a hearing with respect to any dog that was impounded as the immediate result of an attack or bite. In those instances, the dog shall be impounded and thereafter shall be humanely destroyed.

§ 5-5.8 DOG, CAT OR DOMESTICATED POT-BELLIED PIG LICENSE AND TAG

5-5.8 Any person who shall own, keep, or harbor a dog, cat or domesticated pot-bellied pig over the age of three months within the municipality shall:

5-5.8.1 Any person who shall own, keep, or harbor a dog, cat or domesticated pot-bellied pig over the age of three months within the municipality shall within 10 days after acquisition of the animal acquire a license for each such dog, cat or domesticated pot-bellied pig annually by or before May 1 of each year. Upon payment of the license fee, the Municipal Clerk shall issue the owner of the animal a license certificate and a metallic tag for each animal so licensed. The metallic tag shall be properly attached to the collar or harness of all animals so licensed and shall entitle the owner to keep or harbor the said animal until the 30th day of April following such licensing. All license fees and collection shall be immediately credited to the General Fund. It shall be the duty of the Municipal Clerk to issue tags of a suitable design that are different in appearance each year.

5-5.8.2 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, cat or domesticated pot-bellied pig owned and kept by the owner. A certificate that the dog or domesticated pot-bellied pig has had a rabies shot, or that the cat has had its distemper, FIV, and rabies shots and are effective for the ensuing year of the license shall be presented when the license is applied for. No license or tag shall be issued until the certificate is shown.

Statutory reference: Authority, see Neb. RS 17-526 and 54-603

5-3.8.2.1 The licensing fee per year is \$10.00 for neutered animals and \$18.00 for non-neutered animals. If the license is not obtained on or before the 15th of May of each year or within fifteen (15) days after the animal is placed in the possession of the owner, the fee shall then be \$50.00. The license shall not be transferable and no refund will be allowed in case of death, sale or other disposition of the licensed animal.

5-5.8.3 Upon the payment of the license fee, the person designated by the licensing authority shall issue to the owner of a dog, cat or domesticated pot-bellied pig a license certificate and a metallic tag for each dog, cat or domesticated pot-bellied pig so licensed. The metallic tags shall be properly attached to the collar or harness of all dog, cat or domesticated pot-bellied pig so licensed and shall entitle the owner to keep or harbor the said dog, cat or domesticated pot-bellied pig until April 30 following such licensing.

5-5.8.3.1 If approval is given by the City Council after application as provided in 5-5.6 for licensing of animals in excess of four (4) per household, the licensing fees shall be \$20.00 per animal for 5 to 8 animals; \$45.00 per animal for 9 to 16 animals; and \$75.00 per animal for 17-to 32 animals. Under no circumstances shall one household harbor more than 32 animals.

5-5.8.4 Dogs, cats or domesticated pot-bellied pigs must wear identification tags or collars at all times when off the premises of the owner. In the absence of a tag, a dog or cat shall be regarded as a stray whenever off its owner's property.

5-5.8.5 In the event that a license tag is lost and upon satisfactory evidence that the original plate or tag was issued in accordance with the provisions herein, the person designated by the licensing authority 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 set by resolution of the City Council for each duplicate or new tag so issued. All license fees and collections shall be immediately credited to the general fund. It shall be the duty of the person designated by the licensing authority to issue tags of a suitable design that are different in appearance each year.

Statutory reference: Authority, see Neb. RS 17-526 and 54-603

§ 5-5.9 ANIMALS: KILLING AND POISONING

It shall be unlawful to kill, or to administer, or cause to be administered, poison of any sort to an animal, or in any manner to injure, maim, or destroy, or in any manner attempt to injure, maim, or destroy any animal that is the property of another person, or to place any poison, or poisoned food where the same is accessible to an animal, provided that this section shall not apply to Animal Control Officer acting within their power and duty.

§ 5-5.10 IMPOUNDING

5-5.10.1 It shall be the duty of the Animal Control Officer to capture, secure, and remove in a humane manner to any animal shelter or veterinarian any animal violating any of the provisions of this article. The animals so impounded shall be treated in a humane manner and shall be provided with a sufficient supply of food and fresh water each day. Each impounded animal shall be kept and maintained at the pound for a period of not less than five days after public notice has been given unless reclaimed earlier by the owner. Notice of impoundment of all animals, including any significant marks or identification, shall be posted at the office of the office of the City Clerk within twenty-four (24) hours after impoundment as public notification of such impoundment. Any animal may be reclaimed by its owner during the period of impoundment by payment of the animal shelters' or veterinarian's daily boarding fee and a general impoundment fee as stated below. The day on which the animal was impounded shall count as one day and any part of any day during which the animal is impounded shall also count as a full day.

5-5.10.2 The impoundment fee shall be as follows:

5-5.10.2.1 For the first time any animal(s) is impounded in a 12-month period, \$25.00.

5-5.10.2.2 For the second time any animal(s) is impounded in a 12-month period, \$50.00.

5-5.10.2.3 For the third and subsequent times any animal(s) is impounded in a 12-month period, \$75.00.

5-5.10.3 Unclaimed impounded animals shall be kept for no more than five days and will become the property of the city or of the humane society and shall be placed for adoption in a suitable home or humanely destroyed. Stray animals that are roaming at large, remaining on private property without consent of the owner or tenant, or remaining on or frequenting public property are deemed to be the property of the city. If the stray animal cannot be captured by conventional means, every Law Enforcement officer, humane officer, or other person designated by the City Council is authorized to use any means necessary to remove the animal.

5-5.10.4 Before releasing the animal before or after impoundment, the owner of said animal shall pay for the cost of a rabies shot (if suggested by a veterinarian), cost of impounding the animal (including the boarding fees and impoundment fees), and cost of a license tag (if required). The owner may also be required to pay any fines and court costs imposed for violations of the ordinances but said fines and costs will not be a requirement for release of the animal to the custody of the owner.

Statutory reference:

Pounds authorized, see Neb. RS 17-548

Pounds created by rabies control authorities, see Neb. RS 71-4408

§ 5-5.11 ANIMALS AND FOWL BANNED FROM THE MUNICIPALITY

5-5.11.1 It shall be unlawful for any person to keep or maintain within the corporate limits any horse, mule, sheep, cow, goat, swine, or other livestock.

5-5.11.2 It shall be unlawful for any person to keep or maintain within the corporate limits any poultry, chickens, turkeys, geese, or any other fowls.

5-5.11.3 A permit to keep or maintain the animals and fowl prohibited in subsections 5-5.11.1 and 5-5.11.2 may be applied for by completing a form available at City Hall. Granting or denying of such permit shall be at the sole discretion of the City Council.

§ 5-5.12 ANIMAL CRUELTY

No person shall cruelly mistreat any animal.

Statutory reference:

Neb. RS 28-1001; 28-1002

§ 5-5.13 VIOLATION; PENALTY

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Article, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and not more than five hundred (\$500.00) dollars for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

CHAPTER 6: BUSINESS REGULATIONS

ARTICLE

6-1. BUSINESS LICENSING

6-2. ALCOHOLIC BEVERAGES

6-3. OCCUPATION TAXES

6-4 BINGO

CHAPTER 6-1: BUSINESS LICENSING

Section

Plumbers

- 6-1.1 Master Plumber; license
- 6-1.2 Master Plumber; supervision of work
- 6-1.3 Master Plumber; bond
- 6-1.4 License
- 6-1.5 License; expiration
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PLUMBERS

§ 6-1.1 MASTER PLUMBER; LICENSE.

No individual shall engage in the business of plumbing in the city unless licensed by City.

§ 6-1.2 MASTER PLUMBER; SUPERVISION OF WORK.

No individual, firm, partnership or corporation shall engage in the business of installing, repairing or altering plumbing unless the plumbing work performed in the course of such business has passed the City test and has references of a licensed Master Plumber they have worked under.

§ 6-1.3 MASTER PLUMBER; BOND.

A person who has been issued a Master Plumber's license shall execute and deposit with the City Clerk a bond in the penal amount of \$5,000.00, such bond to be conditioned that all plumbing work performed by the licensee or under his or her supervision shall be performed in accordance with the provisions of the Plumbing Code, and that he or she will pay all fines and penalties properly imposed upon him or her for violation of the provisions of this section. A Master Plumber's license shall not be valid unless a bond is executed and deposited as herein provided, and a fee paid in the amount of \$20.00.

§ 6-1.4 LICENSE.

6-1.4.1 Any person desiring to be licensed as a Plumber in the City shall make written application to the City Clerk. Examination fees for Plumber and plumber licenses shall be \$50.00, and payment of the fee shall accompany the application. Examination fees are not refundable.

6-1.4.2 The City Clerk shall establish standards and procedures for the City qualification, examination and licensing of Plumbers, and shall issue an appropriate license to each person who meets the qualifications therefor and successfully passes the examination given by the City Clerk.

6-1.4.3 Any person who fails to pass an examination as given by the City Clerk may apply for re-examination after the expiration of 30 days upon payment of the regular examination fee.

§ 6-1.5 LICENSE; EXPIRATION.

All licenses issued by the City Clerk shall expire on April 30 of the year in which issued but may be renewed upon payment of the fee or fees provided in this section. Expired licenses may be renewed at any time upon payment of the penalty of \$20.00 for Plumber.

§ 6-1.6 LICENSE; REVOCATION.

The City Clerk may revoke any license if the same was obtained through nondisclosure, misstatement or misrepresentation of a material fact, or if a penalty has been imposed under § 1-1.19. Before a license may be revoked, the licensee shall have notice in writing, enumerating the charges against him or her, and he or she shall be entitled to a hearing before the Mayor and City Council, to be held not less than five days from the licensee's receipt of the notice. The licensee shall be given an opportunity to present oral or written testimony and shall have the right to cross-examination. All testimony shall be given under oath. The Mayor and Council shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses. The decision of the Mayor and Council shall be based on the evidence produced at the hearing and made a part of the record thereof. A person whose license has been revoked shall not be permitted to apply for a new license for a period of one year from the date of the revocation.

§ 6-1.7 LICENSE; USE OF NAME BY ANOTHER.

No person who has obtained a plumber's license shall allow his or her name to be used by another person, either for the purpose of obtaining permits or for the purpose of doing business or work under the license. Every person licensed shall notify the City Clerk of the address of his or her place of business, if any, and the name under which such business is carried on and shall give immediate notice to the City Clerk of any change in either.

§ 6-1.8 LICENSE; EXCEPTIONS.

The provisions of this Chapter relating to plumbers shall not apply to any public utility company or companies serving the City and its inhabitants under a franchise agreement with the City, or its agents and employees, and shall not be construed as a limitation or restriction upon any franchises heretofore granted by the City.

(Neb. RS 18-1910)

RAILROAD COMPANIES

§ 6-1.9 RAILROAD COMPANIES; SAFE CROSSING.

It shall be the duty of every railroad company doing business in, or traveling through, the City to keep in a suitable, and safe condition the crossings and right-of-way in the City. If any such crossing shall at any time fall into disrepair and become unsafe, or inconvenient for public travel, the City Council may, by resolution, call upon the said company to make whatever repairs that it may deem necessary to correct the dangerous condition. Notice of the said resolution shall be served upon the local agent of the said company. In the event that the railroad shall fail or neglect to repair and correct the said condition as aforesaid within forty-eight (48) hours, neglect for each twenty-four (24) hours thereafter shall be deemed and is hereby made a separate and distinct offense against the provisions herein.

(Neb. RS 17-143, 17-144)

§ 6-1.10 RAILROAD COMPANIES; AUTOMATIC LIGHTS AND SIGNALS.

When so ordered by the City Council, approved automatic lights or signals shall be installed at designated crossings. Said lights and bells shall be kept in good working order at all hours of the day and night so that all persons approaching said crossing shall be warned of the danger of approaching trains, engines, or cars on the tracks. Neglect or refusal to comply with the said order within the time prescribed on the notice shall constitute a misdemeanor for each twenty-four (24) hours of such neglect or refusal.

(Neb. RS 17-561)

§ 6-1.11 RAILROAD COMPANIES; DRAINAGE.

It shall be the duty of any railroad company, its employees, agents or servants, owning, maintaining or operating a railroad within or through the corporate limits to construct and keep in repair ditches, drains, and culverts along and under its railroad tracks where the same may be necessary for the escape of water and proper draining of the territory on either side of said railroads.

When any such drains, ditches, or culverts may be necessary for the escape of water and the proper drainage of the territory on either side of any such railroad track, the City Council may, by resolution, call upon the proper railroad company to construct or repair the said drain, ditch or culvert and to place the same in proper condition for the escape of water for the proper drainage of the territory on either side of said railroads. A copy of every such resolution shall be served upon the local agent of the railroad company whose duty it is to construct or keep in repair any such drain, ditch, or culvert; and for a failure or refusal to comply with any such resolution within fourteen (14) days after service thereof, as aforesaid, such railroad company, its local agent, section foreman, or the employee in charge of maintenance shall be deemed guilty of a misdemeanor. Neglect or refusal to comply with the said order after fourteen (14) days have expired shall constitute a separate offense for each twenty-four (24) hour period thereafter.

(Neb. RS 17-144, 18-1719)

§ 6-1.12 RAILROAD COMPANIES; OBSTRUCTING TRAFFIC.

It shall be unlawful for any railroad company, its employees, agents, or servants operating a railroad through the City to obstruct traffic on any public street, except in the event of an emergency, for a longer period at one time than ten (10) minutes.

(Neb. RS 17-552)

SOLID WASTE COLLECTION

§ 6-1.13 SOLID WASTE COLLECTION; REGULATION.

It shall be unlawful for any person to own, operate, or participate in the removal of garbage for a fee until and unless the said person has contracted with, or has received a license from, the City Council. Application for a license may be made at the office of the City Clerk upon a blank form supplied by the City. Said application shall require all information and documents which the City Council deems necessary to determine whether or not to grant a license. If the City Council decides to grant the license, the City Clerk will issue to the applicant the said license which will entitle him to collect, remove, and transport any garbage for a fee in, over, or upon any street or public way in the City. Any license so issued shall be subject to revocation by the City Council after proper notice and a hearing if requested by the licensee. The said licensee shall be liable for all bonds, fees, and other rules and regulations set by resolution of the City Council. The City Council shall have the power to review and amend any rate or business practice adopted by the licensee. In the event that the City Council shall provide for the City removal of garbage or rubbish, the license shall immediately become void upon proper notice to the licensee.

Neb. RS 19-2105, 19-2106)

§ 6-1.14 MUNICIPAL SEWER DEPARTMENT; RATES; SURCHARGES.

Each resident user shall pay for the services provided by the City based on a flat rate monthly as designated resolution of the governing body.

FRANCHISES

§ 6-1.15 FRANCHISES; NATURAL GAS.

The City Council has granted to the Black Hills Energy Inc. the authority to construct, maintain, and operate a gas transmission, and distribution system within the City. Actual details of the agreement, and the present gas rates, charges, and fees are available at the City Clerk's office.

(Neb. RS 17-528.02)

§ 6-1.16 FRANCHISES; SATELLITE CABLE TELEVISION.

The City of Oshkosh has granted to the Wind Break Cable TV, its successors and assigns, the non-exclusive rights privileges and authority to operate a Cable Television System in the City of Oshkosh, Nebraska. Actual details of the agreement and the charges, rates, and fees are on file and available for public inspection at any reasonable time at the City Clerk's office.

(Neb. RS 17-902)

CHAPTER 6-2: ALCOHOLIC BEVERAGES

Section

- 6-2.1 Adoption of state statutes; definitions
- 6-2.2 Licensees and applicants; municipal powers and duties
- 6-2.3 Citizen complaints
- 6-2.4 Hours of sale

§ 6-2.1 ADOPTION OF STATE STATUTES; DEFINITIONS.

Except for the penalty provisions, the city hereby adopts Neb. RS Chapter 53, Article 1 “Nebraska Liquor Control Act,” together with all subsequent amendments thereto, as adopted by the state of Nebraska. Ordinance reference to any specific statute is made as follows: “Ordinance No. 6-2.1-53-167.02” refers to keg sales. One copy of all the relevant statutes for this chapter shall be on file with the City Clerk and shall be available for public inspection at any reasonable time.
(Neb. RS 53-103)

§ 6-2.2 LICENSEES AND APPLICANTS; MUNICIPAL POWERS AND DUTIES.

6-2.2.1 The City Council is authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail, bottle club, or craft brewery licensees carried on within the corporate limits of the city.
(Neb. RS 53-134.03)

6-2.2.1.1 Findings and Intent.

- A. All Class C Liquor Licenses and Owners, Managers, Employees must have the Responsible Bar Server Training (RBST). have
- B. Training is available online at www.lcc.ne.gov.
- C. The owner/manager of the establishment for the Class C Liquor License will be responsible for the setting up and creating an account for each employee. will
- D. Certificate of condition of class will be due to the City Council within 45 days of completion.
- E. Completion of training is a condition of liquor license approval or renewal.

6-2.2.2 During the period of 45 days after the date of receiving from the Nebraska Liquor Control Commission an application for a new license to sell alcoholic liquor at retail, a bottle club license, or a craft brewery license, the City Council may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant.
(Neb. RS 53-131(2))

6-2.2.3 The City Council, with respect to Class D-1 licenses within one mile of the corporate city limits and with all other licenses within the corporate limits of the city, has the following powers, functions, duties with respect to retail, bottle club, and craft brewery licenses, (LB 278):

6-2.2.3.1 To cancel or revoke for cause retail, bottle club, or craft brewery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the Nebraska Liquor Control Commission;

6-2.2.3.2 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 such time examine the premises of such licensee in connection with such determination;

6-2.2.3.3 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 such complaints in the manner provided in the Act;

6-2.2.3.4 To receive retail license fees, bottle club license fees, and craft brewery license fees as provided in Neb. RS 53-124 and pay the same, after the license has been delivered to the applicant, to the City Treasurer;

6-2.2.3.5 To examine or cause to be examined any applicant or any retail licensee, bottle club licensee, or craft brewery 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, 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;

6-2.2.3.6 To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in § 6-1.03, it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such 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;

6-2.2.3.6.1 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 such hearing shall be published in a legal newspaper in or of general circulation in the municipality, one time not less than seven and not more than 14 days before the time of the hearing. Such 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 such license may do so at the time of the hearing.

6-2.2.3.6.2 The hearing shall be held not more than 45 days after the date of receipt of the notice from the Commission, and after such hearing the City Council shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such 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)

6-2.2.4.1 When the Nebraska Liquor Control Commission mails or delivers to the City Clerk a license issued or renewed by the commission, the Clerk shall deliver the license to the licensee upon proof of payment of:

6-2.2.4.1.1 The license fee if by the terms of Neb. RS 53-124(5) the fee is payable to the City Treasurer;

6-2.2.4.1.2 Any fee for publication of notice of hearing before the City Council upon the application for the license;

6-2.2.4.1.3 The fee for publication of notice of renewal, if applicable, as provided in Neb. RS 53-135.01; and

6-2.2.4.1.4 Occupation taxes, if any, imposed by the city.

6-2.2.4.2 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 two times the amount of the license fee required to be paid under the Act to obtain such license.

(Neb. RS 53-132(4))

Statutory reference:

State license renewal procedures, see Neb. RS 53-135 and 53-135.01

§ 6-2.3 CITIZEN COMPLAINTS.

Any five residents of the municipality shall have the right to file a complaint with the City Council stating that any retail 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. Such 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 such belief, it shall set the matter for hearing within ten days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of such 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. The resolution shall be deemed the final order for purposes of appeal to the Nebraska Liquor Control Commission as provided by law.

(Neb. RS 53-134.04)

§ 6-2.4 HOURS OF SALE.

6-2.4.1 No alcoholic liquor, including beer, shall be sold at retail or dispensed on any day between the hours of 1:00 a.m. and 6:00 a.m.

6-2.4.2 No alcoholic liquor shall be sold at retail or dispensed on Sunday.

6-2.4.3 It shall be unlawful on any property licensed to sell alcoholic liquor at retail to allow any alcoholic liquor in open containers to remain or be in possession or control of any person for purposes of consumption between the hours of 1:15 a.m. and 6:00 a.m. on any day; provided that, where any ordinance of the

city or any statute of the state provides for an earlier closing hour, the provisions of this division shall become effective 15 minutes after such closing hour instead of 1:15 a.m.

6-2.4.4 Nothing in this section shall be construed to 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.

Statutory reference:

Authority to alter statutory hours, see Neb. RS 53-179

CHAPTER 6-3: OCCUPATION TAXES

Section

- 6-3.1 Taxes imposed
- 6-3.2 Exemptions
- 6-3.3 Due date
- 6-3.4 Parties liable
- 6-3.5 Payment

§ 6-3.1 TAXES IMPOSED.

6-3.1.1 There is hereby levied an occupation tax for each and every vendor, occupation and business carried on within the city which does not have a permanent business residence within the city limits. The amount of the tax is in the amount as set by resolution of the Governing Body.

6-3.1.2 The provisions of this chapter shall not extend to nor affect individuals selling their own labor, handiwork, farm products, food livestock, meat, poultry, butter, eggs, vegetables, hay, or grain if raised or produced by the vendors; provided that, the sale or offering for sale in the city of the products or commodities above excepted shall be prima facie evidence that such products or commodities were not raised or produced by such vendors until such vendors shall satisfy the City Clerk or law enforcement officer by sufficient proof that they are entitled to exemption under this division; and provided further that, the City Clerk or law enforcement officer may, in the case of vendors claiming exemption under this division, require such vendors to make affidavit under oath with respect to the matter concerning the raising or production of the specific products or commodities sold or offered for sale by such vendors.

6-3.1.3 The provisions of this chapter shall not extend to scientific or literary lectures or entertainments, or concerts and other entertainments given exclusively by citizens of the city or their employees.

6-3.1.4 The occupation tax year shall commence on May 1 of each year and end on April 30 next succeeding. No occupation tax in an amount less than the amount provided in this division for a yearly period shall be accepted regardless of the time within the taxing period when such business is commenced. The amount of such occupation tax shall be deposited with the City Clerk at the time the application for license is made or within 24 hours after the application has been filed with the Nebraska Liquor Control Commission. The City Clerk shall hold such occupation tax as a trust fund until the application is finally passed upon, and if the application is refused and license denied then the amount thereof shall be returned to the applicant. The City Clerk shall account for and pay the occupation tax to the City Treasurer immediately after the license is issued and the Treasurer shall credit the same to the general fund of the city. Upon the failure of any such applicant to pay the occupation tax as herein provided, it shall be mandatory upon the City Council to pass a resolution denying the application for a license or requesting the Commission to deny the application, and the resolution shall state the reason therefor and shall be forwarded to the Commission.

§ 6-3.2 EXEMPTIONS.

The provisions of this chapter shall not extend to any business or occupation which is interstate, or which is done or conducted by any department of the government of the United States of America, the state, or the city, or of any county or other political subdivision of the state, or any of the officers of such, in the course of its or their official duties.

§ 6-3.3 DUE DATE.

On all occupations and businesses on which an occupation tax is levied at a yearly rate, the year for such tax shall be deemed to begin with May 1 of each year and end April 30 of the year following; and the occupation tax for that year shall be due and payable in advance on May 1 every year and thereafter shall be delinquent. On all occupations and businesses on which an occupation tax is levied at a daily, monthly or quarterly rate, the tax shall be due and payable in advance before the business begins for the number of days, months or quarters as the case may be for which the occupation or business is to be carried on within the taxing year.

§ 6-3.4 PARTIES LIABLE.

It is the duty of each and every person to pay the occupation tax levied against him or her at the time such tax becomes due.

§ 6-3.5 PAYMENT.

6-3.5.1 The occupation tax herein levied shall be paid in cash to the City Clerk or other person designated by the Mayor and City Council, who, upon the payment thereof by any person, shall issue a receipt thereof to the person paying the same, properly dated and specifying on behalf of whom and for what the sum was paid. The City Clerk shall keep a proper account of occupation taxes paid to him or her and the same shall be credited to the general fund of the city. The City Clerk's receipt shall be the warrant and proper authority for any person to carry on and conduct the business specified in the receipt so issued and for which the occupation tax has been paid; provided that, such receipt shall not be assignable.

6-3.5.2 Every occupation tax levied at a daily, monthly, quarterly, yearly or other rate must be paid in one payment in advance before the business is commenced, whether the receipt is issued at the beginning of the day, month, quarter, year or other term, or at any time thereafter; and no such receipt shall be issued at the beginning of the day, month, quarter, year or other term, or any certain time less than the day, month, quarter, year or other term. No person paying an occupation tax shall be entitled to a refund of any part of the tax so paid.

