

CODE
OF THE CITY OF
LEXINGTON, NEBRASKA

Published in 2012 by Order of the City Council



OFFICIALS

of the

CITY OF

LEXINGTON, NEBRASKA

AT THE TIME OF THIS RECODIFICATION

Mayor

City Council

City Manager

City Attorney

City Clerk

PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the City of Lexington, Nebraska.

Source materials used in the preparation of the Code were the 1990 Code, as supplemented through November 12, 2007, and ordinances subsequently adopted by the city. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1990 Code, as supplemented, and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

CODE	CD1:1
CODE APPENDIX	CDA:1
CODE COMPARATIVE TABLES	CCT:1
STATE LAW REFERENCE TABLE	SLT:1
CODE INDEX	CDi:1

Index

The index has been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the index itself which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up to date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up to date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Roger D. Merriam, Senior Code Attorney, and D. J. Heath, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to City Manager Joe Pepplicht, Assistant City Manager Dennis Burnside, City Clerk Pam Burke, City Attorney Will Weinhold and Chief Building Official Bill Brecks for cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the city readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the city's affairs.

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PROOFS

CITY CODE

PART I

GENERAL ORDINANCES

Chapter 1

GENERAL PROVISIONS¹

Sec. 1-1. How Code Designated and Cited.

All ordinances embraced in the following chapters and sections shall constitute and be designated the "Code of the City of Lexington, Nebraska," and may be so cited. Such Code may also be cited as the "Lexington City Code." The Code consists of parts I and II.

(Code 1990, § 1-1)

State law reference—Codification of ordinances R.R.S. 1943, §§ 16-247, 16-404.

Sec. 1-2. Definitions and rules of construction.

In the construction of this Code and of all ordinances of this city, the following rules of construction and definitions shall be observed, except where the context clearly requires otherwise.

Generally. All words and phrases shall be construed and understood according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

City. The term "city" means the City of Lexington, Nebraska.

City council or council. The term "city council" or "council" means the city council of the City of Lexington, Nebraska, being the governing body of the city.

Code. The term "the Code" or "this Code" means the "Code of the City of Lexington, Nebraska," as amended, as designated in section 1-1.

Computation of time. ~~The time within which an act is to be done shall be computed as provided in the state civil procedure statutes, by excluding the first day and including the last, unless the last day falls upon any legal holiday or on Saturday or Sunday, in which case the last day is also excluded. The period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of city may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office will be open.~~

State law reference—Similar provisions, R.R.S. 1943, § 25-2221.

Conjunctions. Where a provision involves two or more items, conditions, provisions or events connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows, provided in appropriate cases the terms "and" and "or" are interchangeable:

¹ Legal or Editorial Change: Code 1990, ch. 1. Revised to be more complete.

- (1) The term "and" indicates that all the connected items, conditions, provisions or events shall apply.
- (2) The term "or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
- (3) The term "either . . . or" indicates that the connected items, conditions, provisions or events shall apply singly, but not in combination.

County. The term "county" means Dawson County, Nebraska.

Day. The term "day" means the period of time between any midnight and the midnight following.

Daytime, nighttime. The term "daytime" means the period of time between sunrise and sunset. The term "nighttime" means the period of time between sunset and sunrise.

Gender. Words of one gender include all other genders.

~~*In the city.* The words "in the city" shall mean and include all territory over which the city now has or shall hereafter acquire jurisdiction for the exercise of its police powers or other regulatory powers.~~

Joint authority. All words purporting to give a joint authority to three or more persons shall be construed as giving such authority to a majority of such persons unless it shall be otherwise expressly declared.

May. The term "may" is to be construed as being permissive.

Month. The term "month" means a calendar month.

Must. The term "must" is to be construed as being mandatory.

Number. Every word importing the singular number only shall extend and be applied to several persons or things as well as to one person or thing, and every word importing the plural number only shall extend and be applied to one person or thing as well as to several persons or things.

Oath. The term "oath" includes an affirmation.

Officials, employees, boards, commissions, etc. Whenever reference is made to officials, officers, departments, employees, boards, commissions or other agencies of the city by title only, i.e., "mayor," "clerk," "chief of police," etc., they shall be deemed to refer to the officials, employees, boards, commissions or other agencies of this city.

Owner. The term "owner," applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety of the whole or of a part of such building or land or vendee in possession under a land sale contract.

Person. The term "person" shall extend and be applied to firms, corporations, voluntary associations, partnerships and joint stock companies, as well as to individuals, unless plainly inapplicable.

Preceding, following. The terms "preceding" and "following" mean next before and next after, respectively.

Property. The term "property" includes real and personal property.

Real property. The term "real property" includes lands, tenements and hereditaments.

Reasonable time. In all cases where any provision of this Code shall require any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall mean

such time only as may be necessary for the prompt performance of such duty, or compliance with such notice.

R.R.S. 1943. The term "R.R.S. 1943" means the Reissue Revised Statutes of Nebraska, as amended.

Shall. The term "shall" is to be construed as being mandatory.

Signature or subscription by mark. The term "signature" or "subscription by mark" includes a mark when the signer or subscriber cannot write, such signer's or subscriber's name being written near the mark by a witness who writes his own name near the signer's or subscriber's name, but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when one witness shall sign his own name thereto.

State. The term "state" means the State of Nebraska.

Tenant or occupant. The term "tenant" or "occupant," applied to a building or land, includes any person holding a written or an oral lease of or who occupies, the whole or a part of such building or land, either alone or with others.

Tenses. ~~The use of any verb in the present tense shall include the future when applicable.~~ The present tense includes the past and future tenses. The future tense includes the present tense.

To. The term "to" means "to and including," when used in reference to a series of sections of this Code, or when reference is made to the Reissue Revised Statutes of Nebraska, 1943.

Week. The term "week" means seven consecutive days, but publication in a newspaper of any notice or other matter indicated to be for a stated number of weeks shall be construed to mean one insertion in each week, unless specifically stated to be for each day of the week or for more than one day in each week.

Writing. Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this Code, it shall be made in writing, in the English language, unless it is expressly provided otherwise.

Year. The term "year" means a calendar year.

(Code 1990, § 1-2)

Sec. 1-3. Catchlines of sections; history notes; references.

(a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not titles of such sections, or of any part of the section, nor unless expressly so provided shall they be so deemed when any such section, including the catchline, is amended or reenacted.

(b) The history or source notes appearing in parentheses after sections in this Code have no legal effect and only indicate legislative history. Editor's notes and state law references that appear in this Code after sections or subsections or that otherwise appear in footnote form are provided for the convenience of the user of the Code and have no legal effect.

(c) Unless specified otherwise, all references to parts, chapters or sections are to parts, chapters or sections of this Code.

(Code 1990, §§ 1-3, 1-5)

Sec. 1-4. Effect of repeal of ordinances.

(a) Unless specifically provided otherwise, the repeal of an ordinance does not revive any repealed ordinance.

(b) The repeal or amendment of an ordinance does not affect any punishment or penalty incurred before the repeal took effect, nor does such repeal or amendment affect any suit, prosecution or proceeding pending at the time of the amendment or repeal.

Sec. 1-5. Amendments to Code.

~~Whenever any part of this Code is amended or repealed, the ordinance amending or repealing shall refer to the full number of the section so amended or repealed.~~

~~All future regulatory ordinances shall contain in the ordinance, the section number indicating the chapter, article and section assigned to each part of the new regulation.~~

~~This Code shall have printed and inserted in the Code, at least annually, all amendments, repealed sections and new sections. After each amended section, repealed section or new section, the number of the ordinance and the numerical date of the passing of the ordinance shall be printed in parenthesis.~~

(a) All ordinances adopted subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of the Code and printed for inclusion in the Code.

(b) Amendments to provisions of this Code may be made with the following language: "Section _____ (chapter, article, division or subdivision, as appropriate) of the Code of Ordinances of the City of Lexington, Nebraska, is hereby amended to read as follows: . . ."

(c) If a new section, subdivision, division, article or chapter is to be added to the Code, the following language may be used: "Section _____ (chapter, article, division or subdivision, as appropriate) of the Code of Ordinances of the City of Lexington, Nebraska, is hereby created to read as follows: . . ."

(d) All provisions desired to be repealed should be repealed specifically by section, subdivision, division, article or chapter number, as appropriate, or by setting out the repealed provisions in full in the repealing ordinance.

(Code 1970, § 1-103; Code 1990, § 1-10)

Sec. 1-6. Supplementation of Code.

(a) Supplements to this Code shall be prepared and printed whenever authorized or directed by the city. A supplement to this Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of the supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages that have become obsolete or partially obsolete. The new pages shall be so prepared that when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code that have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as necessary to do so in order to embody them into a unified code. For example, the person may:

- (1) Arrange the material into appropriate organizational units.
- (2) Supply appropriate catchlines, headings and titles for chapters, articles, divisions, subdivisions and sections to be included in the Code and make changes in any such catchlines, headings and titles or in any such catchlines, headings and titles already in the Code.

- (3) Assign appropriate numbers to chapters, articles, divisions, subdivisions and sections to be added to the Code.
- (4) Where necessary to accommodate new material, change existing numbers assigned to chapters, articles, divisions, subdivisions or sections.
- (5) Change the words "this ordinance" or similar words to "this part," "this chapter," "this article," "this division," "this subdivision," "this section" or insert section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated in the Code.
- (6) Make other nonsubstantive changes necessary to preserve the original meaning of the ordinances inserted in the Code.

Sec. 1-7. Effect of repeal of ordinances.

(a) Unless specifically provided otherwise, the repeal of an ordinance does not revive any repealed ordinance.

(b) The repeal or amendment of an ordinance does not affect any punishment or penalty incurred before the repeal took effect, nor does such repeal or amendment affect any suit, prosecution or proceeding pending at the time of the amendment or repeal.

(Code 1990, § 1-6)

Sec. 1-8. General penalty; continuing violations.

(a) In this section, the term "violation of this Code" means any of the following:

- (1) Doing an act that is prohibited or made or declared unlawful, an offense, a violation or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.
- (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
- (3) Failure to perform an act if the failure is prohibited or is made or declared unlawful, an offense, a violation or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.
- (4) Aiding, abetting, procuring, encouraging, requesting, advising or inciting another to commit a violation of this Code, as above defined.

(b) Except as otherwise provided by law or ordinance:

- (1) A person convicted of a violation of this Code shall be punished by a fine of not more than \$500.00.
- (2) With respect to violations of this Code that are continuous with respect to time, each day the violation continues is a separate offense.
- (3) With respect to violations of this Code that are not continuous with respect to time, each day the violation continues is a separate offense.

(c) The imposition of a penalty does not prevent suspension or revocation of a license, permit or franchise or other administrative sanctions.

(d) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent injunctive relief or nuisance abatement. Action by the city to abate a nuisance does not prevent imposition of a penalty for a violation of this Code. 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 part of the judgment in the case.

(e) In all cases where the same offense is made punishable or is created by different clauses or sections of an ordinance the prosecuting officer may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense; provided, that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.

~~Whenever a minimum but not maximum fine or penalty is imposed, the court may in its discretion fine the offender any sum exceeding the minimum fine or penalty so imposed but not exceeding \$1,000.00.~~

(Code 1970, § 7-801; Code 1990, § 1-7; Ord. No. 1062, § 1; Ord. No. 2060, § 1; Ord. No. 2289, § 1, 2-8-2011)

State law reference—Fines, penalties for violation of ordinances, R.R.S. 1943, § 16-246.

Sec. 1-9. Severability.

~~It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable and if any phrase, clause, sentence, paragraph or section of this Code shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.~~

The sections, subsections, paragraphs, sentences, clauses and phrases of this Code and all provisions adopted by reference in this Code are severable so that if any section, subsection, paragraph, sentence, clause and phrase of this Code or of any provision adopted by reference in this Code is declared unconstitutional or invalid by a valid judgment of a court of competent jurisdiction, such judgment shall not affect the validity of any other section, subsection, paragraph, sentence, clause and phrase of this Code or of any provision adopted by reference in this Code, for the council declares that it is its intent that it would have enacted this Code and all provisions adopted by reference in this Code without such invalid or unconstitutional provisions. If any provision of this Code is declared to be inapplicable to specific property by a valid judgment of a court of competent jurisdiction, such judgment shall not restrict the applicability of such provision to other property.

(Code 1990, § 1-4)

~~Sec. 1-8. Procedure for issuance of summons for violation of Code.~~²

~~Whenever any person is arrested for a violation of any of the provisions of this Code or has been charged with any violation of this Code, the City police shall take the name and address of such person and issue a summons in writing to appear at the time and place to be specified in the summons or notice. Such time shall be at least five days after such arrest or charge, unless the person arrested shall demand an earlier hearing. Such person demanding an earlier hearing shall have the right to an immediate hearing or a hearing within 24 hours, during the regular hours of the police court, before the police magistrate of the city. If such a person gives his written promise to appear, he may be released from the custody of such officer. Any person refusing to give such written promise to appear shall be taken immediately by the arresting officer and placed under arrest to be brought before the police magistrate as soon as possible. Any person who, having been left a summons on his vehicle, shall acknowledge receiving the summons shall be treated in all respects as the person to whom the summons was personally delivered. Any person who violates the provisions of this section shall be guilty of a misdemeanor, regardless of the disposition of the charge for which he was originally given the summons.~~

² Legal or Editorial Change: Code 1990, § 1-8. Procedure for issuance of summons for violation of Code. Deleted as not needed in light of R.R.S. 1943, § 29-422 et seq.

~~(Code 1990, § 1-8; Ord. No. 1002, § 2)~~

~~Sec. 1-9. Use of prisoners for labor.³~~

~~The provisions of the statutes of the state shall apply to the use of prisoners for labor on the streets, sidewalks or elsewhere.~~

~~(Code 1990, § 1-9; Ord. No. 1063, § 1)~~

Sec. 1-10. Provisions deemed continuation of existing ordinances.

The provisions of this Code, insofar as they are substantially the same as legislation previously adopted by the city relating to the same subject matter, shall be construed as restatement and continuation thereof and not as new enactments.

Sec. 1-11. Code does not affect prior offenses or rights.

Nothing in this Code or the ordinance adopting this Code affects any offense or act committed or done, any penalty or forfeiture incurred, or any contract or right established before the effective date of the ordinance adopting this Code. Nothing in this Code or the ordinance adopting this Code creates or eliminates any preexisting nonconforming uses.

Sec. 1-12. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code affects the validity of any ordinance or portion of an ordinance listed below that is not codified in this Code. Such ordinances continue in full force and effect to the same extent as if published at length in this Code.

- (1) Annexing or deannexing property.
- (2) Providing for salaries or other employee benefits for city officers and employees.
- (3) Promising or guaranteeing the payment of money or authorizing the issuance of bonds or other instruments of indebtedness.
- (4) Authorizing or approving any contract, deed, or agreement.
- (5) Making or approving any appropriation or budget.
- (6) Granting any right or franchise.
- (7) Vacating any easement or road.
- (8) Adopting or amending the comprehensive plan.
- (9) Levying or imposing any special assessment.
- (10) Creating a special district, including, but not limited to, an off-street parking district or an improvement district.
- (11) Providing for an economic development program.
- (12) Dedicating, establishing, naming, locating, relocating, opening, paving, widening, repairing or vacating any street.
- (13) Establishing the grade of any street or sidewalk.
- (14) Dedicating, accepting or vacating any plat or subdivision.
- (15) Levying, imposing or otherwise relating to taxes.
- (16) Rezoning specific property.
- (17) That is temporary, although general in effect.

(18) That is special, although permanent in effect.

(19) The purpose of which has been accomplished.

PROOFS

Chapter 2

ADMINISTRATION

ARTICLE I. IN GENERAL

Sec. 2-1. Classification of city.

The city was proclaimed a city of the first class by the governor of the state on June 4, 1953, and was organized as such and began its operation as such on the same day.

(Code 1970, § 1-201; Code 1990, § 1-11)

State law reference—Cities of the first class, R.R.S. 1943, § 16-101 et seq.

Sec. 2-2. Adoption of city manager form of government.

The city, pursuant to an election held on August 12, 1947, adopted the provisions of R.R.S. 1943, ch. 19, art. 6 (R.R.S. 1943, § 19-601 et seq.), and has been operating under the provisions of such article as a city manager form of government since April 12, 1948.

(Code 1970, § 1-202; Code 1990, § 2-1)

Secs. 2-3--2-22. Reserved.

ARTICLE II. CITY COUNCIL*

***State law reference**—City councils in cities of the first class, R.R.S. 1943, § 16-401 et seq.; city councils in manager form of government, R.R.S. 1943, § 19-611 et seq.; vacancies on city council for nonattendance of meetings, R.R.S. 1943, § 19-3101 et seq.; quorum of city council and power to compel attendance at meetings, R.R.S. 1943, §§ 16-401, 19-615; restrictions on council dealing with employees under city manager form of government, R.R.S. 1943, § 19-618.

Sec. 2-23. Meeting of city council.

Regular meetings of the city council shall be held at the city offices at 5:30 p.m., on the second and fourth Tuesdays of each month. Special meetings shall be held as may be provided by the statutes of the state. The place and time of the meetings may be changed by the majority of the council. A notice of such change of meetings shall be published in a legal newspaper at least one week before such meeting.

(Code 1970, § 1-309; Code 1990, § 2-2; Ord. No. 929, § 1; Ord. No. 1721, § 1; Ord. No. 1807, § 1; Ord. No. 2226)

State law reference—Council meetings, R.R.S. 1943, § 19-615; Open Meetings Act, R.R.S. 1943, § 84-1407 et seq.

Sec. 2-24. Publication of ordinances.

All ordinances passed and approved by the council shall be published in pamphlet form and take effect, as provided by law, unless otherwise directed by the council or the laws of the state.

(Code 1990, § 1-12; Ord. No. 1383, § 1)

State law reference—Publication of ordinances, R.R.S. 1943, § 18-131.

Sec. 2-25. Salaries.⁴

~~All elective and appointive officers of the city shall receive annual salaries as provided by statutes, special ordinances or resolutions. the salary of the city attorney, city manager and city clerk treasurer shall be paid biweekly. All other appointive and elective officers shall be paid quarterly. Beginning December 1, 2006, the annual salary of the council shall be \$1,500.00 for the president and \$1,500.00 for each of the other councilmembers.~~

(Code 1990, § 2-10; Ord. No. 2205)

State law reference—Compensation of council to be paid quarterly in equal installments in amount fixed by council, R.R.S. 1943, § 19-616.

Secs. 2-26--2-53. Reserved.**ARTICLE III. OFFICERS AND EMPLOYEES***

***State law reference**—Officers and employees in cities of the first class, R.R.S. 1943, § 16-319 et seq.

DIVISION 1. GENERALLY**Sec. 2-54. Mayor and president of council to be same.**

As provided in the statutes of the state, the mayor and president of the council are the same. In all official matters the designation may be either president of the council or mayor.

(Code 1970, § 1-302; Code 1990, § 2-13)

State law reference—President to be ex officio mayor, R.R.S. 1943, § 19-617.

Sec. 2-55. Appointment of certain officers.

~~The city manager shall be appointed as provided in R.R.S. 1943, § 19-645, as may be amended. The city clerk, city physician and city attorney shall be appointed by the council at the second meeting in December of each year.~~

(Code 1970, § 1-306; Code 1990, § 2-8; Ord. No. 1938, § 1)

Sec. 2-56. Term of office of appointed officers.

The term of office of each of the appointed officers shall continue, after appointment, until discharged or until a successor has been appointed and qualified.

(Code 1970, § 1-306.01; Code 1990, § 2-9)

Sec. 2-11 Bonds.⁵

~~The following city officers and employees shall be required to give bond in the amount shown after the name of each office. The city shall pay the premiums of the bonds so required. 19-648~~

~~city manager: \$ 5,000.00~~

~~city treasurer: \$250,000.00~~

~~city clerk: \$ 5,000.00~~

~~All other employees shall be covered by a blanket bond or by an individual bond in an amount not less than \$5,000.00, in the discretion of the city manager.~~

~~(Code 1970, § 1-308; Code 1990, § 2-11; Ord. No. 1938, § 2)~~

⁴ Legal or Editorial Change: Code 1990, § 2-10 Salaries. Deleted first sentence as obsolete.

⁵ Legal or Editorial Change: Code 1990, § 2-11 Bonds. Deleted as not needed. The budget provides for the bonds.

Sec. 2-57. Salary range schedule by pay grade.

The city manager shall prepare a job specification for each position in the city work force. Such specifications together with the starting rate of pay for any position will be kept on file in the city personnel office. The city manager shall cause such starting pay rates to be comparable to the prevalent wage rates paid in conditions of employment maintained for the same or similar work or workers exhibiting like or similar skills under the same or similar working conditions.

(Code 1990, § 21-42; Ord. No. 1243, § 1; Ord. No. 1354, § 1; Ord. No. 1415, § 1; Ord. No. 1655, § 1; Ord. No. 1688, § 1; Ord. No. 1714, § 1; Ord. No. 1765, § 1)

Sec. 2-58. Unclassified positions.⁶

The following are designated as the unclassified positions in the city: mayor, councilmen, ~~police magistrate~~, city manager, city clerk ~~treasurer~~, city treasurer, city attorney, deputy city attorney, school crossing guards, temporary or parttime employees. Unclassified positions shall have no weekly work hour standards. The city council shall by resolution establish salaries for the various unclassified positions.

(Code 1990, § 21-44; Ord. No. 1243, § 3)

Sec. 2-59. Deputy city clerk and deputy city treasurer.⁷

~~The offices of the city clerk and city treasurer will hereafter be separated. The city council shall appoint a city clerk on or before January 1 of each year for such term and under such conditions as the council shall deem appropriate. Further, there is hereby created the offices of deputy city clerk and deputy city treasurer whose duties shall be to assist the city clerk and city treasurer and act in their absence.~~

(Code 1990, § 2-14; Ord. No. 1938, § 3)

State law reference—city clerk, R.R.S. 1943, § 16-317; city treasurer, R.R.S. 1943, §§ 16-318, 19-1101 et seq.

Sec. 2-12 city manager.⁸

~~The city manager shall be selected, appointed, be invested with authority and have the duties to perform as provided in the statutes of the state, and such additional duties and responsibilities as set out in this Code.~~

(Code 1970, § 1-301; Code 1990, § 2-12)

Sec. 2-15 city attorney.⁹

~~The city attorney shall attend council meetings, draw ordinances, contracts, deeds, resolutions and other documents as requested by the council; he shall prosecute misdemeanors in the police court; he shall give legal opinions to the city council, city manager and other city officials as may be required; he shall defend and prosecute all minor suits for the city. For such services he shall receive an annual salary as may be determined by the council. For additional legal services, the city attorney shall be paid a reasonable fee for the actual services rendered.~~

⁶ Legal or Editorial Change: Code 1990, § 1-44, Unclassified positions. Deleted reference to police magistrate as obsolete. Changed city clerk-treasurer to city clerk and city treasurer.

⁷ Legal or Editorial Change: Code 1990, § 2-14 Offices of the city clerk and city treasurer. Deleted first sentence as obsolete. Deleted second sentence as in conflict with Code 1990, § 2-8.

⁸ Legal or Editorial Change: Code 1990, § 2-12, city manager. Deleted as not needed.

⁹ Legal or Editorial Change: Code 1990, § 2-15, city attorney. Deleted as not needed or covered by R.R.S. 1943, § 16-319.

~~(Code 1970, § 1-304; Code 1990, § 2-15)~~

Secs. 2-60--2-76. Reserved.

DIVISION 2. CIVIL SERVICE*

***State law reference**—Civil Service Act, R.R.S. 1943, § 19-1825 et seq.

Sec. 2-77. Commission created; composition.¹⁰

There is hereby created within the city a civil service commission composed of three members to be appointed by the city manager. ~~The term of office of the commissioners shall be six years, except members of the first commission of which one member shall be appointed for a term of two years, one for a term of four years and one for a term of six years.~~

(Code 1990, § 21-1; Ord. No. 762, § 1)

State law reference—Civil service commission, R.R.S. 1943, § 19-1827.

~~Sec. 21-2 Same--Adoption by Reference of Certain State Law.~~¹¹

~~Sections 19-1801 to 19-1823 of the Reissue Revised Statutes of Nebraska, 1943, as amended by Legislative Bill No. 372 of the 1985 Legislature, and as further amended, known as the Nebraska Civil Service Act, shall so far as applicable be a part of this article and by reference is incorporated in this section.~~

~~(Code 1990, § 21-2; Ord. No. 762, § 2; Ord. No. 1793, § 1)~~

~~Sec. 21-2.1 Pretermination hearing.~~

~~Whenever the city manager shall determine that there is cause for discipline of any fulltime police officer for reasons specified in the Nebraska Civil Service Act, the city manager shall notify such employee in writing of the factual basis for such discipline, the possible actions to be taken, and a time and place for a pretermination hearing. At such hearing, the employee shall have an opportunity to meet with the city manager and the chief supervising officer of the police department, and shall be given an opportunity to respond to written allegations. After such pretermination hearing, the city manager, in his sole discretion, shall determine what, if any, discipline is to be imposed.~~

~~(Code 1990, § 21-2.1; Ord. No. 1793, § 2)~~

~~Sec. 21-2.2 Discipline to be imposed.~~

~~If the city manager shall determine that there exists cause as defined by section 19-1807, R.R.S. 1943, as amended, the discipline to be imposed may include removal or discharge from employment, suspension with or without pay, demotion, reduction in rank, deprivation of vacation, benefits, compensation or other privileges, except suspension benefits.~~

~~(Code 1990, § 21-2.2; Ord. No. 1793, § 3)~~

¹⁰ Legal or Editorial Change: Code 1990, § 21-1 civil service commission--Created; composition; Terms of Members. Deleted material covered by R.R.S. 1943, § 19-1827.

¹¹ Legal or Editorial Change: Code 1990, § 21-2 Same--Adoption by Reference of certain state law. Deleted as not needed. The act applies absent this section. This section adopts repealed provisions. Code §§ 21-2.1--21-2.6 is deleted as covered by and inconsistent with R.R.S. 1943, § 19-1826 et seq.

~~Sec. 21-2.3 Written notification.~~

~~Upon determination of grounds for discipline and the discipline to be imposed, the city Manager shall notify the officer by written accusation of the disciplinary action imposed, and the factual basis for such disciplinary action. Such written accusation may be delivered to such employee by the city manager or his designated agent, or if the whereabouts of such employee are unknown, such accusation may be mailed to his last known address.~~

~~(Code 1990, § 21-2.3; Ord. No. 1793, § 4)~~

~~Sec. 21-2.4 Citizen Complaint Procedure.~~

~~A citizen may make a complaint against a fulltime employee of the police department by delivering a written complaint, signed and dated, to the city manager. The city manager shall cause a copy of such written complaint to be delivered to the secretary of the civil service commission. Within 60 days of delivery of such complaint to the city manager, the city manager shall cause an investigation of such complaint and shall make a determination as to whether or not said complaint is meritorious. If a determination is made that the complaint is meritorious, the city manager shall proceed to impose disciplinary sanctions. If the city manager determines that said complaint is not meritorious, the civil service commission shall be so notified, and the citizen shall further be notified in writing of the determination of the city manager.~~

~~(Code 1990, § 21-2.4; Ord. No. 1793, § 5)~~

~~Sec. 21-2.5 Citizen Complaint Hearing.~~

~~In the event any citizen filing a complaint as described above determines that the action taken by the city manager is incorrect or insufficient, the citizen may request a hearing before the civil service commission. No later than ten calendar days from the date of notice to the citizen of the action taken by the city manager, the citizen may file with the commission a written demand for a hearing; upon such request for hearing, the commission shall notify the city manager and the employee with respect to whom the complaint has been lodged. The commission shall then hold a public hearing, where any interested party may appear and present evidence to the commission. Such hearing shall be confined to a determination of whether or not the complaint is true, and whether such complaint justifies some type of discipline against the employee or employees. After such hearing, the commission may either dismiss the complaint or may affirm the complaint and order such disciplinary action as provided by law. The procedures for such hearing shall be as established by the rules and regulations of the civil service commission.~~

~~(Code 1990, § 21-2.5; Ord. No. 1793, § 6)~~

~~Sec. 21-2.6 Appeals to civil service commission.~~

~~Any permanent fulltime employee of the police department who is removed, suspended, demoted, or discharged by the city manager, may, within ten days after notice of such action file with the civil service commission a written demand for an investigation. Upon receipt of such request for investigation, the civil service commission shall set a time and place for a public hearing to be held not less than ten nor more than 20 days after the filing of such written demand for investigation, and notice of such public hearing shall be given to the accused. The commission shall further appoint the city attorney or other special counsel to serve as investigator for the commission, and such investigator shall prepare evidence for presentation at the public hearing of the civil service commission. Such investigator shall have authority to request the assistance of the city manager and the police department in preparing evidence, to examine all of the city manager and police department files relevant to the issue, to have authority to issue subpoenas to appear before the civil service commission, and to examine all personnel files and records of the accused. Investigation shall be confined to the question of whether the disciplinary action taken was made in good faith for cause.~~

~~(Code 1990, § 21-2.6; Ord. No. 1793, § 7)~~

~~Sec. 21-3 Acceptance by city, etc.¹²~~

~~By Ordinance No. 594, dated June 12, 1951, and the agreement of the city with the state tax commissioner, dated June 12, 1951, the city accepts for itself and on behalf of its officials, appointees and employees, except such as are excluded from the provisions of this article, and their dependents and survivors, the benefits and protection of the Federal Old Age and Survivors Insurance System, sometimes in this article designated the "Social Security System," established by Title II of the Social Security Act, the same being Public Law 734 (81st Congress, 2nd Session, H.R. 6000) and cited as the "Social Security Act Amendments of 1950."~~

~~(Code 1970, § 1-1001; Code 1990, § 21-3)~~

~~Sec. 21-4 "Employee" defined.~~

~~The term "employee" as used in this article shall mean an employee as defined by the Social Security Act referred to in the preceding section and shall include both officers and appointees of this city.~~

~~(Code 1970, § 1-1002; Code 1990, § 21-4)~~

~~Sec. 21-5 Authority of city to enter into agreements for benefits.~~

~~The president of the council of this city is hereby authorized and directed to enter into such contracts and make such agreements and stipulations with the administrator of the social security system in and for the state, or such other state agency for the purpose that may hereafter be designated or created, as may be deemed necessary or expedient by such administrator, or other state agency authorized in the premises, as the case may be, or as required by general law, to extend the benefits and protection of such system to the eligible employees of this city, their dependents and survivors. Such contracts, agreements or stipulations shall be executed in duplicate by the president of the council attested by the signature of the city clerk treasurer with the seal of the city attached thereto, one copy thereof to be filed with and become a part of the permanent records of the city. Such agreement shall be effective July 1, 1951, in all respects.~~

~~(Code 1970, § 1-1003; Code 1990, § 21-5)~~

~~Sec. 21-6 Employees included in system.~~

~~The employees, or classes of employees, of this city shall include all such employees as are not excluded from participation in the social security system by the provisions of section 21-7, and are hereby determined to be within and entitled to the benefits and protection of such system.~~

~~(Code 1970, § 1-1004; Code 1990, § 21-6)~~

~~Sec. 21-7 Employees excluded from system.~~

~~The following employees are hereby determined to be excluded by the terms of this article from participation in the social security system:~~

- ~~(a) Any employee whose services on the effective date of the ordinance from which this article derives are employed in a position which is covered by an existing municipal retirement or pension system, or authorized to be so covered by general law.~~

¹² Legal or Editorial Change: Code 1990, §§ 21-3--21-12. Social security. Deleted as not needed. This is undoubtedly provided for in a personnel manual. In addition, once the city joins social security it cannot withdraw from it. Language in Code ch. 1 saves ordinances of this nature from repeal.

~~(b) Any employee with respect to any position not authorized for coverage by applicable state or federal laws or regulations of the federal administration agency.~~

~~(Code 1970, § 1-1005; Code 1990, § 21-7)~~

~~Sec. 21-8 Withholdings from pay authorized.~~

~~Withholdings from the compensation of eligible employees of this city as found and determined by sections 21-6 and 21-7 are hereby authorized, and the city shall impose upon such employees as to services covered by this article such withholdings to be made in amounts and at such times as may be required by general law, state or federal, and applicable regulations promulgated with respect thereto by state or federal administrative agencies.~~

~~(Code 1970, § 1-1006; Code 1990, § 21-8)~~

~~Sec. 21-9 Creation of social security fund.~~

~~There is hereby created, and the city treasurer is hereby authorized and directed to set up an account to be known as the "social security fund," into which the withholdings authorized by section 21-8 shall be paid; also the proceeds from the tax levy as authorized by this article, together with any appropriations from available funds that might be made from time to time by municipal authority for the benefit of such fund. Such fund shall be kept segregated and shall be used for no other purpose than the provisions and obligations of this article, as herein provided to be accomplished by such fund.~~

~~(Code 1970, § 1-1007; Code 1990, § 21-9)~~

~~Sec. 21-10 Payment of funds to tax commissioner.~~

~~The moneys in the social security fund established by section 21-9 shall be paid over to the tax commissioner designated by law as the administrator of the Social Security Act for the state, as authorized and provided by regulations promulgated to that end by such administrator.~~

~~(Code 1970, § 1-1008; Code 1990, § 21-10)~~

~~Sec. 21-11 Records and reports to be made.~~

~~The city clerk treasurer shall keep such records and make such reports relevant to the administration of the Social Security Act as may be required by general law, state or federal, or as provided by regulations promulgated by either the state or federal administrator of the system.~~

~~(Code 1970, § 1-1009; Code 1990, § 21-11)~~

~~Sec. 21-12 Levy of tax.~~

~~The president of the council and council shall levy a tax, in addition to all other taxes, of not to exceed one mill upon the dollar of the actual value of real and personal property in this city in order to defray the cost of the city in meeting the obligations arising by reason of the contracts, agreements or stipulations authorized under section 21-5; provided, that the revenue raised by such special levy shall be used for no other purpose.~~

~~(Code 1970, § 1-1010; Code 1990, § 21-12)~~

Secs. 2-78--2-97. Reserved.

ARTICLE IV. FINANCE*

*State law reference—Fiscal management, revenue and finances in cities of the first class, R.R.S. 1943, § 16-701 et seq.; Nebraska Municipal Auditing Law, R.R.S. 1943, § 19-2901 et seq.; depositories for city funds, R.R.S. 1943, § 16-712 et seq.

Sec. 10-1 Transfer of funds.¹³

~~Money received from any source, either from charges, for services, taxation, licenses, etc., shall not be diverted or transferred from the fund from which or for which it was created, except under the provisions of R.R.S. 1943, § 16-721.~~

~~(Code 1970, § 3-101; Code 1990, § 10-1)~~

Sec. 2-98. Warrants.¹⁴

(a) *Deduction of amounts owed city; payment.* The city ~~clerk~~-treasurer is hereby authorized and directed to withhold from any warrant issued against the city any sum that the person in whose favor the account is allowed and warrant is drawn, may owe the city for any tax, license, water charge, charge for electrical energy or any other debt owed the city, and if there is any balance due after the deduction, pay the same to the holder of the warrant.

(b) *Endorsement of amount owed city.* When the city ~~clerk~~-treasurer draws the warrant for payment of any claim, he shall endorse on the warrant the amount such holder of the warrant may owe the city for any of the purposes named in subsection (a) of this section~~10-5~~.

(c) *Issuance of receipts.* For any payment provided for in subsection (a) of this section, the city ~~clerk~~-treasurer shall give a receipt to such person for the money so withheld.

~~(Code 1970, §§ 3-401--3-403; Code 1990, §§ 10-5--10-7)~~

~~State law reference—Warrants R.R.S. 1943, §§ 16-718, 16-720.~~

Secs. 2-99--2-124. Reserved.**ARTICLE V. ABANDONED PROPERTY***

~~*State law reference—Unclaimed property, R.R.S. 1943, § 69-1301 et seq.; abandoned vehicles, R.R.S. 1943, § 60-1901 et seq.~~

Sec. 2-125. Definitions.¹⁵

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
~~The following words shall have the meaning given herein.~~

Abandoned personal property.

- (1) The term "abandoned personal property" means tangible personal property which has come into possession of the city or its police department, that is not claimed by the owner within 30 days after coming into possession of the city. The term "abandoned personal property" may include property not claimed after termination of criminal prosecution.
- (2) The term "abandoned personal property" does not include personal property held as evidence in criminal prosecutions.

Abandoned vehicle.

- (1) The term "abandoned vehicle" means a motor vehicle that is ~~shall be deemed to be an if~~ left unattended:

¹³ Legal or Editorial Change: Code 1990, § 10-1 Transfer of Funds. Deleted as not needed.

¹⁴ Legal or Editorial Change: Code 1990, §§ 10-5--10-7. Warrants Changed clerk-treasurer to treasurer.

¹⁵ Legal or Editorial Change: Code 1990, § 16-92 Abandoned Property Definitions. Conformed to R.R.S. 1943, § 60-1901.

- a. Left unattended, with no license plates or valid in-transit stickers issued pursuant to the Motor Vehicle Registration Act affixed thereto, for more than six hours on any public property; ~~with no license plates affixed thereto, for more than 12 hours on public property;~~
 - b. Left unattended for more than 24 hours on any public property, except a portion thereof on which parking is legally permitted;
 - c. Left unattended for more than 48 hours, after the parking of such vehicle shall have become illegal, if left on a portion of public property on which parking is legally permitted;
 - d. Left for more than seven days on private property, if left initially without permission of the owner, or after permission of the owner shall be terminated;
 - e. Left for more than 30 days in the custody of the police department after the department has sent a letter to the last-registered owner under R.R.S. 1943, § 60-1903.01; or
 - f. Removed from private property by the city pursuant to ordinance.
- (2) The term "abandoned vehicle," in reference to an all-terrain vehicle, means a utility-type vehicle, or a minibike that is:
- a. Left unattended for more than 24 hours on any public property, except a portion thereof on which parking is legally permitted;
 - b. Left unattended for more than 48 hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;
 - c. Left unattended for more than seven days on private property, if left initially without permission of the owner, or after permission of the owner is terminated;
 - d. Left for more than 30 days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under R.R.S. 1943, § 60-1903.01; or
 - e. Removed from private property by the city pursuant to ordinance.

No motor vehicle subject to forfeiture under R.R.S. 1943, § 28-431 shall be an abandoned vehicle under this definition.

Privately owned property means any property not included within the definition of public property.

Public property means any public right-of-way, street, highway, alley, park or other municipally owned property.

(Code 1991, § 16-92; Ord. No. 1919, § 1)

State law reference—Similar provisions, R.R.S. 1943, § 16-1901.

Sec. 2-126. Administration.

(a) The chief of police shall be the administrative officer responsible for administration and enforcement.

(b) For abandoned motor vehicles, the city shall proceed according to R.R.S. 1943, ch. 60, art. 19 (R.R.S. 1943, § 60-1901 et seq.).

(Code 1991, § 16-93; Ord. No. 1919, §§ 2, 3)

Sec. 2-127. Notice.

If abandoned personal property shall come into the possession of the city, the city shall make a reasonable attempt to determine the owner thereof. If ownership can be determined, the city shall give notice to such owner that said personal property has been impounded and stored. The notice shall state the location where the property is stored, and the costs incurred by the city for removal and storage.

(Code 1991, § 16-94; Ord. No. 1919, § 4)

Sec. 2-128. Storage charges.

In order to recover the cost of towing, impounding and storage, the city shall charge the owner of such property the following:

- (1) For abandoned motor vehicles the actual cost of towing, plus \$4.00 per day for storage upon city property, or the actual cost of storage at a private facility;
- (2) For other personal property, there shall be no charge if the property is reclaimed within ten days of original receipt. Thereafter, a storage charge of \$1.00 per day.

(Code 1991, § 16-95; Ord. No. 1919, § 5)

Sec. 2-129. Sale or disposal.¹⁶

~~Abandoned motor vehicles and other~~ Abandoned personal property which is not claimed by the owners within 60 days shall be sold by the city. ~~If the city has incurred costs for towing motor vehicles which is in excess of the reasonable value of said motor vehicle, the city may transfer title to said motor vehicle directly to the towing service as compensation for such service.~~ Otherwise, such property shall be sold at public sale.

(Code 1991, § 16-96; Ord. No. 1919, § 6)

Sec. 2-130. Public sale, redemption, proceeds.¹⁷

(a) Notice of public sale shall be given not less than ten days before the date of proposed sale. The sale notice shall state the following:

- (1) The sale is of abandoned property in the possession of the city.
 - (2) A description of the vehicles or other property, including year, make and model of any motor vehicles.
 - (3) The terms of the sale.
 - (4) The date, time and place of the sale.
- (b) The property shall be sold at such sale to the highest and best bidder.

(c) The owner of any ~~motor vehicle or other~~ property other than an abandoned motor vehicle held by the city under the provisions of this article may redeem such property at any time prior to the sale thereof, upon proof of ownership and payment to city of all costs of towing and storage as aforesaid.

¹⁶ Legal or Editorial Change: Code 1990, § 16-96 Abandoned Property Sale or Disposal. Deleted reference to abandoned motor vehicles as inconsistent with R.R.S. 1943, § 60-1901 et seq.

¹⁷ Legal or Editorial Change: Code 1990, § 16-97 Public Sale, Redemption, Proceeds. Deleted reference to abandoned motor vehicles as inconsistent with R.R.S. 1943, § 60-1901 et seq.

(d) All proceeds of sale shall be applied to the expense of sale, and the cost of towing and storage of property sold. Any surplus funds shall be held by the city treasurer for remittance to the state treasurer as proceeds of abandoned property.

(Code 1991, § 16-97; Ord. No. 1919, §§ 7, 8, 9, 10)

Secs. 2-131–2-158. Reserved.

ARTICLE VI. BOARDS, COMMISSIONS, AUTHORITIES AND OTHER AGENCIES

DIVISION 1. GENERALLY

Sec. 2-159. Temporary boards and commissions.

The city council may, by resolution, establish temporary advisory boards and commissions for special studies and investigations. The members of such boards or commissions shall be composed of at least 75 percent residents and citizens of the city, and shall be representative of the various occupations, professions, interest groups and industries of the city. Such boards shall report to the city council and shall be automatically discharged at the conclusion of the special study or investigation. Unless otherwise specified by the council, the city manager shall be an ex officio member of each such temporary board or commission and shall make available to the board or commission all the facilities and resources of his office for the purpose of implementing the study or investigation.

(Code 1970, § 1-801.01; Code 1990, § 2-6)

Sec. 2-160. Time of appointment of members of boards and commissions and housing authority commissioners.

Unless otherwise provided, members of all commissions and boards and housing authority commissioners shall be appointed by the city council at the second meeting in December of each year as the vacancies occur. Members of such boards, whose vacancies occur prior to such time, shall continue in office until replaced by new appointment.

(Code 1990, § 2-7.1; Ord. No. 1272, § 1; Ord. No. 1562, § 1)

Secs. 2-161–2-188. Reserved.

DIVISION 2. BOARD OF HEALTH*

*State law reference—Board of health, R.R.S. 1943, § 16-237.

Sec. 2-189. Established.

Under the provisions of R.R.S. 1943, § 16-238, there is hereby established a board of health. The members of the board shall be as provided in the statute, except, the city manager shall be a member instead of the mayor, for the reason that the mayor and president of the council under the city manager form of government are one and the same.

(Code 1970, § 1-701; Code 1990, § 2-4)

~~Sec. 2-214.~~¹⁸

~~The board of health shall have the powers as given it by state law to safeguard the health of the people of the city, prevent nuisances and unsanitary conditions, and enforce the same.~~

~~(Code 1970, § 1-702; Code 1990, § 2-5)~~

¹⁸ Legal or Editorial Change: Code 1990, § 2-5 Same—Powers. Deleted as not needed.

Secs. 2-190–2-216. Reserved.

DIVISION 3. COMMUNITY DEVELOPMENT AGENCY*

*State law reference—Community Redevelopment Law, R.R.S. 1943, § 18-2101 et seq.

Sec. 2-217. Findings of council.

It is hereby found and declared that there exists in the city areas which have deteriorated and become substandard and blighted because of the unsafe, unsanitary, inadequate or overcrowded condition of the dwellings therein; because of inadequate planning of the area, or excessive land coverage by the buildings thereon, or the lack of proper light and air and open space; or because of the defective design and arrangement of the buildings thereon, or faulty street and lot layout, or congested traffic conditions, or economically and socially undesirable land uses. Such conditions or a combination of some or all of them have resulted and will continue to result in making such areas economic or social liabilities harmful to the social and economic well-being of the entire community needlessly increasing public expenditures, imposing onerous municipal burdens, decreasing the tax base, reducing tax revenue, substantially impairing or arresting the sound growth of city, aggravating traffic problems, substantially impairing or arresting the elimination of traffic hazards and the improvement of traffic facilities, and depreciating general communitywide values. The existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency, and for the maintenance of adequate police, fire and accident protection and other public services and facilities. These conditions are beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided. The elimination of such conditions and the acquisition and preparation of land in or necessary to the renewal of substandard and blighted areas and its sale or lease for development or redevelopment in accordance with general plans and redevelopment plans of communities and any assistance which may be given by any state public body in connection therewith are public uses and purposes for which public money may be expended and private property acquired. The necessity in the public interest for the provisions of the community development law is hereby declared to be a matter of legislative determination.

(Code 1990, § 2-26; Ord. No. 1294, § 1; Ord. No. 2312, § 1(2-26), 2-28-2012)

Sec. 2-218. Created; membership; appointment of members; powers and authority.

(a) There is hereby established pursuant to R.R.S. 1943, § 18-2101.01 a community development agency for the city composed of seven members with two members being city councilmembers, to be appointed by the city manager with the approval of the city council.

(b) The term of office of the members shall be five years, except, that the members of the agency initially appointed shall be one member each for one year, two years, and five years, and two members each for three years and four years, as designated by the city manager in making the respective appointments.

(c) The agency shall organize by electing one of its members chairperson and another vice-chairperson. The city manager shall be the executive director and the city clerk shall be the secretary of the authority. The agency shall adopt bylaws at its first organizational meeting.

(d) The community development agency shall have the power and authority to exercised those power and authority granted to a community development agency under R.R.S. 1943, §§ 18-2101--18-2144. The community development agency shall also have the power and authority to do all community development activities, and to do all things necessary to cooperate with the federal government in all matters relating to community development program activities as a grantee, or

as an agent or otherwise, under the provisions of the Federal Housing and Community Development Act of 1974, as amended, through the Housing and Community Development Amendments of 1981. The community development agency may levy taxes for the exercise of such jurisdiction and authority and may issue general obligation bonds, general obligation notes, revenue bonds, revenue notes including those general obligation and revenue refunding bonds and notes for the purposes set forth in such sections and under the powers granted to any community redevelopment authority described therein.

(Code 1990, § 2-27; Ord. No. 1294, § 2; Ord. No. 2312, § 1(2-27), 2-28-2012)

Sec. 2-219. Rights; abolishment of community redevelopment authority.

All of the rights and property, both real and property of the existing community redevelopment authority of the city and all obligations including leases, bonds, redevelopment contracts, agreements and other evidence of debt of such authority are hereby transferred to the community development agency created pursuant to this division. On February 28, 2012, the community redevelopment authority shall be dissolved.

(Code 1990, § 2-28; Ord. No. 1294, § 3; Ord. No. 2312, § 1(2-27), 2-28-2012)

Sec. 2-220. State law adopted by reference.

The community redevelopment law, R.R.S. 1943, §§ 18-2101 to 18-2144 shall, so far as applicable, be a part of this division, and by reference are incorporated in this section.

(Code 1990, § 2-29; Ord. No. 1294, § 4; Ord. No. 2312, § 1(2-29), 2-28-2012)

Secs. 2-221–2-248. Reserved.

DIVISION 4. POLICE RETIREMENT COMMITTEE*

*State law reference—Police retirement committee, R.R.S. 1943, § 16-1014 et seq.

Sec. 2-249. Established.¹⁹

The city council hereby establishes the police department retirement committee which shall supervise the general operation of the police department's retirement system. ~~The retirement committee shall consist of six members of which four members shall be selected by the active paid policemen. Two members shall be designated by the governing body. The members who are not participants in such retirement system shall have a general knowledge of retirement plans. Members of the governing body of the municipality, active members of the police department, and members of the general public may serve on the retirement committee. The committee members shall be appointed to four year terms. Vacancies shall be filled for the remainder of the term by a person with the same representation as his predecessor. Members of the retirement committee shall receive no salary and shall not be compensated for expenses.~~

(Code 1990, § 2-40; Ord. No. 1739, § 1)

Sec. 2-41 Retirement funds.²⁰

~~The funds of the retirement system shall be invested by the retirement committee. The municipality or committee shall contract with an insurance company, trust company, or other financial institution including, but not limited to, brokerage houses, investment managers, savings~~

¹⁹ Legal or Editorial Change: Code 1990, § 2-40 Retirement Committee. Deleted provisions covered by R.R.S. 1943, § 16-1015.

²⁰ Legal or Editorial Change: Code 1990, § 2-41 Retirement Funds. Deleted as covered by R.R.S. 1943, § 16-1016.

~~and loan associations, banks, credit unions, or Farmers Home Administration or Veterans' Administration approved lenders. Such funds shall be invested pursuant to the policies established by the Nebraska Investment Council.~~

~~(Code 1990, § 2-41; Ord. No. 1739, § 1)~~

~~Sec. 2-42 Retirement Committee Duties.²¹~~

~~It shall be the duty of the Retirement Committee to:~~

~~Provide each employee a summary of plan eligibility requirements and benefit provisions;~~

~~Provide, within 30 days after a request is made by a participant, a statement describing the amount of benefits such participant is eligible to receive;~~

~~Make available for review an annual report of the system's operations describing both (1) the amount of contributions to the system from both employee and employer sources and (2) an identification of the total assets of the retirement system, and;~~

~~Have an analysis made of the investment return that has been achieved on the assets of the retirement system administered by the Committee. Such analysis shall be prepared as of January 1, 1989, and each five years thereafter. The analysis shall be prepared by an independent private organization which has demonstrated expertise to perform this type of analysis and which is unrelated to any organization offering investment advice or which provides investment management services to the retirement system.~~

~~(Code 1990, § 2-42; Ord. No. 1739, § 1)~~

Secs. 2-250–2-276. Reserved.

DIVISION 5. CITY TREE BOARD

Sec. 2-277. Creation and establishment.

There is hereby created and established a city tree board for the city, which shall consist of five members, who shall be appointed by the mayor and have approval of the council. A member shall be a citizen and resident of the Lexington area.

(Code 1990, § 2-35; Ord. No. 1435, § 1; Ord. No. 2115)

Sec. 2-278. Term of office.²²

The term of the five persons to be appointed by the mayor shall be three years, ~~except, that the term of two of the members appointed to the first board shall be for only one year and the term of two members of the first board shall be for two years.~~ In the event that a vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion of the term.

(Code 1990, § 2-36; Ord. No. 1435, § 2)

Sec. 2-279. Compensation.

The members of the board shall serve without compensation.

(Code 1990, § 2-37; Ord. No. 1435, § 3)

²¹ Legal or Editorial Change: Code 1990, § 2-42 Retirement Committee Duties. Deleted as covered by and not consistent with R.R.S. 1943, § 16-1017.

²² Legal or Editorial Change: Code 1990, § 2-36 Term of office. Deleted initial terms of office as obsolete.

Sec. 2-280. Duties and responsibilities.

(a) It shall be the responsibility of the board to study, investigate, counsel and develop a written plan for the care, preservation, trimming, planting, replanting, removal or disposition of trees and shrubs in the public ways, streets and alleys. Such plan will be presented to the city council and upon their acceptance and approval shall constitute the official comprehensive city tree plan for the city.

(b) The board shall review annually and update if needed, the comprehensive city tree plan. The board shall prepare and present an annual work plan to the city council for their acceptance and approval.

(c) The board, when requested by the city council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its duties and responsibilities.

(Code 1990, § 2-38; Ord. No. 1435, § 4)

Sec. 2-281. Operation.

The board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

(Code 1990, § 2-39; Ord. No. 1435, § 5)

~~Sec. 2-26 Findings of council.~~²³

~~It is hereby found and declared that there exists in the city areas which have deteriorated and become substandard and blighted because of the unsafe, unsanitary, inadequate or overerowed condition of the dwellings thereon; because of inadequate planning of the area, or excessive land coverage by the buildings thereon, or the lack of proper light and air and open space; or because of the defective design and arrangement of the buildings thereon, or faulty street and lot layout, or congested traffic conditions, or economically and socially undesirable land uses. It is further found that such conditions have resulted or will continue to result in making such areas economic or social liabilities harmful to the social and economic well being of the city.~~

~~(Code 1990, § 2-26; Ord. No. 1294, § 1)~~

~~Sec. 2-27 Created; membership; appointment of members.~~

~~There is hereby created within the city the urban renewal authority of the city, composed of five members, to be appointed by the mayor.~~

~~(Code 1990, § 2-27; Ord. No. 1294, § 2)~~

~~Sec. 2-28 Term of office of members.~~

~~The term of office of the members shall be for five years, except, that the members of the first Authority shall be appointed for one year, two years, three years, four years and five years, as designated by the Mayor in making the respective appointments.~~

~~(Code 1990, § 2-28; Ord. No. 1294, § 3)~~

~~Sec. 2-29 State law adopted by reference.~~

~~R.R.S. 1943, §§ 18-2101 to 18-2144 shall, so far as applicable, be a part of this Article, and by reference are incorporated in this section.~~

²³ Legal or Editorial Change: Code 1990, §§ 2-26--2-29. Urban renewal agency. Deleted as obsolete.

~~(Code 1990, § 2-29; Ord. No. 1294, § 4)~~

~~Sec. 2-30 Creation and Establishment.~~²⁴

~~There is hereby created and established a city recreation advisory board for the city, which shall consist of six members, who shall be appointed by the mayor and have the approval of the city council. Two members shall be appointed from the city school board, two members from the city council, and two members at large who are residents and citizens of the city. The city manager and school superintendent shall be ex-officio members.~~

~~(Code 1990, § 2-30; Ord. No. 1622, § 1)~~

~~Sec. 2-26 Findings of council.~~²⁵

~~The term of the six persons to be appointed by the mayor shall be three years, except, that the term of two of the members appointed to the first board shall be for only one year and the term of two of the members of the first board shall be for two years. In the event that a vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion of the term.~~

~~(Code 1990, § 2-31; Ord. No. 1622, § 2)~~

~~Sec. 2-32 Compensation.~~

~~The members of the Board will serve without compensation.~~

~~(Code 1990, § 2-32; Ord. No. 1622, § 3)~~

~~Sec. 2-33 Organization; election of chairman.~~

~~The recreation advisory board shall meet in January of each year and elect one of their own members as chairman.~~

~~The board shall adopt all necessary rules providing for regular and special meetings of the board and for the conduct of its business. The proceedings of the board shall be set down and preserved in record books. The records of the board shall be open to the public as other records of the city.~~

~~A majority of the members shall be a quorum for the transaction of business.~~

~~(Code 1990, § 2-33; Ord. No. 1622, § 4)~~

~~Sec. 2-34 Duties of the recreation advisory board shall be to work with the city recreation director to:~~

~~Help define and recommend policies to be followed in the administration of the city Recreation Program.~~

~~Help formulate plans for current and future recreation needs.~~

~~Provide or recommend facilities and supervised recreation for all.~~

~~Recommend recreation budgets to the city council for approval.~~

~~(Code 1990, § 2-34; Ord. No. 1622, § 5)~~

²⁴ Legal or Editorial Change: Code 1990, §§ 2-30--2-34, Recreation advisory board. Deleted as obsolete.

²⁵ Legal or Editorial Change: Code 1990, § 2-26 Findings of council. Deleted initial terms of office as obsolete.

Sec. 2-3 Municipal library; library board.²⁶

~~Under the provisions of R.R.S. 1943, ch. 51, art. 2 (R.R.S. 1943, § 51-201 et seq.), there is established a municipal library. The manner of operation, control, appointment of the library board and all matters pertaining thereto shall be as provided by such article.~~

~~(Code 1970, § 1-601; Code 1990, § 2-3)~~

Sec. 2-7 Housing Authority.²⁷

~~Pursuant to R.R.S. 1943, ch. 19, art. 10 (R.R.S. 1943, § 19-1001 et seq.), a housing authority is hereby created.~~

~~Such housing authority shall have such powers as specified by state law.~~

~~(Code 1990, § 2-7; Res. No. 899, § 5)~~

Sec. 2-7.2 Participation in Mid-Nebraska Area Planning Council of Governments.²⁸

~~The city is hereby authorized to join with any incorporated villages, cities or counties that are eligible and may wish to participate in the creation of the Mid-Nebraska Area Planning council of Governments through the execution of an intergovernmental agreement. The Mayor of the city is hereby authorized for and on behalf of the city, as its corporate act and deed under its corporate name and seal, to execute an agreement for participation by the city in the Mid-Nebraska Area Planning council of Governments, which agreement shall be substantially in the words and figures set forth in that certain agreement, a copy of which is attached to Ordinance No. 1280, on file in the office of the city clerk, and made a part hereof.~~

~~(Code 1990, § 2-7.2; Ord. No. 1280, § 1)~~

Sec. 2-43. Multicultural commission; creation and establishment.²⁹

~~There is hereby created and established a multicultural commission for the city, which shall consist of 12 members, who shall be appointed by the mayor with approval of the council. A member shall reside in the Lexington area. Membership shall reflect the cultural diversity of the Lexington area.~~

~~(Code 1990, § 2-43)~~

Sec. 2-44. Multicultural commission; term of office.

~~The term of the members to be appointed by the mayor shall be three years, except, that the original term of four of the members appointed shall be for only one year, the original term of four members appointed shall be two years, and the original term of four members appointed shall be three years. In the event that a vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion of the term. No member shall serve more than two consecutive full terms.~~

~~(Code 1990, § 2-44)~~

²⁶ Legal or Editorial Change: Code 1990, § 2-3 Municipal library; library board. Deleted as obsolete.

²⁷ Legal or Editorial Change: Code 1990, § 2-7 Housing Authority. Deleted. This is derived from a resolution and does not belong in an ordinance code. In addition, R.R.S. 1943, ch. 19, art. 10 (cited as authority for section) has been repealed.

²⁸ Legal or Editorial Change: Code 1990, § 2-7.2 Participation in Mid-Nebraska Area Planning council of Governments. Deleted as obsolete. Basically this authorizes an agreement.

²⁹ Legal or Editorial Change: Code 1990, §§ 2-43--2-47. Multi-Cultural commission. Deleted as obsolete.

~~Sec 2-45. Multicultural commission compensation.~~

~~The members of the commission shall serve without compensation.~~

~~(Code 1990, § 2-45)~~

~~Sec. 2-46. Multicultural commission duties and responsibilities.~~

~~The functions of the commission shall be to:~~

~~To gather and disseminate information and conduct hearings, conferences, and special studies on problems and programs concerning the diversity of cultures in the city of Lexington;~~

~~To develop, coordinate and assist public and private organizations and coordinate and assist city departments and boards to serve the needs of city residents of different cultural backgrounds;~~

~~When requested by the city council, to consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its duties and responsibilities.~~

~~To make at least annual reports of its activities to city council.~~

~~(Code 1990, § 2-46)~~

~~Sec. 2-47. Multicultural commission operation.~~

~~The Board shall choose its own officers, make its own rules and regulations and keep minutes of its proceedings. A majority of the members shall be a quorum for the transaction of business.~~

~~(Code 1990, § 2-47)~~

Ordinance No. 2264³⁰

~~An Ordinance Establishing An Economic Development Program; To Create A Citizens Advisory Review Committee; To Designate A Municipal Official As Program Administrator; To Provide For Meetings Of The Citizens Advisory Review Committee; To Provide For Amendment Of The Ordinance; To Provide For An Effective Date And For Publication In Pamphlet Form.~~

~~Whereas, the Lexington city council has by Resolution submitted to the voters of the city of Lexington, Nebraska, the issue of whether an Economic Development Program should be adopted; and~~

~~Whereas, at a special election held May 12, 2009, the adoption of a program was approved.~~

~~Therefore, Be It Ordained By The Mayor And Council Of The City Of Lexington, Nebraska, as follows:~~

~~1. That the Economic Development Program, as proposed in the Economic Development Plan previously adopted, is hereby established.~~

~~2. That the Citizen Advisory Review Committee, as previously adopted and appointed is hereby continued, which Committee will consist of 5 members, including at least one individual with expertise in the field of business, finance or accounting. The Committee shall consist of citizens who are registered voters of the city, appointed by the Mayor and subject to approval of the city council. The Committee will review the functioning and progress of the economic development program and advise the city council with regard to the program. Except for the administrator of the Program, no member of the committee shall be an elected or appointed city~~

³⁰ Legal or Editorial Change: Ord. No. 2264. Economic development. Deleted as not of a general and permanent nature. Ordinances of this nature are saved from repeal generically in Code chapter 1.

~~official, an employee of the city, a participant in a decision making position regarding expenditures of program funds, or an official or employee of any qualifying business receiving financial assistance under the economic development program or of any financial institution participating directly in the economic development program.~~

~~3. That the city manager, or such successor as shall be appointed by the city council, is hereby designated as the city official responsible for administration of the Economic Development Program, and shall serve as an ex-officio member of the Citizens Advisory Review Committee.~~

~~4. The Citizens Advisory Review Committee will meet regularly as required to review the program and will report to the city council annually on its findings and suggestions at a public hearing called for that purpose.~~

~~5. That this Ordinance shall only be amended to conform to the provisions of any existing or future state or federal law, or when necessary to accomplish the purpose of the original enabling resolution. The Economic Development Program shall not be amended to as to fundamentally alter its basis structure and goals without submitting the proposed changes to a new vote of the registered voters.~~

~~6. That this Ordinance shall be published in pamphlet form and take effect as provided by law.~~

PASSED AND APPROVED July 14, 2009.

CITY OF LEXINGTON, NEBRASKA

BY: _____

John Fagot, Mayor

ATTEST: _____

city clerk

~~Ordinance No. 2268~~³¹

~~An Ordinance Creating Improvement District No. 09-01, Providing For Grading, Concrete Or Asphalt Paving, Curb And Gutter, And Drainage Therein; To Provide For An Effective Date And Publication In Pamphlet Form.~~

~~Be It Ordained By The Mayor And Council Of The City Of Lexington, Nebraska:~~

~~section 1. There is hereby created within the city of Lexington, an Improvement District to be known as "Improvement District No. 09-01."~~

~~section 2. The Improvement District shall consist of the following streets or portions of streets in the city of Lexington, Nebraska:~~

~~17th Street between Jefferson Street and Monroe Street.~~

~~section 3. There shall be constructed and provided on the above described streets, grading, paving and drainage which shall be in accordance with the plans, specifications, and estimates to be hereinafter adopted.~~

~~section 4. The streets provided in the above section will abut on curb and gutter where it exists, and will include curb and gutter where curb and gutter has not already been provided.~~

³¹ Legal or Editorial Change: Ord. No. 2268. Improvement District No. 1. Deleted as not of a general and permanent nature. Ordinances of this nature are saved from repeal in Code chapter 1.

~~section 5. That the cost of such grading, paving and drainage except street and alley intersections, shall be assessed against lots and tracts of land abutting upon and adjacent to said portion of the streets, specifically benefited thereby, in proportion to the benefit received, to be determined by the city council as the law provides.~~

~~section 6. This Ordinance shall be published in pamphlet form and take effect as provided by law.~~

~~PASSED AND APPROVED SEPTEMBER 22, 2009.~~

Mayor

ATTEST: _____

Deputy city clerk

~~NOTICE OF CREATION OF STREET IMPROVEMENT DISTRICT NO. 09-01~~

~~You are hereby notified that the Lexington city council on September 22, 2009, adopted Ordinance No. 2268, thereby creating Street Improvement District No. 09-01, which includes the following described real property:~~

~~The North 150 feet of Block 1 and Block 2, Abels Addition to the city of Lexington, Dawson County, Nebraska;~~

~~Lot 1, O'Donnell Third Addition to the city of Lexington, Dawson County, Nebraska;~~

~~The South 150 feet of the East 668.4 feet of the Southeast Quarter of section 32, Township 10 North, Range 21 West of the 6th P.M., Dawson County, Nebraska;~~

~~City Of Lexington, Nebraska~~

city clerk

~~publish 1 time per week for 3 weeks~~

~~Mail copy to all property owners included in the District; add Virginia M. Stevens, sole trustee of the Stevens Family Trust~~

~~Ordinance No. 2271³²~~

~~An Ordinance Creating Improvement District No. 09-02, Providing For Grading, Concrete Or Asphalt Paving, Curb And Gutter, And Drainage Therein; To Provide For An Effective Date And Publication In Pamphlet Form.~~

~~Be It Ordained By The Mayor And Council Of The City Of Lexington, Nebraska:~~

~~section 1. There is hereby created within the city of Lexington, an Improvement District to be known as "Improvement District No. 09-02."~~

~~section 2. The Improvement District shall consist of the following streets or portions of streets in the city of Lexington, Nebraska:~~

~~West Elm Street between Price Drive and South Ontario Street.~~

~~Price Drive between West Elm Street and West Spruce Street.~~

³² Legal or Editorial Change: Ord. No. 2271. Special Improvement District No. 2. Deleted as not of a general and permanent nature. Ordinances of this nature are saved from repeal generically in Code chapter 1.

~~West Spruce Street between Price Drive and South Adams Street.~~

~~South Ontario Street between West Elm Street and West Spruce Street.~~

~~section 3. There shall be constructed and provided on the above described streets, grading, paving and drainage which shall be in accordance with the plans, specifications, and estimates to be hereinafter adopted.~~

~~section 4. The streets provided in the above section will abut on curb and gutter where it exists, and will include curb and gutter where curb and gutter has not already been provided.~~

~~section 5. That the cost of such grading, paving and drainage except street and alley intersections, shall be assessed against lots and tracts of land abutting upon and adjacent to said portion of the streets, specifically benefited thereby, in proportion to the benefit received, to be determined by the city council as the law provides.~~

~~section 6. This Ordinance shall be published in pamphlet form and take effect as provided by law.~~

~~PASSED AND APPROVED _____, 2009.~~

~~_____

Mayor~~

~~ATTEST: _____~~

~~Deputy city clerk~~

~~NOTICE OF CREATION OF STREET IMPROVEMENT DISTRICT NO. 09-02~~

~~You are hereby notified that the Lexington city council on October 27, 2009, adopted Ordinance No. 2271, thereby creating Street Improvement District No. 09-02, which includes the following described real property:~~

~~Lots 1-51, Price's Addition to the city of Lexington, Dawson County, Nebraska;~~

~~All of Price's Second Addition to the city of Lexington, Dawson County, Nebraska;~~

~~All of Price's Third Addition to the city of Lexington, Dawson County, Nebraska;~~

~~The South one half of Block 10; The North one half of Block 9; The South one half and the West 150 feet of the North one half of Block 4;~~

~~The North one half of Block 8; and the North one half of Block 5, all in C.L. Ervin's Subdivision to the city of Lexington, Dawson County, Nebraska;~~

~~Lots 1 and 2, Greenlee Subdivision to the city of Lexington, Dawson County, Nebraska;~~

~~CITY OF LEXINGTON, NEBRASKA~~

~~_____

Deputy city clerk~~

~~publish 1 time per week for 3 weeks~~

~~Mail copy to all property owners included in the district.~~

Chapter 3
RESERVED

PROOFS

Chapter 4

ALCOHOLIC BEVERAGES*

*State law reference—Nebraska Liquor Control Act, R.R.S. 1943, § 53-101 et seq.

Sec. 4-1. Definitions.

Unless otherwise indicated, the terms and phrases used in this chapter are used in the sense as defined in R.R.S. 1943, § 53-103--53-103.42.

(Code 1970, § 5-101; Code 1990, § 3-1)

Sec. 4-2. Liability—Owner of licensed premises.

If the owner of the licensed premises or any person from whom the licensee derives the right to possession of such premises, or the agent of such owner or person, shall knowingly permit the licensee to use the licensed premises in violation of the terms of this chapter, the owner, or agent or other person shall be deemed guilty of a violation of this chapter to the same extent as the licensee and be subject to the same punishment.

(Code 1970, § 5-109; Code 1990, § 3-15)

Sec. 4-3. Same—Licensee for violations of others.

Every act or omission of whatsoever nature constituting a violation of any of the provisions of this chapter, by any officer, director, manager or other agent or employee of any licensee, if the act is committed or omission is made with the authorization, knowledge or approval of the licensee, shall be deemed and held to be the act of such employer or licensee, and the employer or licensee shall be punishable in the same manner as if the act or omission had been done or omitted by him personally.

(Code 1970, § 5-110; Code 1990, § 3-16)

Sec. 4-4. Right of entry of police officer to licensed premises.

All police officers of the city are hereby authorized to enter at any time upon any premises of any licensee under the Nebraska Liquor Control Act (R.R.S. 1943, § 53-101 et seq.) within the city to determine whether any of the provisions of such act or of this chapter, or any rules or regulations adopted by the city or by the state liquor control commission have been or are being violated, and at such time to examine sufficiently the premises of the licensee in connection therewith.

(Code 1970, § 5-105.05; Code 1990, § 3-17)

State law reference—Inspection of retailers, R.R.S. 1943, § 53-116.01.

Sec. 4-5. Liquor license application; retail licensing standards.

(a) The city council adopts the following licensing standards and criteria for consideration by the state liquor control commission of any applicant for a retail alcoholic liquor license, for the upgrading of a license to sell alcoholic liquor, or for the expansion or change in location of the premises, in accordance with R.R.S. 1943, § 53-132(3)(a):

- (1) The adequacy of existing law enforcement resources and services in the area.
- (2) Existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises, potential traffic and parking problems, and the proximity and availability of on-street and off-street parking.
- (3) Zoning restrictions.

- (4) Sanitation or sanitary conditions on or about the proposed licensed premises.
- (5) The existing population, and projected growth, both citywide and within the area to be served.
- (6) The existing liquor licenses, the class of such license, and the distance and times of travel to such licenses.
- (7) The nature and needs of the neighborhood or community where the proposed premises are located as well as its projected growth.
- (8) Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.
- (9) Whether the applicant can ensure that all alcoholic beverages, including beer and wine, will be handled by persons in accordance with R.R.S. 1943, § 53-168.06.
- (10) Whether the applicant has taken every precaution to protect against the possibility of shoplifting of alcoholic beverages, which must be displayed, kept, and sold from an area which is secured to the greatest extent possible.
- (11) Whether the applicant is fit, willing, and able to properly provide the service proposed in conformance with all provisions, requirements, needs and regulations provided for in the Nebraska Liquor Control Act (R.R.S. 1943, § 53-101 et seq.).
- (12) Whether the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to ensure that the licensee can conform to all the provisions, requirements, rules and regulations provided for in the Nebraska Liquor Control Act (R.R.S. 1943, § 53-101 et seq.).
- (13) The background information of the applicants established by information contained in the public records of the state liquor control commission.
- (14) Past compliance with state laws and liquor regulations and municipal ordinances and regulations.
- (15) If the application is for an on-sale license, whether it is adjunct to a legitimate food service operation as evidenced by percent of gross income allocated to food and liquor, and the type and extent of kitchen facilities.
- (16) Whether the application will provide an improvement to the neighborhood, a betterment to the city or a true increase in service to the public at large.
- (17) Proximity of and impact on schools, hospitals, libraries and public institutions.
- (18) Whether the type of entertainment to be offered, if any, will be appropriate and nondisruptive to the neighborhood where the premises are located and to the community at large.
- (19) Whether the application is for a business, and the sole purpose for which is the sale or dispensing of liquor, or when the sale or dispensing of liquor is a substantial integral part of the business, and not just incidental thereto.
- (20) Applications for Class "B," "C," and "D" licenses (as defined by R.R.S. 1943, § 53-124) must be for premises which are separate and distinct from any other business activity. Premises shall be deemed separate and distinct only when located in a building which is not adjacent to any other building, or when located within the same building, they shall be so separated by walls (floor to ceiling), that access cannot be had directly from the area of alcoholic liquor sales to any other business activity by means of doors or other openings; provided, nothing herein shall prevent the construction or maintenance of doors that are used by employees; further, any nonconforming premises in existence on

the effective date of the ordinance from which this chapter is derived may be continued for the life of the license. Such nonconforming premises may not be enlarged, extended or restored after damage during the interim. For the purposes of this section, the term "other business activity" means the sale or display of any food, produce, mercantile product, item or service other than keeping or selling of alcoholic liquors at retail for consumption off-premises and the sale or display of ice, drink mix, tobacco, cups or carbonated beverages.

- (21) Whether or not the applicant has ever forfeited bond to appear in court to answer charges of having committed a felony, or charges of having violated any law or ordinance enacted in the interest of good morals and decency, or has been convicted of violating or forfeiting bond to appear in court and answer charges for violating any law or ordinance relating to alcoholic liquors.
- (22) Other information and data that may reasonably be considered pertinent to the issuance of the license.

(b) ~~The preceding standards set forth in subsection (a) of this section~~ are not necessarily of equal value that can be computed in a mathematical formula. Rather, they are standards which can be weighed and cumulated positively and negatively. The burden of proof and persuasion shall be on the party filing the application. When applicable, the term "applicant" as used herein is synonymous with the term "licensee."

(Code 1990, § 3-18; Ord. No. 1808, § 1)

Sec. 4-6. Occupation tax on manufacturers and sellers. ³³

~~For the purpose of raising revenue within the city there is hereby levied upon the following described businesses conducted in the city, in connection with beverages and alcoholic liquors, the following designated annual occupation taxes:~~

Manufacturer of alcohol and spirits.....	\$2,000.00
Manufacturer of beer.....	500.00
Manufacturer of wine.....	500.00
Alcoholic liquor distributor (except beer).....	1,000.00
Beer distributor.....	500.00
Retailer of beer only, for consumption on the premises.....	100.00
Retailer of beer only, for off premises consumption (sale in the original package only)....	50.00
Retailer of alcoholic liquors for on premises and off premises consumption (sale in the original packages only).....	500.00
Retailer of alcoholic liquors, including beer, for consumption off the premises, (sale in the original packages only).....	300.00
Bottle clubs.....	400.00
Nonprofit corporations (H).....	200.00

³³ Legal or Editorial Change: Code § 3-14 Occupation Tax on Manufacturers and Sellers. Changed city clerk-treasurer to city treasurer. Per R.R.S. 1943, § 53-132(4), occupation taxes can no more than twice the state occupation tax for the same license. The taxes herein were at odds with the new statutory scheme found in R.R.S. 1943, §§ 53-124, 53-124.01, 53-124.02, 53-124.11 & 53-124.12. Therefore, revised to levy a tax of twice that levied by the state.

~~Retailer of beer and wine only for consumption on the premises (J).....100.00~~
~~Catering license or special designated permit, per event (up to \$50.00 per year)....10.00~~
 Nonbeverage user:
 Class 1.....10.00
 Class 2.....50.00
 Class 3.....100.00
 Class 4.....200.00
 Class 5.....500.00

~~For any other class of license not listed above, the occupation tax shall be two times the amount of fee paid to the state liquor control commission.~~

(a) For the purpose of raising revenue, there is hereby levied an occupation tax on the business of any person licensed under Nebraska Liquor Control Act (R.R.S. 1943, § 53-101 et seq.) in the amount of twice the amount of the license fee required to be paid under such act to obtain such license.

(b) For existing license holders, such occupation tax so levied shall be paid to the city ~~clerk-treasurer~~ treasurer for the benefit of the general fund of the city on or before May 1 of each year. For newly issued licenses, the tax shall be due immediately upon issuance of license under the Nebraska Liquor Control Act (R.R.S. 1943, § 53-101 et seq.), and such tax shall be prorated as follows:

Date License Issued	Amount of Tax (in percent)
May 1--July 31	100
August 1--October 31	75
November 1--January 31	50
February 1--April 30	25

(c) Such occupation tax so levied shall be paid to the city ~~clerk-treasurer~~ treasurer for the benefit of the general fund of the city immediately after the final issuance of license under the Nebraska Liquor Control Act (R.R.S. 1943, § 53-101 et seq.) for any such business.

(d) The city ~~clerk-treasurer~~ treasurer shall issue his receipt for such tax when paid, properly dated, specifying the person for whom paid and for what purpose. If such city ~~clerk-treasurer~~ treasurer is unable to collect such occupation tax when due, he shall immediately report such facts to the city attorney who shall then proceed, by civil suit in the name of the city, to collect the amount due. This remedy shall not be exclusive of any other right of action, but merely cumulative.

(Code 1970, § 5-111; Code 1990, § 3-14; Ord. No. 961, § 1; Ord. No. 1722, § 1; Ord. No. 1847, § 1)

State law reference—Occupation tax authorized, R.R.S. 1943, §§ 53-132(4), 53-124, 53-124.01, 53-124.02, 53-124.11, 53-124.12.

Sec. 4-7. Presence of underage persons where alcoholic beverages are consumed on the premises.

(a) It shall be unlawful for any person who owns or manages any premises licensed for sale of alcoholic beverages for consumption on the premises, to allow any person under the age of 21 years to be or remain within the licensed premises after 9:00 p.m. on any date, unless such underage person is accompanied by his parent or legal guardian.

(b) It shall be unlawful for any person under the age of 21 years to be within the licensed premises of a business licensed for sale of alcoholic beverages for consumption on the premises after 9:00 p.m. on any date, unless such underage person is accompanied by his parent or legal guardian.

(c) The provisions of this section shall not apply to employees of the licensed premises who are legally entitled to serve or dispense alcoholic beverages. The provisions of this section shall not apply to licensed premises whose primary business is providing food, lodging or a bowling alley.

(d) The owner or manager of the licensed premises shall post a notice stating that persons under the age of 21 are not allowed after 9:00 p.m.

(Ord. No. 2180, § 1, 3-9-2004)

State law reference—Sales to underage persons, R.R.S. 1943, § 53-180.

Sec. 4-8. Hours of sale.³⁴

(a) No alcoholic liquors shall be sold at retail or dispensed on the first day of the week, commonly called Sunday, or on Thanksgiving Day or Christmas, between the hours of 1:00 a.m. and 1:00 a.m. the day following; provided, that alcoholic liquor including beer and wine may be sold or dispensed for on- or off-premises consumption, on the first day of the week, commonly called Sunday, or on Thanksgiving Day or Christmas, between the hours of 12:00 noon and 1:00 a.m. the day following; and provided further, that when December 31 shall fall on a Sunday, alcoholic liquor may be sold or dispensed for on- or off-premises consumption between 12:00 noon and 1:00 a.m. the day following.

(b) No alcoholic liquors, including beer, shall be sold at retail or dispensed on secular days between 1:00 a.m. and 6:00 a.m.

(c) It shall be unlawful on property licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in possession or control of any person for purposes of consumption between the hours of 15 minutes after the closing hour applicable to the licensed premises and 6:00 a.m. on any day.

(d) 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.

(Code 1970, § 5-104; Code 1990, § 3-6; Ord. No. 770, § 1; Ord. No. 1127, § 1; Ord. No. 1142, § 1; Ord. No. 1326, § 1; Ord. No. 1335, § 1; Ord. No. 1681, § 1; Ord. No. 1774, § 1; Ord. No. 2037; Ord. No. 2114; Ord. No. 2122)

State law reference—Hours of sale and local alteration thereof, R.R.S. 1943, § 53-179.

Sec. 3-2 License to manufacture, sell, etc., required.³⁵

~~It shall be unlawful for any person to manufacture for sale, sell, keep for sale, to barter or exchange, under any pretext any alcoholic liquor within the city unless such person shall have in full force and effect a license therefor as provided by the Nebraska Liquor Control Act (R.R.S. 1943, § 53-101 et seq.).~~

~~(Code 1970, § 5-102; Code 1990, § 3-2)~~

³⁴ Legal or Editorial Change: Code § 3-6 Hours of Sale Generally. Conformed to R.R.S. 1943, § 53-179 by adding subsection (c) thereof.

³⁵ Legal or Editorial Change: Code § 3-2 License to Manufacture, Sell, etc., Required Deleted as obsolete. The city enforces the statutes, not this section.

~~Sec. 3-3 Display of license.³⁶~~

~~Every licensee under the Nebraska Liquor Control Act within the city shall cause his license to be framed and hung in plain public view in a conspicuous place on the licensed premises.~~

~~(Code 1970, § 5-105.02; Code 1990, § 3-3)~~

~~Sec. 3-4 Sale, etc., to minors and incapacitated persons.³⁷~~

~~No person shall, within the city, sell or give any alcoholic liquors to, or procure any such liquor for, or permit the sale or gift of any such liquor to, or the procuring of any such liquor for, any minor or any person who is mentally incompetent or any person who is physically or mentally incapacitated due to the consumption of such liquors.~~

~~(Code 1970, § 5-103; Code 1990, § 3-4)~~

~~Sec. 3-5 Misrepresentation of age by minors.³⁸~~

~~No minor shall, within the city, represent that he is of age for the purpose of asking for, purchasing or receiving any alcoholic liquors from any person.~~

~~(Code 1970, § 5-103; Code 1990, § 3-5)~~

~~Sec. 3-7 Entrances to licensed premises.³⁹~~

~~No person holding a license for the sale at retail of alcoholic liquors, including beer, shall sell within the city any such liquors or conduct any of the business for which such license is required in any room or premises not provided with a public entrance at the front thereof, opening upon a public street. No person holding such license shall permit the use of any other entrance except by the licensee, his family or employees, or for ingress and egress by other persons for the purpose of lawful labor or business other than the purchase at retail or the consumption of alcoholic liquors.~~

~~(Code 1970, § 5-105; Code 1990, § 3-7)~~

~~Sec. 3-8 Interiors of lighted premises.⁴⁰~~

~~In premises within the city upon which the sale of alcoholic liquor for consumption on the premises is licensed, other than restaurants, hotels or clubs, no screen, blind, curtain, partition, article or thing shall be permitted in the windows or upon the doors of such premises, and no booth, screen, wall, partition or other obstruction, nor any arrangements of lights shall be permitted in or about the interior of such licensed premises which shall prevent a full and clear view of the entire interior of such premises from the streets, roads or sidewalks. All rooms where alcoholic liquors are sold shall be continuously lighted during business hours by natural or artificial light.~~

~~(Code 1970, § 5-105.01; Code 1990, § 3-8)~~

³⁶ Legal or Editorial Change: Code § 3-3 Display of License. Deleted as obsolete. This is covered by R.R.S. 1943, § 53-148; the city enforces the statute, not the ordinance.

³⁷ Legal or Editorial Change: Code § 3-4 Sale, etc., to Minors and Incapacitated Persons. Deleted as obsolete. This is covered by R.R.S. 1943, § 53-180; the city enforces the statute, not the ordinance. (The ordinance is not completely consistent with the statute.)

³⁸ Legal or Editorial Change: Code § 3-5 Misrepresentation of Age by Minors. Deleted as obsolete. This is covered by R.R.S. 1943, § 53-180.01; the city enforces the statute, not the ordinance. (The ordinance is not completely consistent with the statute.)

³⁹ Legal or Editorial Change: Code § 3-7 Entrances to Licensed Premises. Deleted as obsolete.

⁴⁰ Legal or Editorial Change: Code § 3-8 Interiors of Lighted Premises. Deleted as obsolete.

~~Sec. 3-9 Entertainment on licensed premises.~~⁴¹

~~It shall be unlawful for any licensee under the Nebraska Liquor Control Act (R.R.S. 1943, § 53-101 et seq.) with a place of business within the city to permit, on premises where alcoholic liquors are consumed thereon, entertainments other than:~~

- ~~(a) Music from any vocal or instrumental source;~~
- ~~(b) Radio, television or other electronically produced information, music or entertainment;~~
- ~~(c) Performances by entertainers; provided, such entertainers shall not engage in any lewd, obscene, nude or otherwise objectionable behavior.~~

~~(Code 1970, § 5-105.03; Code 1990, § 3-9; Ord. No. 1326, § 2)~~

~~Sec. 3-10 Dancing on licensed premises.~~⁴²

~~It shall be lawful for patrons to dance on the premises of an on-sale licensee when such dancing is supervised by the licensee.~~

~~(Code 1970, § 5-105.04; Code 1990, § 3-10; Ord. No. 1326, § 3)~~

~~Sec. 3-11 Possession of liquor in other than original packages.~~⁴³

~~It shall be unlawful for any person to have in his possession within the city for sale at retail any alcoholic liquors contained in bottles, casks or other containers except the original package.~~

~~(Code 1970, § 5-106; Code 1990, § 3-11)~~

~~Sec. 3-12 Nonbeverage users.~~⁴⁴

~~No nonbeverage user shall, within the city, sell, give away or otherwise dispose of any alcohol, purchased under a license as such nonbeverage user, in any form fit for beverage purposes.~~

~~(Code 1970, § 5-107; Code 1990, § 3-12)~~

~~Sec. 3-13 Possession of liquor acquired from person other than licensee.~~⁴⁵

~~It shall be unlawful for any person to have possession of any alcoholic liquors within the city which shall have been acquired otherwise than from a licensee duly licensed to sell the same to such person under the provisions of the Nebraska Liquor Control Act; provided, that nothing herein contained shall prevent the possession of alcoholic liquor for the personal use of the possessor, his family and guests, nor prevent the making of wine, cider or other alcoholic liquor by a person from fruits, vegetables or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of a maker, his family and his guests; and provided further, that any drugstore employing a licensed pharmacist may possess and use alcoholic~~

⁴¹ Legal or Editorial Change: Code § 3-9 Entertainment on Licensed Premises Generally. Deleted as obsolete.

⁴² Legal or Editorial Change: Code § 3-10 Dancing on Licensed Premises. Deleted as obsolete.

⁴³ Legal or Editorial Change: Code § 3-11 Possession of Liquor in Other than Original Packages. Deleted as obsolete. This is covered by R.R.S. 1943, § 53-184; the city enforces the statute, not the ordinance. (The ordinance is not completely consistent with the statute.)

⁴⁴ Legal or Editorial Change: Code § 3-12 Nonbeverage Users Generally.. Deleted as obsolete. This is covered by R.R.S. 1943, § 53-187; the city enforces the statute, not the ordinance.

⁴⁵ Legal or Editorial Change: Code § 3-13 Possession of Liquor Acquired from Person Other than Licensee. Deleted as obsolete. This is covered by R.R.S. 1943, § 53-168.06; the city enforces the statute, not the ordinance. (The ordinance is not completely consistent with the statute.)

~~liquors in the compounding of prescriptions of duly licensed physicians; provided further, that the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite of religious ceremony conducted by such church shall not be prohibited by this chapter.~~

~~(Code 1970, § 5-108; Code 1990, § 3-13)~~

PROOFS

Chapter 5
RESERVED

PROOFS

Chapter 6
ANIMALS

ARTICLE I. IN GENERAL

Sec. 6-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

To run at large means to be off the premises of the owner and not under the control of the owner or other member of his immediate family.

(Code 1990, § 5-91)

~~Sec. 5-8 Animal warden.~~⁴⁶

~~An animal warden shall be appointed by the city manager. The animal warden is hereby given the responsibility, the power, the duty and authority to enforce the provisions of articles I and II of this chapter.~~

~~(Code 1990, § 5-8)~~

Sec. 6-2. Animals; capture impossible.

~~The municipal police~~ Persons authorized by the city shall have the authority to kill any animals showing vicious tendencies, or characteristics of rabies which make capture impossible due to the danger involved.

(Code 1990, § 5-10)

Sec. 6-3. Cruelty to animals prohibited.⁴⁷

It shall be unlawful for any person within the city, to cruelly, inhumanely or unnecessarily beat, injure, overload or to insufficiently shelter or feed, or to otherwise abuse any horse, mule or other animal or to cause, encourage or urge any dogs or other animals to fight within the city.

- (1) *Physical abuse.* It is unlawful for any person to willfully or maliciously ~~kill,~~ maim, disfigure, torture, beat with stick, chain, club or other object, mutilate, burn or scald with any substance, or cruelly set upon any animal except that reasonable force may be employed to drive off vicious or trespassing animals.
- (2) *Care and maintenance.* It is unlawful for any person to fail, refuse or neglect to provide any animal in his charge or custody, as owner or otherwise, with proper food, drink, shade, shelter or veterinary care as may be necessary for diseased or injured animals. Any animal habitually kept outside shall be provided with a structurally sound moistureproof and windproof shelter large enough to accommodate and keep the animal reasonably clean, dry and comfortable.

⁴⁶ Legal or Editorial Change: Code 1990, § 5-8 Animal Warden. Deleted as obsolete. The entire chapter is altered (as appropriate) so that it is enforced by persons authorized by the city.

⁴⁷ Legal or Editorial Change: Code 1990, § 5-7 Cruelty to Animals Prohibited. In subsection (1), deleted the killing prohibition as covered by R.R.S. 1943, § 28-1009. Deleted subsection (d) as a felony under R.R.S. 1943, § 28-1005. Added appropriate exemptions in R.R.S. 1943, § 28-1019.

(3) *Leaving animals in an unattended vehicle.* It is unlawful for any person to place or confine or allow such animal to be confined in such a manner that it must remain in a motor vehicle or trailer under such conditions or for such periods of time as may endanger the health or well-being of the animal due to heat, lack of food or water or any circumstances which might cause suffering, disability or death.

~~(d) *Dogs; fighters.* It shall be unlawful for any person, by agreement or otherwise, to set dogs to fighting, or by any gesture or word to encourage the same to fight.~~

(4) *Abandonment of animals.* It is unlawful for any person to abandon or dump any animal within the city.

a. *Owner's cost.* Any person violating this section, in addition to prosecution, shall bear full cost and expenses incurred by the city in the care, medical treatment, impoundment cost and disposal of said animals, including removal from a vehicle.

b. *Trapping of animals.* It shall be unlawful for any person to trap animals within the city limits unless given permission by the city manager.

c. *Animal's health.* If an animal's health is in immediate danger, the ~~animal warden or police officer~~ persons authorized by the city shall impound the animal and the animal shall be treated at the owner's expense.

d. *Animals for slaughter.* Within the area of the city-zoned for residential purposes, or upon property predominantly used for residential purposes, it shall be unlawful to slaughter any livestock animal, including but not limited to horses, cattle, hogs, sheep or goats, or to confine or impound any such animal prior to slaughter.

e. *Applicability.* This section shall not apply to animals impounded or confined for slaughter at a properly zoned commercial slaughterhouse. In addition this section shall not apply to the following:

1. Care or treatment of an animal or other conduct by a veterinarian or veterinary technician licensed under the Veterinary Medicine and Surgery Practice Act that occurs within the scope of his employment, that occurs while acting in his professional capacity, or that conforms to commonly accepted veterinary practices;

2. Commonly accepted care or treatment of a police animal by a law enforcement officer in the normal course of his duties;

3. Research activity carried on by any research facility currently meeting the standards of the federal Animal Welfare Act, 7 USC 2131 et seq., as such act existed on January 1, 2010;

4. Commonly accepted practices of hunting, fishing or trapping;

5. Humane killing of an animal by the owner or by his agent or a veterinarian upon the owner's request;

6. Use of reasonable force against an animal, other than a police animal, which is working, including killing, capture or restraint, if the animal is outside the owned or rented property of its owner or custodian and is injuring or posing an immediate threat to any person or other animal;

7. Commonly accepted animal training practices.

(Code 1990, § 5-7; Ord. No. 1992)

State law reference—Animal cruelty, R.R.S. 1943, § 28-1008 et seq.

Sec. 6-4. Poisoning, injuring, etc., prohibited.⁴⁸

It shall be unlawful for any person to willfully kill, poison or injure any dog, cat or other animal or place poison or poison food or poison articles at places with the intent of such person to poison any dog, cat or other animal. This section shall not apply to the following:

- (1) The municipal police acting within their power and duty.
- (2) Care or treatment of an animal or other conduct by a veterinarian or veterinary technician licensed under the Veterinary Medicine and Surgery Practice Act that occurs within the scope of his employment, that occurs while acting in his professional capacity, or that conforms to commonly accepted veterinary practices;
- (3) Research activity carried on by any research facility currently meeting the standards of the federal Animal Welfare Act, 7 USC 2131 et seq., as such act existed on January 1, 2010;
- (4) Commonly accepted practices of hunting, fishing, or trapping;
- (5) Humane killing of an animal by the owner or by his agent or a veterinarian upon the owner's request;
- (6) Use of reasonable force against an animal, other than a police animal, which is working, including killing, capture or restraint, if the animal is outside the owned or rented property of its owner or custodian and is injuring or posing an immediate threat to any person or other animal;
- (7) Killing of house or garden pests; and
- (8) Killing of an animal in self-defense.

(Code 1990, § 5-1; Ord. No. 2232, 6-11-2007)

Sec. 6-5. Unusual animals prohibited.

(a) It shall be unlawful for any person to own, harbor, or have under such person's control, care or custody any unusual animal within the city. This section shall not apply to such animals which are naturally present in outdoor public spaces.

(b) The term "unusual animal" means any poisonous or potentially dangerous animal not normally considered domesticated and includes animals prohibited by the city or federal requirements, and also:

- (1) Class Mammalia, Order Carnivora, Family Felidae (such as lions, tigers, jaguars, leopards and cougars) except commonly accepted domesticated cats and hybrids involving same; Family Canidae (such as wolves, coyotes and fox) except domesticated dogs and hybrids involving same; Family Mustelidae (such as weasels, martins, fishers, skunks, wolverines, opossums, mink, badgers and ferrets); Family Procyonidae (such as raccoon); Family Ursidae (such as bears); Order Primata (such as monkeys and chimpanzees); and Order Chiroptera (such as bats).
- (2) Poisonous reptiles, cobras and their allies (Elapidae, Hydrophiidae); vipers and their allies (Crotalidae, Viperidae); Boonslang and Kirtland's tree snake; and gila monster (Heleodermatidae).

(Code 1990, § 5-5; Ord. No. 2232, 6-11-2007; Ord. No. 2236, 7-24-2007)

⁴⁸ Legal or Editorial Change: Code 1990, § 5-1 Poisoning, injuring, etc., prohibited. Added various exemptions (some of which were found in R.R.S. 1943, § 28-1019). As worded one could not kill a mosquito or a rat.

Sec. 6-6. Procedure upon striking animal with vehicle.

It shall be unlawful for the operator of any vehicle after knowingly hitting an animal to leave the scene of the collision without notifying the police or the owner of such animal, if the owner of such animal can be ascertained.

(Code 1990, § 5-2; Ord. No. 2232, 6-11-2007)

Sec. 6-7. Keeping animals and beehives in proximity to dwellings.

It is hereby declared to be unlawful for any person, either by himself, his agents, servants or employees, to have under such person's control, care or custody, any beehive, livestock animal or fowl, including but not limited to horses, cattle, hogs, sheep, goats, poultry, chickens, turkeys, ducks, geese or other like fowl, at any place within the city which is within 600 feet of any dwelling house in the city. This section shall not apply to fowl kept for display in a public park.

(Code 1990, § 5-6; Ord. No. 1992; Ord. No. 2082; Ord. No. 2232, 6-11-2007)

Sec. 6-8. Animals running at large.

It shall be unlawful for any person to permit or cause to run at large, within the corporate limits of the city, any cattle, hogs, horses, mules, sheep, goats, dogs, cats or any other animal. Any animal running loose shall be impounded and disposed of as provided herein.

(Code 1990, § 5-3; Ord. No. 2232, 6-11-2007)

Sec. 6-9. Fowl running at large.

The running at large within the city, except in enclosed places on private property, of poultry, chickens, turkeys, ducks, geese or other like fowl, is hereby declared to be a common nuisance and is hereby prohibited; and it is hereby declared and shall hereafter be unlawful for any person to permit the same to run at large.

(Code 1990, § 5-4; Ord. No. 2232, 6-11-2007)

Secs. 6-10--6-36. Reserved.**ARTICLE II. DOGS AND CATS***

*State law reference—General authority relative to dogs and cats, R.R.S. 1943, § 16-206.

DIVISION 1. GENERALLY**Sec. 6-37. Definition.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Owner includes a harborer of dogs or cats and the parents of any minor who owns or harbors a cat or dog.

(Code 1990, § 5-12)

Sec. 6-38. Right of entry of enforcement officers.

For the purpose of discharging the duties imposed by this article, and to enforce its provisions, the chief of police, any police officer and ~~the animal warden~~ others authorized by the city are empowered to enter upon any premises upon which a dog or cat is kept or harbored and to demand the exhibition by the owner of such dog or cat.

(Code 1990, § 5-27)

Sec. 6-39. Citations for running at large violations.

When dogs or cats are found running at large and their ownership is known to the chief of police, any police officer or ~~the animal warden~~ others authorized by the city, such dogs or cats need not be impounded; but the chief of police, any police officer or ~~the animal warden~~ others authorized by the city may cite the owners of such dogs or cats to appear in court to answer charges of violation of this article.

(Code 1990, § 5-28)

Sec. 6-40. Liability of owner for damages.

The owner of any dog or cat shall be liable in damages for any injuries, nuisances or damages to property caused by any dog or cat within the city, which injuries, nuisances or damages were not the result of the negligence or wrongdoing of the person damaged.

(Code 1990, § 5-26)

Sec. 6-41. Dangerous dogs.

(a) No person shall own, harbor or care for a dangerous dog within the city. Further, it shall be unlawful to own, keep or harbor any vicious dog or guard dog in or upon any commercial or industrial property or place of business unless each entrance is clearly marked with signs of warning of such dog. As used in this section, the term “dangerous dog” includes the following:

- (1) Any animal with a propensity, tendency or disposition to attack, to cause injury or damage or otherwise endanger the safety of human beings or domestic animals;
- (2) Any animal which attacks a human being one time without provocation;
- (3) Any animal which attacks a domestic animal on two or more occasions without provocation, while the dog was off the owner’s property; or
- (4) Any dog which has been used primarily or in part for the purpose of dogfighting, or is a dog trained for dogfighting.

(b) The keeping, maintaining, owning, or harboring of a dangerous dog within the city is hereby declared a nuisance as being against the public health, safety and welfare.

(c) Whenever a nuisance exists as ~~defined in the foregoing~~ set forth in section 6-40, the city may proceed by a suit in a court of competent jurisdiction to enjoin and abate the same in a manner provided by law. In any criminal prosecution, the court, in addition to any penalty imposed, may enter an order of abatement as part of the judgment of that case. As a part of the order of abatement, the court may order the police department to have the dog euthanized.

(Code 1990, § 5-19)

State law reference—Dangerous dogs, R.R.S. 1943, § 54-617 et seq.

Sec. 6-42. Reporting of dog bites.

Any medical health care provider, including hospital, medical clinic, physician, veterinarian, veterinary clinic, ambulance or rescue agency, which provides treatment or emergency care for an injury to a human being or domestic animal, when the injury appears to have been inflicted by dog bite, is required to report to the city police department, by telephone, immediately upon becoming aware of such injury.

(Code 1990, § 5-20)

Sec. 6-43. Number of dogs and cats limited.

No household within the city shall harbor more than four dogs and four cats over six months of age. The term "household" includes all persons living together, whether related or otherwise, in a single-family dwelling unit.

(Code 1990, § 5-13)

Sec. 6-44. Control of female dogs and cats.

An owner of any female dog or cat shall keep such dog or cat enclosed within a building during any mating season of such dog or cat. Such female dog or cat found not enclosed shall be impounded as provided in section 6-91.

(Code 1990, § 5-21)

Secs. 6-45--6-61. Reserved.

DIVISION 2. RABIES CONTROL*

*State law reference—Rabies control, R.R.S. 1943, § 71-4401 et seq.

Sec. 6-62. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Vaccination for rabies means the inoculation of an animal with a rabies vaccine licensed by the United States Department of Agriculture. Such vaccination must be performed by a duly licensed veterinarian.

(Code 1990, § 5-14)

Sec. 6-63. Owning or keeping unimmunized dog or cat prohibited.

(a) Every person who shall own, keep or harbor a dog or cat more than four months of age within the city, shall have such animal vaccinated with an inactivated virus anti-rabies vaccine by a licensed veterinarian. To be valid, such vaccination shall be current as of the date on which such animal is kept or maintained. For every dog or cat vaccinated for rabies, the veterinarian shall issue a tag sufficient to identify the name of the veterinarian. A record of such tag and vaccination will be kept by the veterinarian, sufficient to identify the animal and owner thereof. A copy of such record shall be provided to the city police department, within 30 days of the date of vaccination, to be used solely for the purpose of identification of animals.

(b) Any person who shall own, keep or harbor a dog or cat which is not displaying a current vaccination tag shall be issued a citation for violation of this division.

(Code 1990, § 5-15; Ord. No. 2136)

Sec. 6-64. Animals; rabies suspected.

Any dog or cat suspected of being afflicted with rabies, or any dog or cat not vaccinated in accordance with the provisions of this division which has bitten any person and caused an abrasion of the skin, shall be seized and impounded for a period of not less than ten days. If upon examination by a veterinarian, the dog or cat has no clinical signs of rabies at the end of such impoundment, it may be released to the owner, or, in the case of an unlicensed animal, it shall be disposed of in accordance with the provisions herein. If no signs of rabies are observed, the animal may be released from confinement.

(Code 1990, § 5-16)

Sec. 6-65. Animals; cost of confinement.

If the ownership of any animal which has bitten a person can be established, the owner shall be liable for the cost of confining it for such length of time as is necessary to establish whether the animal is rabid. If the ownership of such animal cannot be determined, the cost of confining an animal that is only suspected of having rabies shall be paid by the city.

(Code 1990, § 5-17)

Sec. 6-66. Rabies quarantine of dogs and cats.

(a) Whenever it becomes necessary to safeguard the public from the dangers of hydrophobia, the mayor, if he deems it necessary, shall issue a proclamation ordering every person owning or harboring a dog or cat to confine it securely on his premises unless such dog or cat shall have a muzzle of sufficient strength to prevent biting a person. Any unmuzzled dog or cat running at large during the time of the proclamation shall be seized and impounded, unless noticeably infected by rabies. All dogs and cats so noticeably infected with rabies, and displaying vicious propensities shall be disposed of by the police without notice to the owner. Dogs or cats impounded during the first 72 hours of such proclamation shall, if claimed within five days, be released to the owner, unless infected with rabies, upon payment of impounding charges and any medical fees as provided in section 6-93. If not claimed after such period, such dog or cat may be summarily disposed of under direction of the police.

(b) During the period of such proclamation, the provisions as to notice in section 6-92 shall be of no force and effect and will be considered waived by owners of any dogs or cats impounded.

(Code 1990, § 5-18)

Secs. 6-67--6-90. Reserved.

DIVISION 3. IMPOUNDMENT

Sec. 6-91. When required.

All dogs and cats running at large, all stray dogs and cats, all dogs and cats without current vaccination tags, all dangerous dogs and all other dogs and cats for which impoundment is herein provided in this division shall be impounded by ~~the animal warden, the police of the city or by an employee of the city employed for that purpose~~ persons authorized by the city. The owner of any dog or cat shall, on demand, surrender to ~~the animal warden or the police of the city~~ persons authorized by the city, any dog or cat required to be impounded under the provisions of this division.

(Code 1990, § 5-22)

Sec. 6-92. Providing for pound; notification of owner of impounded dog or cat.

The city manager shall provide by contract or otherwise for adequate shelter and food for any dog or cat impounded under the provisions of this Code or other ordinances of the city. The city manager shall give notice of such impoundment to the known owner of such impounded dog or cat.

(Code 1990, § 5-23)

Sec. 6-93. Reclaiming by owner.⁴⁹

~~Within three days after notice is given as provided in section 5-23, the owner of any such impounded animal may claim such animal by paying: an impoundment fee of \$15.00, plus the cost~~

⁴⁹ Legal or Editorial Change: Code 1990, § 5-24 Same—Reclaiming by Owner. Deleted first paragraph as not needed. The city does not house impounded dogs.

~~of any medical care or boarding costs expended by the city for such impounded animal. Fees for impoundment shall be in addition to prosecution for violation of any of the provisions of this chapter. No animal shall be released from impoundment unless such animal has been currently vaccinated with anti-rabies vaccine as required by section 6-63.~~

(Code 1990, § 5-24; Ord. No. 2010)

Sec. 6-94. Disposition of unclaimed dogs and cats.

Any impound dog or cat not reclaimed as provided by section 6-93 shall become the property of the city, and the city shall have the power to give away such dog or cat to a reputable person for adoption; to sell or give the dog or cat for use for research purposes for preventing disease or betterment of mankind; or to cause such dog or cat to be humanely destroyed. The owner of such animal shall be liable to the city for any costs incurred for impoundment and destruction of such animal.

(Code 1990, § 5-25)

PROOFS

Chapter 7
RESERVED

PROOFS

Chapter 8
ELECTIONS*

*State law reference—Elections, R.R.S. 1943, § 32-101 et seq.

Sec. 8-1. Wards.

The city is divided into five wards, as follows:

- (1) The first ward shall include all that part of the city lying north of the centerline of the Union Pacific Railroad right-of-way, east of the east line of Washington Street and south of 13th Street.
- (2) The second ward shall include all that part of the city lying north of 13th Street and east of Adams Street.
- (3) The third ward shall include all that part of the city lying west of Adams Street and north of the centerline of the Union Pacific Railroad right-of-way.
- (4) The fourth ward shall include all that part of the city lying north of the centerline of the Union Pacific Railroad right-of-way, west of Washington Street and east of Adams Street, and south of 13th Street.
- (5) The fifth ward shall include that part of the city lying south of the centerline of the Union Pacific Railroad right-of-way.

(Code 1970, § 1-501; Code 1990, § 7-1; Ord. No. 1225, § 1)

State law reference—Wards R.R.S. 1943, §§ 16-104, 16-105.

Sec. 8-2. Voting districts.

The number and boundaries of voting districts shall be the same as for the wards shown in section 8-1.

(Code 1970, § 1-402; Code 1990, § 7-2)

State law reference—Voting districts, R.R.S. 1943, § 32-103.

~~Sec. 7-4 Municipal elections.~~ ⁵⁰

~~The city shall hold its municipal election for the year 1980 and all succeeding municipal elections on the date of the statewide primary election for the state. Such elections shall be held in accordance with the provisions of R.R.S. 1943, ch. 32.~~

~~(Code 1990, Ord. No. 1656, § 1)~~

⁵⁰ Legal or Editorial Change: Code 1990, § 7-4 Municipal Elections. Deleted as covered by and inconsistent with R.R.S. 1943, §§ 32-536, 32-538.

Chapter 9
RESERVED

PROOFS

Chapter 10

EMERGENCY MANAGEMENT AND EMERGENCY SERVICES**ARTICLE I. IN GENERAL**

Secs. 10-1--10-18. Reserved.

ARTICLE II. STATES OF EMERGENCY*

***State law reference**—Emergency Management Act, R.R.S. 1943, § 81-829.36 et seq.; local emergency management functions, R.R.S. 1943, §§ 81-829.46, 81-829.50.

Sec. 10-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

State of emergency means any unforeseen combination of circumstances calling for immediate action, as may be determined by the city manager, until such determination can be approved and ratified or rejected by the next meeting of the city council.

(Code 1990, § 8A-1; Ord. No. 1242, § 2)

Sec. 10-20. Rules and regulations generally; assistance from certain organizations.

The city manager is hereby authorized and directed, whenever a state of emergency exists in the city, to proclaim and publish rules and regulations which shall have the full force and effect of law, for the conduct and cooperation of persons, firms, corporations and agencies. Such rules and regulations may affect the use of highways, streets, alleys and other public grounds, health care, police regulations, fire protection and the general welfare and safety of the citizens of the city. The city manager may also request assistance from all organizations in the event of an emergency situation whether the organization is local, state or national.

(Code 1990, § 8A-2; Ord. No. 1242, § 3)

Sec. 10-21. City volunteer emergency committee.

The city manager is hereby authorized and directed, to act as, or appoint or recommend for appointment a city volunteer emergency committee. The committee shall direct the preparation and execution of emergency plans and volunteer emergency services in cooperation with the city manager, the city council and other local, state or national organizations interested in the welfare and safety of the citizens of the city.

(Code 1990, § 8A-3; Ord. No. 1242, § 4)

Sec. 10-22. Refusal or neglect to obey rules and regulations prohibited.

It shall be unlawful to refuse or neglect to obey any such rules and regulations as proclaimed by the city manager, or to refuse or to neglect to obey any order of the city manager in connection therewith, or any call made upon any person, firm, corporation or agency for aid in enforcing the same. Any person found to so neglect or refuse to obey such a rule or regulation shall be guilty of a misdemeanor.

(Code 1990, § 8A-4; Ord. No. 1242, § 5)

Sec. 10-23. Persons not liable for damages.

This article shall constitute an exercise of the city's governmental functions for the protection of the public peace, health and safety. Neither the city nor any person, firm, corporation or agency

responding to the regulations lawfully proclaimed and published by the city manager, or called upon to assist in enforcing the same shall be liable in a suit for damages in connection therewith.

(Code 1990, § 8A-5; Ord. No. 1242, § 6)

PROOFS

Chapter 11
RESERVED

PROOFS

Chapter 12
ENVIRONMENT*

*State law reference—Environmental protection, R.R.S. 1943, § 81-1501 et seq.

ARTICLE I. IN GENERAL

Secs. 12-1--12-18. Reserved.

ARTICLE II. STORMWATER MANAGEMENT

DIVISION 1. GENERALLY

Sec. 12-19. Definitions.⁵¹

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: For the purposes of this ordinance, the following shall mean:

Authorized enforcement agency means the city and its employees or third parties designated to enforce this article.

Best management practices means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters or stormwater conveyance systems. The term "best management practices" also includes treatment practices, operating procedures and practices to control site runoff, spillage, leaks, sludge disposal, water disposal or drainage from raw materials storage.

Building phase of development means the period of construction activity when a portion of a common plan of development or sale requires a building permit.

Clean water act means the federal Water Pollution Control Act (33 USC 1251 et seq.), and any subsequent amendments thereto.

Clearing means any activity that removes the vegetative surface cover.

Common plan of development or sale means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan which may include, but is not limited to, an announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

Construction activity means activities subject to National Pollutant Discharge Elimination System construction permits. The term "construction activity" includes, but is not limited to, clearing, grubbing, grading, excavating, demolition and other land disturbing actions.

Construction site means any location where construction activity occurs.

⁵¹ Legal or Editorial Change: Ord. No. 2291, § 1(15-2. Definitions.). Deleted as covered by code chapter 1.

Contractor means any person performing or managing construction work at a construction site, including, but not limited to, any construction manager, general contractor or subcontractor, and any person engaged in any one or more of the following: earthwork, pipe work, paving, building, plumbing, mechanical, electrical, landscaping or material supply.

Disturbed area.

- (1) The term "disturbed area" means area of the land's surface disturbed by any work or activity upon the property by means including but not limited to grading, excavating, stockpiling soil, fill, or other materials, clearing, vegetation removal, removal or deposit of any rock, soil, or other materials, or other activities which expose soil.
- (2) The term "disturbed area" does not include the tillage of land that is zoned for agricultural use.

Drainage plan means a schematic of the proposed area and how it connects to city's storm sewer system, including proposed location, grade, direction of flow, elevations, drainage structures and drainage areas.

Earthwork means the disturbance of soil on a site associated with construction activities.

Erosion means the detachment and movement of soil or rock fragments by water, wind, ice or gravity.

Erosion and sediment control plan means a plan that indicates the specific measures and sequencing to be used for controlling sediment and erosion on a development site during construction activity according to locally approved standards, specification and guidance.

Erosion control means measures that prevent soil erosion to the maximum extent practicable.

Final stabilization means when all soil disturbing activities at the site have been completed, and vegetative cover has been established with a uniform density of at least 70 percent of predisturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. For purposes of this article, establishment of a vegetative cover capable of providing erosion control equivalent to preexisting conditions at the site is considered final stabilization.

Financial security means a surety bond, performance bond, maintenance bond, irrevocable letter of credit or similar guarantees provided to the city to ensure that a construction stormwater pollution prevention plan is carried out in compliance with requirements of this article.

Hazardous materials means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit connections.

- (1) The term "illicit connections" means:
 - a. Any drain or conveyance, whether on the surface or subsurface, which allows any illicit discharge to enter the storm drainage system including, but not limited to, any conveyance which allows any nonstormwater discharge including sewage, process wastewater, or wash water to enter the storm drainage system.
 - b. Any connections to the storm drainage system from indoor drains and sinks regardless of whether said drain or connection has been previously allowed, permitted or approved by an authorized enforcement agency.

c. Any drain or conveyance connected from a commercial or industrial land use to the storm drainage system which has not been documented in plans, maps or equivalent records, and approved by an authorized enforcement agency.

(2) The term "illicit connections" does not include connections that have been formerly approved or connections that are allowed under section 12-85.

Illicit discharge means any direct or indirect nonstormwater discharge to the storm drainage system unless exempted by this article.

Industrial activity means activities subject to National Pollutant Discharge Elimination System industrial permits.

Municipal separate storm sewer system means publicly owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, catchbasins, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and humanmade or altered drainage ditches/channels, reservoirs and other drainage structures.

National Pollutant Discharge Elimination System stormwater discharge permit means a permit issued by Environmental Protection Agency (or by the state authority delegated to it) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group or general areawide basis.

NDEQ means the Nebraska Department of Environmental Quality.

NOI means the notice of intent.

Nonstormwater discharge means any discharge to the storm drainage system that is not composed entirely of stormwater.

NOT means the notice of termination.

Operator means the individual who has day-to-day supervision and control of activities occurring at the construction site. This can be the owner, the developer, the general contractor or the agent of one of these parties. It is anticipated that at different phases of a construction project, different types of parties will satisfy the definition of the term "operator" and the pertinent portions of any applicable permit authorization from the state will be transferred as the roles change.

Outfall means the point of discharge to any watercourse from a public or private stormwater drainage system.

Owner means the person who owns a facility, development, part of a facility or land.

Permittee means the applicant in whose name a valid permit is issued.

~~*Person* means any individual, association, organization, partnership, firm, corporation or other entity recognized by law.~~

Phasing means clearing a parcel of land in distinct phases, with the stabilization of each phase before the clearing of the next.

Pollutant means anything which causes or contributes to pollution. The term "pollutant" includes, but is not limited to:

- (1) Paints, varnishes, and solvents;
- (2) Oil and other automotive fluids;
- (3) Nonhazardous liquid and solid wastes;
- (4) Yard wastes;

- (5) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution;
- (6) Floatables;
- (7) Pesticides, herbicides, and fertilizers;
- (8) Hazardous substances and wastes;
- (9) Sewage, fecal coliform and pathogens;
- (10) Dissolved and particulate metals;
- (11) Animal wastes;
- (12) Wastes and residues that result from constructing a building or structure; and
- (13) Noxious or offensive matter of any kind.

Post-construction means the general time period referenced in perpetuity from the approval for final acceptance of the construction phase of any construction activity.

Premises means any building, lot, parcel of land or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

Receiving water means any water of the state, including any and all surface waters that are contained in, or flow in or through the state, all watercourses, even if they are usually dry, irrigation ditches that receive municipal stormwater and storm sewer systems owned by other entities.

Sediment means soil or mud that has been disturbed or eroded and transported naturally by water, wind or gravity or mechanically by any person.

Sediment control means measures that prevent eroded sediment from leaving the site.

Site means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Site plan means a plan or set of plans showing the details of any land disturbance activity of a site including but not limited to the construction of structures, open and enclosed drainage facilities, stormwater management facilities, parking lots, driveways, curbs, pavements, sidewalks, bike paths, recreational facilities, ground covers, plantings and landscaping.

Spill means a release of solid or liquid material, which may cause pollution of the municipal separate storm sewer system or waters of the state.

Stabilization means the use of practices that prevent exposed soil from eroding.

Storm drainage system means publicly owned facilities by which stormwater is collected and/or conveyed, including, but not limited to: any roads with drainage systems; municipal streets; gutters; curbs; inlets; piped storm drains; pumping facilities; retention and detention basins; natural and humanmade or altered drainage channels; reservoirs; and other drainage structures. The storm drainage system in the city is a municipal separate storm sewer system as defined by applicable federal regulations.

Stormwater means any surface flow, runoff or drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater pollution prevention plan means a document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems and/or receiving waters, to the maximum extent practicable.

Subdivision development includes activities associated with the platting of any parcel of land into two or more lots and all construction activity taking place thereon.

Utility agency/contractor means private utility companies, public utility departments or other utility providers; contractors working for such private utility companies, public-entity utility departments or other utility providers engaged in the construction or maintenance of utility lines and services, including water, sanitary sewer, storm sewer, electric, gas, telephone, television and communication services.

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from any premises or facility. The term "wastewater" includes sewage that is treated at the city's wastewater treatment plant.

Waters of the state means any and all surface and subsurface waters that are contained in, or flow in or through the state. The term "waters of the state" includes all watercourses, even if they are usually dry.

(Ord. No. 2291, § 1(15-2), 2-22-2011)

Sec. 12-20. Purpose/intent.

The purpose of this article is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of nonstormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. In addition, to control land disturbances, or eliminate soil erosion and sedimentation within the city. This article establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System permit process. The objectives of this article are to:

- (1) Regulate the contribution of pollutants to the municipal separate storm sewer system by discharges by any person.
- (2) Prohibit illicit connections and discharges to the municipal separate storm sewer system.
- (3) Prevent nonstormwater discharges generated as a result of spills, inappropriate dumping or disposal to the city separate storm drainage system.
- (4) Reduce pollutants in stormwater discharges from construction activity by guiding, regulating and controlling the design, construction, use and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land.
- (5) Require the construction of locally approved, permanent stormwater runoff controls to protect water quality and maintain nonerosive hydrologic conditions downstream of construction activity and development.
- (6) Require responsibility for and long-term maintenance of structural stormwater control facilities and nonstructural stormwater management.
- (7) Establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this article.

(Ord. No. 2291, § 1(15-1), 2-22-2011)

Sec. 12-21. Applicability.

This article shall apply to all water entering the storm drainage system generated on any developed and undeveloped lands unless explicitly exempted.

(Ord. No. 2291, § 1(15-3), 2-22-2011)

Sec. 15-5. Severability.⁵²

~~The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.~~

~~(Ord. No. 2291, § 1(15-5), 2-22-2011)~~

Sec. 12-22. Ultimate responsibility.

The standards set forth herein and promulgated pursuant to this article are minimum standards. Compliance with this article does not act as a waiver or defense to any person for contamination, pollution or unauthorized discharge of pollutants. Ultimate responsibility for prohibited acts rests with persons who own or are in possession or control of premises from which the discharge of contaminants or pollutants emanates.

(Ord. No. 2291, § 1(15-6), 2-22-2011)

Secs. 12-23--12-47. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Sec. 12-48. Responsibility for administration.⁵³

The city shall administer, implement and enforce the provisions of this article. Any powers granted or duties imposed upon the city may be delegated by the ~~mayor or city administrator~~ city manager to persons or entities acting in the beneficial interest of or in the employ of the city.

(Ord. No. 2291, § 1(15-4), 2-22-2011)

Sec. 12-49. Notice of violation.

(a) Whenever the city finds that a person has violated or failed to meet a requirement of this article, the city's designee may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analyses and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) The violating discharges, practices or operations shall cease and desist;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of costs to cover administrative and remediation expenses;
- (6) The implementation of source control, treatment and prevention practices.

(b) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator and may be assessed against the real estate or collected by civil action.

⁵² Legal or Editorial Change: Ord. No. 2291, § 1(15-5. Severability.). Deleted as covered by Code chapter 1.

⁵³ Legal or Editorial Change: Ord. No. 2291, § 1(15-4. Responsibility for administration.). Changed mayor or city administrator to city manager.

(Ord. No. 2291, § 1(15-18), 2-22-2011)

Sec. 12-50. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination. The notice of appeal must be received within ten days from the date of the notice of violation. Hearing on the appeal before the director of public works or his designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the director shall be final.

(Ord. No. 2291, § 1(15-19), 2-22-2011)

Sec. 12-51. Enforcement measures.

If the violation has not been corrected as set forth in the notice of violation, or, in the event of an appeal, within 25 days of the original deadline if the director upholds the notice of violation, then representatives of the city may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the city's designees or agents to enter upon the premises for the purposes set forth in this section above.

(Ord. No. 2291, § 1(15-20), 2-22-2011)

Sec. 12-52. Cost of abatement of the violation.

After abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. If the amount due is not paid within 30 days, the city may sue to recover the costs through a civil action or levy and assess the costs against the real estate in the manner of special assessments.

(Ord. No. 2291, § 1(15-21), 2-22-2011)

~~Sec. 15-22. Injunctive relief.~~⁵⁴

~~It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. If a person has violated or continues to violate the provisions of this ordinance, the city may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation. Injunctive relief shall be in addition to any other remedy available under this ordinance or any other federal or state law.~~

~~(Ord. No. 2291, § 1(15-22), 2-22-2011)~~

Sec. 12-53. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety and welfare, and is declared and deemed a nuisance, and may be abated or restored at the violator's expense, in the same manner as other nuisances under this Code.

(Ord. No. 2291, § 1(15-23), 2-22-2011)

Sec. 12-54. Criminal prosecution.

Any person violating any provision of this article shall, upon conviction, be guilty of an infraction. Each day shall constitute a separate offense and be punishable by a fine of \$100.00. Criminal fines shall be in addition to any civil remedies available under this Code.

⁵⁴ Legal or Editorial Change: Ord. No. 2291, § 1(15-22. Injunctive relief.). Deleted as covered by Code chapter 1.

(Ord. No. 2291, § 1(15-24), 2-22-2011)

Sec. 12-55. Remedies not exclusive.

The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

(Ord. No. 2291, § 1(15-25), 2-22-2011)

Secs. 12-56--12-83. Reserved.

DIVISION 3. STANDARDS AND REQUIREMENTS

Sec. 12-84. Illicit discharge.

No person shall discharge or cause to be discharged into the municipal storm drainage system or watercourses any materials including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards. The commencement, conduct or continuance of any illicit discharge to the storm drainage system is prohibited except as described and allowed under section 12-85.

(Ord. No. 2291, § 1(15-7), 2-22-2011)

Sec. 12-85. Allowed discharge.

The following discharges are exempt from discharge prohibitions established by this article:

- (1) Waterline flushing or other potable water sources;
- (2) Landscape irrigation or lawn watering;
- (3) Diverted stream flows;
- (4) Rising groundwater;
- (5) Groundwater infiltration to storm drains;
- (6) Uncontaminated pumped groundwater;
- (7) Foundation or footing drains (not including active groundwater dewatering systems);
- (8) Crawl space pumps;
- (9) Air conditioning condensation;
- (10) Springs;
- (11) Noncommercial washing of vehicles;
- (12) Natural riparian habitat or wetland flows;
- (13) Swimming pools (if dechlorinated, typically less than one ppm chlorine);
- (14) Firefighting activities; and
- (15) Any other water source not containing pollutants.
- (16) Discharges determined by the city to be necessary to protect public health and safety.
- (17) Dye testing if the city is notified in writing prior to the time of the test.
- (18) Any nonstormwater discharge permitted under a National Pollutant Discharge Elimination System permit, waiver or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver or order, and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drainage system.

(Ord. No. 2291, § 1(15-8), 2-22-2011)

Sec. 12-86. Illicit connection.

The construction, use, maintenance or continued existence of illicit connections to the storm drainage system is prohibited.

- (1) This prohibition expressly includes, without limitation, illicit connections made in the past regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (2) A person is considered to be in violation of this article if the person connects a line conveying sewage or pollutants to the municipal separate storm sewer system or allows such a connection to continue.

(Ord. No. 2291, § 1(15-9), 2-22-2011)

Sec. 12-87. Suspension of storm drainage system access.

(a) *Due to illicit discharges in emergency situations.* The city may, without prior notice, suspend storm drainage system discharge access to a person when the city deems it necessary to prevent an actual or threatened discharge which presents or may present imminent and substantial danger to: the environment; to the health or welfare of persons or to the storm drainage system; or to waters of the United States of America. If the person fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to persons, the storm drainage system, or the waters of the United States of America.

(b) *Due to the detection of illicit discharge.* Any person discharging to the storm drainage system in violation of this article may have their storm drainage system access terminated if such termination would abate or reduce an illicit discharge. The city will notify a person of the proposed termination of storm drainage system access by personal delivery or by United States mail. The person may request a hearing before the city director of public works by delivering such request in writing to the city clerk. The person is not entitled to a stay of the termination pending any such hearing.

(c) *Offense.* A person commits an offense if the person accesses or attempts to access the storm drainage system from premises terminated pursuant to this section, without the prior approval of the city.

(Ord. No. 2291, § 1(15-10), 2-22-2011)

Sec. 12-88. Construction.

(a) *General requirements for construction activities.*

- (1) Except for construction activity relating to the building phase of development, the city shall require proof of coverage by a NDEQ general permit authorization for stormwater discharges from construction sites before providing approval for construction activity and land developments requiring, including, but not limited to, site plan applications, subdivision applications, building applications, and right-of-way applications from the city, unless exempt pursuant to this subsection (a)(1). These provisions apply to all portions of any plan for land disturbing activity which would cause the disturbance of at least one acre of soil even though multiple, separate and distinct land development activities within the overall development may take place at different times on different schedules. The following activities are exempt from this article:
 - a. Any emergency activity that is necessary for the immediate protection of life, property or natural resources; and

- b. Construction activity that provides maintenance and repairs performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.
- (2) The city shall be invited to the preconstruction meeting to review the installation of all temporary erosion and sediment control BMPs included on the approved erosion and sediment control plan at least two business days before any construction activities are scheduled to start.
 - (3) Solid waste, industrial waste, yard waste and any other pollutants or waste on any construction site shall be controlled through the use of BMPs. Waste or recycling containers shall be provided and maintained by the owner or contractor on construction sites where there is the potential for release of waste. Uncontained waste that may blow, wash or otherwise be released from the site is prohibited. Sanitary waste facilities shall be provided and maintained in a secured manner.
 - (4) Ready-mixed concrete, or any materials resulting from the cleaning of vehicles or equipment containing such materials or used in transporting or applying ready-mixed concrete, shall not be allowed to discharge from any construction site. Concrete wasted on site must be disposed in a manner consistent with locally approved standards and generally require establishment of a designated washout area.
 - (5) Cover or perimeter control shall be applied within 14 days to any soil stockpiles, which will remain undisturbed for longer than 30 calendar days.
 - (6) Disturbed soil shall be managed with BMPs that are adequately designed, installed and maintained according to locally approved technical standards, specifications and guidance for the duration of the construction activity to minimize erosion and contain sediment within the construction limits.
 - (7) Sediment tracked or discharged onto public right-of-way shall be removed immediately.
 - (8) Bulk storage structures for petroleum products and other chemicals shall have adequate protection to contain all spills and prevent any spilled material from entering the MS4 or waters of the state.
 - (9) Temporary BMPs shall be removed and disturbed areas shall be stabilized with permanent BMPs at the conclusion of construction activity.
- (b) *Requirements for the building phase of development.*
 - (1) Any person who engages in construction activity is responsible for compliance with this article and all applicable terms and conditions of the approved construction activity and SWPPP as it relates to the building phase of development. The following information shall be included with the application for a building permit and be submitted to the public works department;
 - (2) Either the legal description and NPDES permit number for the larger common plan of development, or ~~(3)~~ the location of the property where the building phase of development is to occur; and
 - (3) Contractor acknowledgement that the building phase of development for the property described on the application for a building permit will be conducted in conformance with this article and the construction activity SWPPP.
 - (c) *Construction stormwater pollution prevention plan.*
 - (1) A SWPPP shall be prepared and updated in accordance with locally approved technical standards, specification, and guidance for construction activity within the city and shall include an erosion and sediment control plan for land disturbance.

- (2) The SWPPP shall include a description of all potential pollution sources, temporary and permanent BMPs that will be implemented at the site as approved by the city.
- (3) The erosion and sediment control plan shall be submitted to the city for review with any application covered in subsection (a)(1) of this section.
- (4) Land disturbing activities may not proceed until approval of the erosion and sediment control plan is provided by the city.
- (5) The owner or operator is required to have a copy of the SWPPP readily available or on site for review with content that reflects the current condition of the construction activity and all records that demonstrate compliance and are required by this article.
- (6) The SWPPP shall include descriptions of routine site inspections as follows:
 - a. The owner or their representative shall inspect all BMPs at intervals of no greater than 14 calendar days and within 24 hours after any precipitation event of at least one-half inch.
 - b. Inspections of BMPs shall be conducted by an individual knowledgeable in the principles and practice of erosion and sediment controls who possesses the skills to assess conditions at the construction site that could impact stormwater quality and to assess the effectiveness of any erosion and sediment control measures selected to control the quality of stormwater discharges from the construction activity.
 - c. Inspection reports shall provide the name and qualification of the inspector, date of the evaluation, risks to stormwater quality identified and all corrective actions necessary to prevent stormwater pollution.
 - d. The owner or operator of a construction activity may be requested to submit copies of inspection reports for review on a periodic basis by the city.
- (7) Based on inspections performed by the owner, operator, authorized city personnel, state or federal regulators, modifications to the SWPPP will be necessary if at any time the specified BMPs do not meet the objectives of this article. In this case, the owner shall meet with an appointed official of the city to determine the appropriate modifications. All required modifications shall be completed within seven calendar days of receiving notice of inspection findings, and shall be recorded in the SWPPP.
- (8) The owner or operator of a construction site shall be responsible for amending the SWPPP whenever there is a significant change in design, construction, operation or maintenance, which has a significant effect on the potential for discharge of pollutants to the MS4 or receiving waters, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with land disturbance.
- (9) Records of inspection are to be maintained with the SWPPP for the life of the project. Inspection records are to be available to city inspectors upon request. Delay in providing a copy of the SWPPP or any requested records shall constitute a violation of this article.
- (d) *Requirements for utility construction.*
 - (1) Utility agencies or their representatives shall develop and implement BMPs to prevent the discharge of pollutants on any site of utility construction within the city. The city may require additional BMPs on utility construction activity. If the utility construction disturbs greater than one acre, the utility agency must comply with the requirements of subsections (a) and (b) of this section.
 - (2) Utility agencies or their representative shall implement BMPs to prevent the release of sediment from utility construction sites. Disturbed areas shall be minimized, disturbed

soil shall be managed and construction site exits shall be managed to prevent sediment tracking. Sediment tracked onto public right-of-way shall be removed immediately.

- (3) Prior to entering a construction site or subdivision development, utility agencies or their representatives shall obtain and comply with any approved erosion and sediment control plans for the project. Any impact to construction and post-construction BMPs resulting from utility construction shall be evaluated prior to disturbance by the developer and utility company. Repairs to the disturbed BMPs must be completed within 48 hours, by individuals agreed upon during the design phase or at a preconstruction meeting.

(Ord. No. 2291, § 1(15-11), 2-22-2011)

Sec. 12-89. Post-construction of permanent BMPs.

(a) *Requirements.*

- (1) Land development that meets the requirements of section 12-88(a)(1) must address stormwater runoff quality through the use of permanent BMPs. Permanent BMPs shall be provided for in the drainage plan for any subdivision plat, annexation plat, development agreement, subdivision agreement or other local development plan.
- (2) Structural BMPs located on private property shall be owned and operated by the owners of the property on which the BMP is located; unless the city agrees in writing that a person or entity other than the owner shall own or operate such BMP. As a condition of approval of the BMP, the owner shall also agree to maintain the BMP in perpetuity to its design capacity unless or until the city shall relieve the property owner of that responsibility in writing. The obligation to maintain the BMP shall be memorialized on the subdivision plat, annexation plat, development agreement, subdivision agreement or other form acceptable to the city and shall be recorded with the city public works department.

(b) *Completion.* Upon completion of a project, the city shall be provided a written certification stating that the completed project is in compliance with the approved final drainage plan. All applicants are required to submit as-built plans for any permanent BMPs once final construction is completed and must be signed by a professional engineer licensed in the state.

(c) *Ongoing inspection and maintenance.*

- (1) The owner of site must, unless an on-site stormwater management facility or practice is dedicated to and accepted by the city, execute an inspection and maintenance agreement, that shall be binding on all subsequent owners of the permanent BMPs.
- (2) Permanent BMPs included in a drainage plan which is subject to an inspection and maintenance agreement must undergo ongoing inspections to document maintenance and repair needs and to ensure compliance with the requirements of the agreement, the plan and this article.

(Ord. No. 2291, § 1(15-12), 2-22-2011)

Sec. 12-90. Technical standards, specifications, and guidance.

All BMPs designed to meet the requirements of this article shall reference the appropriate technical standards, specifications and guidance as follows:

- (1) City standards and specifications for construction.
- (2) State department of roads drainage design and erosion control standards, specifications and guidance.
- (3) Any other alternative methodology approved by the city, which is demonstrated to be effective.

(Ord. No. 2291, § 1(15-13), 2-22-2011)

Sec. 12-91. Monitoring of discharges.

(a) *Applicability.* This section applies to all premises that have stormwater discharges associated with industrial activity, including construction activity.

(b) *Access to premises.*

- (1) The city's designees shall be permitted to enter and inspect premises and facilities subject to regulation under this article as often as may be necessary to determine compliance with this article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the city.
- (2) The city's designees shall be given access to all parts of the premises for the purposes of: inspection, sampling, examination and copying of records that must be kept under the conditions of the National Pollutant Discharge Elimination System permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (3) The city may place upon the premises such devices as deemed necessary to conduct monitoring and/or sampling of discharges from the premises.
- (4) The city may require a person to install monitoring equipment as necessary. Sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition at no expense to the city. All devices used to measure stormwater flow and quality shall be calibrated to ensure accuracy.
- (5) Any obstruction to safe and easy access to the premises to be inspected and/or sampled shall be promptly removed at the request of the city and shall not be replaced. The costs of clearing such access shall not be paid by the city.
- (6) Unreasonable delays in allowing city designees access to premises is a violation of a stormwater discharge permit and of this article. A person who is the operator of a facility or premises with a National Pollutant Discharge Elimination System permit to discharge stormwater associated with industrial activity commits an offense if the person denies the city reasonable access for the purpose of conducting any activity authorized or required by this article.

If a city designee has been refused access to any part of the premises from which stormwater is discharged, the city may seek issuance of a search warrant from any court of competent jurisdiction.

(Ord. No. 2291, § 1(15-14), 2-22-2011)

Sec. 12-92. Best management practices.

The city may adopt requirements identifying best management practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drainage system or the waters of the United States of America. The owner or operator of a commercial or industrial establishment shall provide, at the owner or operator's expense, reasonable protection from the discharge of prohibited materials or other wastes into the municipal storm drainage system or watercourses through the use of these structural and nonstructural best management practices. Further, any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and nonstructural best management practices to prevent the further discharge of pollutants to the municipal separate storm sewer system. These

best management practices shall be part of a stormwater pollution prevention plan as necessary for compliance with requirements of any National Pollutant Discharge Elimination System permit.

(Ord. No. 2291, § 1(15-15), 2-22-2011)

Sec. 12-93. Watercourse protection.

Every person owning property through which a watercourse passes, and such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation and other obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function or physical integrity of the watercourse.

(Ord. No. 2291, § 1(15-16), 2-22-2011)

Sec. 12-94. Notification of discharges and spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility, premises or operation, has information of any known or suspected release of materials which result or may result in illegal discharges or pollutants discharging into stormwater, the storm drainage system, or the waters of the United States of America, said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release. In the event of such release of hazardous materials, said person shall immediately notify emergency response agencies and the city of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the city in person or by phone or facsimile no later than the next business day. Notifications in person, by phone or by facsimile shall be confirmed by written notice addressed and mailed to the city within three business days of the prior notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

(Ord. No. 2291, § 1(15-17), 2-22-2011)

Chapter 13
RESERVED

PROOFS

Chapter 14

FIRE PREVENTION AND PROTECTION*

***State law reference**—Fire departments authorized, R.R.S. 1943, 16-222; fire companies and firefighters, R.R.S. 1943, ch. 35; state fire prevention, 81-501.01 et seq.

ARTICLE I. IN GENERAL**Sec. 14-1. Use of fire apparatus.**

It shall be unlawful for any person within the city to take from the room or building in which the same is usually kept, or in any manner use any fire hose, hose cart, truck or an article or part of the firefighting apparatus owned by the city; provided, that this section shall not apply to members of the regular fire department of the city when taking or using any of the firefighting apparatus in case of fire, or for practice, parade, exercise or other lawful, authorized purpose.

(Code 1970, § 8-302)

Sec. 14-2. Parking near fire hydrant.⁵⁵

It shall be unlawful for any person to park or leave any ~~motor vehicle, any vehicle of any kind or any material or article of any kind~~ within 20 feet of any ~~fireplug or hydrant, except when signs or stalls, where clearly marked, permit closer parking and then only in conformance with such signs or stalls.~~

(Code 1970, § 9-213.01; Code 1990, § 16-53)

Sec. ~~11-5~~ Right of way of fire trucks.⁵⁶

~~The fire trucks of the fire department of the city shall have the right of way over all vehicles of every kind, except ambulances, on the streets and alleys of the city while the trucks are responding to a fire alarm and going to a fire.~~

~~(Code 1970, § 8-303)~~

Secs. 14-3--14-22. Reserved.**ARTICLE II. OPEN BURNING***

***State law reference**—Open burning, R.R.S. 1943, §§ 81-520.01, 81-520.02.

Sec. 14-23. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: The following definitions shall apply in the interpretation and enforcement of this article:

Ambient air means the air that envelopes and surrounds the earth and includes all space outside of buildings, stacks and exterior ducts.

Garbage means all animal and vegetable waste and all other putrescible matter.

⁵⁵ Legal or Editorial Change: Code 1990, § 16-53 Parking Near Fire Hydrant. Deleted material covered by R.R.S. 1943, § 60-6,166.

⁵⁶ Legal or Editorial Change: Code 1990, § 11-5 Right-of-Way of Fire Trucks. Deleted as covered by Code § 16-29 and R.R.S. 1943, § 60-6,151 (and in conflict therewith).

Open fire means a fire in which any material is burned in the open or in a receptacle other than a furnace, incinerator or other equipment connected to a stack.

Stack means any flue, pipe, duct or chimney arranged to conduct gaseous effluent to the ambient air.

(Code 1990, § 11-8; Ord. No. 1309, § 1)

~~Sec. 11-13 Penalty; injunctive relief.~~⁵⁷

~~(a) Any person who violates any provision of this article or any rules or regulations in force pursuant thereto shall be subject to a penalty as provided for in section 1-7.~~

~~(b) Actions pursuant to subsection (a) of this section shall not be a bar to enforcement of this Article or the rules and regulations in force pursuant thereto, and orders may pursue unto this Article by injunction or other appropriate remedy. The city manager shall have the power to initiate and maintain in the name of the city any and all such enforcement proceedings.~~

~~(Code 1990, § 11-13; Ord. No. 1309, § 6)~~

Sec. 14-24. Right of entry.

Any duly authorized officer, employee or representative of the city may enter and inspect any property, premises or place at any reasonable time for the purpose of investigating or testing either an actual or suspected source of open burning, or of ascertaining the state of compliance with this article and the regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the city who requests entry for the aforementioned purposes, and who presents appropriate credentials and warrant, nor shall any person object, hamper or interfere with such inspection.

(Code 1990, § 11-9; Ord. No. 1309, § 2)

Sec. 14-25. Procedure upon violations; hearings by city manager.

(a) Whenever the city manager, chief of police or any police officer has reason to believe that a violation of any provision of this article or any rule or regulation issued pursuant thereto has occurred, he may cause written notice to be served upon the alleged violator. The notice shall specify the provision of this article or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may order that the necessary corrective action be taken within a reasonable time. Any such order shall become final unless, no later than 15 days after the date such order is served, the person named therein requests, in writing, a hearing before the city manager. In lieu of such order, the city manager may require the alleged violator to appear before the city manager for a hearing at a time and place specified in the notice to answer the charges complained of, or the city manager may initiate appropriate action for the recovery of a penalty pursuant to section 1-8.

(b) After such hearing, the city manager shall affirm, modify or rescind his order or issue an appropriate order for the prevention, abatement or control of the open burning involved. Such order shall prescribe the date by which the violation shall cease and may prescribe time tables for necessary action in preventing, abating or controlling the open burning.

(c) Nothing in this article shall prevent the city manager from making efforts to obtain voluntary compliance to warning, conference or any appropriate means.

⁵⁷ Legal or Editorial Change: Code 1990, § 11-13 Penalty; Injunctive Relief. Deleted as covered by code chapter 1.

(d) The hearing provided for in this section may be conducted by the city manager, or the city manager may designate hearing officers who shall have the power and authority to conduct such hearing in the name of the city at any time and place.

(Code 1990, § 11-11; Ord. No. 1309, § 4)

Sec. 14-26. Aggrieved party can have county district court review.

Any person aggrieved by any order of the city manager may have review thereof by a proceeding in the district court of the county.

(Code 1990, § 11-12; Ord. No. 1309, § 5)

Sec. 14-27. Open fires prohibited; exceptions.

Except as noted in this section ~~below~~, no person shall kindle an open fire in any public or private place outside of any building. Fires started in violation of this article shall be promptly extinguished by the person responsible for the same upon written notice by the city manager or his duly designated agent.

(1) Permit. Open burning may be done under permit as follows:

- a. Application for a burning permit shall be on forms provided by the city manager.
- b. No permit shall be issued unless the issuing officer is satisfied that:
 1. There is no practical available alternate method for the disposal of the material to be burned;
 2. No hazardous condition will be created by such burning;
 3. No salvage operation by open burning will be conducted; and
 4. No leaves shall be burned in those areas where provision is made for public collection thereof.
- c. Any permit issued may be limited by the imposition of conditions to protect property and the health, safety and comfort of persons from the effects of the burning.
- d. If it becomes apparent at any time to the city manager that limitations need to be imposed for any of the reasons stated in subsection (1)c of this section, the city manager or his duly designated agent shall notify the permittee in writing and any limitations so imposed shall be treated as conditions under which the permit is issued.

(2) Without permit. Open burning may be done without permit as follows:

- a. In those areas where provision for public collection of leaves is not made, the open burning of leaves is permitted.
- b. In those areas where regular refuse collection is not provided, open burning of ordinary household trash by householders is permitted; provided that:
 1. Fires are located no closer than 100 feet to any neighboring habitable dwelling or place where people work or congregate;
 2. Garbage, dead animals and animal waste are not burned; and
 3. Materials which create dense smoke or emissions injurious or noxious to people or property are not burned.
- c. Open fires may be set in performance of an official duty by any public officer if the fire is necessary for one or more of the following reasons or purposes:
 1. For the prevention of a fire hazard which cannot be abated by other means;

2. For the instruction of public firefighters or industrial employees under supervision of the fire department; or
3. For the protection of public health.
- d. Fire may be used for the cooking of food, provided, no smoke nuisance is created.
- e. Burners or other devices may be used for heating by construction or other workers, provided, no smoke nuisance is created.
- f. Fires may be set in the course of agricultural operations in growing crops or raising fowl or animals, provided, no nuisance is created.
- g. Open fires may be set for recreational purposes, such as campfires, provided, no smoke nuisance is created.

(Code 1990, § 11-10; Ord. No. 1309, § 3)

PROOFS

Chapter 15
RESERVED

PROOFS

Chapter 16

HEALTH*

***State law reference**—Public health and welfare, R.R.S. 1943, ch. 71; health regulations authorized, R.R.S. 1943, § 16-240.

ARTICLE I. IN GENERAL

Secs. 16-1--16-18. Reserved.

ARTICLE II. FOOD SERVICE SANITATION*

***State law reference**—Nebraska Pure Food Act, R.R.S. 1943, § 81-2,239 et seq.

Sec. 16-19. Adoption of state food code.

The definitions, the inspection of food service establishments, the issuance, suspension and revocation of permits to operate food service establishments, the prohibiting of sales of adulterated or misbranded food or drinks, and the enforcement of this section shall be regulated in accordance with the unabridged form of the state food code, as adopted by the state department of agriculture pursuant to R.R.S. 1943, § 81-2,257.01, as the same may be amended from time to time, a copy of which shall be on file in the office of the city clerk.

(Code 1970 § 5-801; Code 1990, § 12-1; Ord. No. 1336, § 1; Ord. No. 2110; Ord. No. 2234, 6-26-2007)

State law reference—Adoption by reference, R.R.S. 1943, §§ 18-132, 19-922.

Sec. 16-20. Inspections and permits.

The city recognizes the state department of agriculture as the primary regulatory authority for food establishment inspections and permitting as published in the state food code. Food establishments operating in the jurisdictional boundaries of the city must comply with the state food code, and must be inspected by and maintain current permits issued by the regulatory authority.

(Code 1990, § 12-2; Ord. No. 2234, 6-26-2007)

Chapter 17
RESERVED

PROOFS

Chapter 18

LICENSES, TAXATION AND MISCELLANEOUS BUSINESS REGULATIONS

ARTICLE I. IN GENERAL

~~Sec. 10-3 Fire insurance tax--Purpose; levied.~~⁵⁸

~~For the use, support and maintenance of the volunteer fire department of the city, regularly organized under the laws of the state, an occupation tax of \$5.00 per annum is hereby levied upon each and every fire insurance company, corporation or association doing business in the city.~~

~~(Code 1970, § 3-201; Code 1990, § 10-3)~~

~~Sec. 10-4 Same--Collection; disposition of revenue.~~⁵⁹

~~The city clerk treasurer shall collect with diligence the occupation tax on fire insurance companies and give a receipt therefor, properly dated, and specifying the person paying, and the name of the insurance company, corporation or association for whom paid, and forthwith the clerk treasurer upon receipt of the tax shall credit the same to a fund to be known as the special occupation tax fund for benefit of the volunteer fire department, and, upon proper claim filed by the chief of the fire department and allowed by the city council, the city clerk treasurer shall pay over the proceeds of the tax in the fund from time to time for the use of the fire department.~~

~~(Code 1970, § 3-202; Code 1990, § 10-4)~~

Secs. 18-1--18-18. Reserved.

ARTICLE II. SALES AND USE TAX

Sec. 18-19. Imposed.

The city does hereby impose a one percent sales and use tax upon the same transactions within the corporate limits of the city on which the state is authorized to impose a tax.

(Code 1990, § 10-18; Ord. No. 1856, § 2)

Editor's note—The qualified electors at a special election held on January 17, 1989, approved the imposition of a one percent city sales tax for property tax relief.

State law reference—Sales and use tax authorized R.R.S. 1943, § 77-27,142.

Sec. 18-20. Tax to be used for general budget.

The tax so collected shall be used for general budget purposes, and to the extent collected shall replace property taxes as a source of revenue.

(Code 1990, § 10-19; Ord. No. 1856, § 3)

⁵⁸ Legal or Editorial Change: Code 1990, § 10-3 Fire Insurance Tax--Purpose; Levied. While this tax is authorized by R.R.S. 1943, § 35-106. Given the amount of the tax (\$5.00 per company--which is the maximum authorized by the statute), is such that the levy is not cost effective. If obsolete, delete this section and Code 1990, § 10-4.

⁵⁹ Legal or Editorial Change: Code 1990, § 10-4 Same--Collection; Disposition of Revenue. Deleted as relating to deleted § 10-3. This provision was covered by and in conflict with R.R.S. 1943, § 35-106.

Secs. 18-21–18-43. Reserved.

ARTICLE III. OCCUPATION TAX GENERALLY*

*State law reference—Occupation tax authorized, R.R.S. 1943, § 16-205.

Sec. 18-44. Purpose; levied; disposition of revenue.⁶⁰

For the purpose of raising revenue there is hereby levied an occupation tax upon each and every occupation and business carried on within the city, as specified and enumerated in this article, and every person carrying on the occupation or business specified in this article within the limits of the city shall pay to the city ~~clerk~~-treasurer annually the sum named in this article, as a tax upon the occupation or business. The city ~~clerk~~-treasurer shall credit the same to the general fund of the city, and the money shall be and remain under the control of the council for such use and purpose as other money belonging to the general fund.

(Code 1970, § 3-301; Code 1990, § 10-8)

Sec. 18-45. Schedule.

There is hereby levied an occupation tax upon each and every occupation and business within the city, upon the several respective occupations, professions and lines of business, and in the several different amounts, as follows:

- (1) *Fireworks*. Owners or operators of a stand or booth for sale of fireworks as follows:
 - a. By a resident of the city, including the owner or operator of an existing business establishment within the city, per season: \$75.00.
 - b. By a nonresident of the city, per season: \$300.00.
 - c. Certificate. Each person or business paying an occupation tax as aforesaid, shall display for public inspection a certificate or receipt from the city clerk, showing payment of such occupation tax.
- (2) *Telephone companies, telecommunications companies, and mobile telecommunications services*. For engaging in the business of providing local exchange telephone service, intrastate message toll telephone service and mobile telecommunications services for revenue in the city.
 - a. *Mobile telecommunications services, defined*. As used in this section, the term "mobile telecommunications services" means a wireless communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:
 1. Both one-way and two-way wireless communications services;
 2. A mobile service which provides a regularly interacting group of base, mobile, portable and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and
 3. Any personal communications service.
 - b. *Amount of tax*. The occupation tax shall be five percent of the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service, other than mobile telecommunications services as defined in this

⁶⁰ Legal or Editorial Changed: Code 1990, § 10-8. Purpose; levied; disposition of revenue. Changed clerk-treasurer to treasurer.

section, from subscribers within the corporate limits of the city. If the telecommunications services provided are mobile telecommunication services as defined in this section, the tax shall be five percent of the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use within the corporate limits of the city. The term "gross income ~~receipts~~" does not mean:

1. The gross income, including division of revenue, settlements or carrier access charges received on or after January 1, 1984, from the sale of a telephone communication service to a communication service provider for purposes of furnishing telephone communication service; or
 2. The gross income attributable to services rendered using a prepaid telephone calling arrangement.
- c. *Quarterly payment due dates.* The payment of any occupation tax levied and imposed by the provisions of this article shall be made in quarterly payments using the calendar quarter year as a basis for determining the due date. Each quarterly payment shall be due 15 days immediately following the termination of each calendar quarter year.
- d. *Statement to be filed.* Every person coming within the provisions of this article shall, on or before the 15th day of the month immediately following the termination of each calendar year, file with the city clerk, in the case of those persons taxed by this section, a full, complete and detailed statement of the income and gross receipts of said person for the preceding three calendar months, omitting therefrom the appropriate exceptions and exemptions, if any. All statements shall be duly verified as true and correct and sworn to by the manager or managing officer of such person.
- e. *City's right to inspect.* The city shall have the right at any and all times during business hours to inspect, through the comptroller or some other officer appointed by the city council, the books and records of any person coming under the provisions of this article for the purpose of ascertaining the correctness of the required statement.
- f. *Failure to file statement; interest and penalty.* In the event any person coming under the provisions of this article shall refuse, fail or neglect to furnish or file the required statement at the time or times specified, the occupation tax for the preceding three calendar months shall draw interest at the rate of one percent per month after due and payable, and in addition thereto, a penalty of five percent for the failure to file.
- g. *Interest and penalty on delinquent payments.* All delinquent payments shall draw interest at the rate of one percent per month; and, if delinquent for six months or more, a penalty of five percent shall be added thereto in addition to the interest charge.
- h. *Collection of tax by civil action.* In case any person shall fail to make payment of the occupation tax as required by this article, the city shall have the right and may sue any such person or persons in any court of competent jurisdiction for the amount of the occupation tax due and payable and may recover judgment against such person for the amount so due, together with interest and penalties, and may have execution thereon.
- i. *Certificate.* The receipt issued after the payment of an occupation tax as aforesaid, shall be the occupation tax certificate. This certificate shall specify the amount of the tax and the name of the person and business that paid the tax.

- (3) *Telecommunications, cable television.* For engaging in the business of providing a television signal for revenue in the city.
- a. *Cable television services, defined.* As used in this section, the term "cable television services" means the furnishing of a television signal, whether through cable or satellite dish, whether by subscription or pay-per-view, provided, any cable television provider having a franchise agreement with the city and paying a franchise fee, shall be excluded from this definition.
 - b. *Amount of tax.* The occupation tax shall be five percent of the gross income received from furnishing cable television services as defined in this section, from subscribers within the corporate limits of the city.
 - c. *Gross income.*
 1. The term "gross income" means any and all revenue billed (whether or not received) or derived directly or indirectly by a provider, its affiliates, subsidiaries, parent or any entity in which the provider has a financial interest from the operation of its cable system within the city including, but not limited to:
 - (i) All cable service fees;
 - (ii) Franchise fees;
 - (iii) Late fees, returned check charges, collection agency charges;
 - (iv) Installation and reconnection fees;
 - (v) Fee payments or other consideration earned (whether or not received) by the provider from programmers for carriage of cable services or marketing support in connection with the cable services on the cable system;
 - (vi) Upgrade and downgrade fees;
 - (vii) Advertising revenue with no deduction or offset for internal commissions earned by employees of the grantee or its affiliates, subsidiaries, parent or any entity in which the grantee has a financial interest, and external commissions earned by advertising agencies/representation firms/brokers/etc., regardless of whether or not such commissions are withheld from remittances to the grantee;
 - (viii) Home shopping commissions;
 - (ix) Converter and remote control rental fees;
 - (x) Lockout device fees;
 - (xi) Guides; and
 - (xii) Production charges.
 2. The term "gross income" does not include bad debts or any taxes on services furnished by the grantee imposed upon subscribers by any municipality, state or other governmental unit and collected by the provider for such governmental unit. The provider will maintain its books and records in accordance with generally accepted accounting principles (GAAP).
 - d. *Quarterly payment due dates.* The payment of any occupation tax levied and imposed by the provisions of this article shall be made in quarterly payments using the calendar quarter year as a basis for determining the due date. Each quarterly

payment shall be due 15 days immediately following the termination of each calendar quarter year.

- e. *Statement to be filed.* Every person coming within the provisions of this article shall, on or before the 15th day of the month immediately following the termination of each calendar year, file with the city clerk, in the case of those persons taxed by this section, a full, complete and detailed statement of the income and gross receipts of said person for the preceding three calendar months, omitting therefrom the appropriate exceptions and exemptions, if any. All statements shall be duly verified as true and correct and sworn to by the manager or managing officer of such person.
- f. *City's right to inspect.* The city shall have the right at any and all times during business hours to inspect, through the comptroller or some other officer appointed by the city council, the books and records of any person coming under the provisions of this article for the purpose of ascertaining the correctness of the required statement.
- g. *Failure to file statement; interest and penalty.* In the event any person coming under the provisions of this article shall refuse, fail or neglect to furnish or file the required statement at the time or times specified, the occupation tax for the preceding three calendar months shall draw interest at the rate of one percent per month after due and payable, and in addition thereto, a penalty of five percent for the failure to file.
- h. *Interest and penalty on delinquent payments.* All delinquent payments shall draw interest at the rate of one percent per month; and, if delinquent for six months or more, a penalty of five percent shall be added thereto in addition to the interest charge.
- i. *Collection of tax by civil action.* In case any person shall fail to make payment of the occupation tax as required by this article, the city shall have the right and may sue any such person or persons in any court of competent jurisdiction for the amount of the occupation tax due and payable and may recover judgment against such person for the amount so due, together with interest and penalties, and may have execution thereon.
- j. *Certificate.* The receipt issued after the payment of an occupation tax as aforesaid, shall be the occupation tax certificate. This certificate shall specify the amount of the tax and the name of the person and business that paid the tax.

(Code 1970, § 3-302; Code 1990, § 10-9; Ord. No. 1216, § 4; Ord. No. 1727, § 1; Ord. No. 1754, § 1; Ord. No. 2220, § 1)

State law reference—Occupation tax for telecommunications companies, R.R.S. 1943, § 86-704(4).

Sec. 18-46. Exemptions from article.⁶¹

It is hereby declared that the provisions of this article shall not extend to nor affect individuals selling their own labor, brooms, farm products, fruit, livestock, meat, poultry, butter, eggs, vegetables, hay or grain, if raised or produced by the vendors, provided, that the sale or offering for sale of the products and commodities, ~~above~~ excepted in this section, in the city shall be prima facie evidence that the same were not raised or produced by the vendors until such vendor shall satisfy the city ~~clerk~~-treasurer or any police officer of the city, by sufficient proof that they are entitled to the exceptions from the schedule set forth in section 18-45 ~~above mentioned~~, and provided further, that the city ~~clerk~~-treasurer or any police officer of the city may, in any case

⁶¹ Legal or Editorial Change: Code 1990, § 10-10. 10-10 Exemptions from article. Changed clerk-treasurer to treasurer.

of such vendor claiming exception hereunder, require such vendor to accompany him to a notary public or any other officer to take acknowledgment under oath, and then and there to make affidavit with respect to the matter concerning the raising or production of the specific products or commodities sold or offered for sale by such vendor. All scientific and literary lectures and entertainments shall be exempt from such taxation, as well as concerts and other entertainments given exclusively by the citizens of this city or their employees.

(Code 1970, § 3-303; Code 1990, § 10-10)

Sec. 18-47. Government business exemption.

The occupation tax by this article levied is not levied upon any business or occupation which is done or conducted by any department of the government of the United States, the state, the city or the officers of either as such in the course of official duties, or by any county or subdivision of this state or its officers as such.

(Code 1970, § 3-303.01; Code 1990, § 10-11)

Sec. 18-48. Duty to pay.

It is hereby made the duty of each and every person to pay the tax levied against him under this article at the time the same becomes due as provided in the foregoing section 18-45.

(Code 1970, § 3-305; Code 1990, § 10-13)

Sec. 18-49. Payment.⁶²

The tax levied in this article shall be paid in cash to the city ~~clerk~~-treasurer, or other person designated by the mayor and city council, who, upon the payment thereof by any person shall issue receipt therefor to the person paying the same, properly dated and specifying on behalf of whom and for what the sum is paid. The city ~~clerk~~-treasurer shall keep proper account of such tax.

(Code 1970, § 3-305.01; Code 1990, § 10-14)

Sec. 18-50. Nonrefundable.

No person paying an occupation tax shall be entitled to a refund of any part of the tax so paid.

(Code 1970, § 3-305.2; Code 1990, § 10-15)

Sec. 18-51. Receipt as authority to conduct business.⁶³

The city ~~clerk~~-treasurer's receipt shall be the warrant and proper authority of any person to carry on and conduct the business specified in the receipt and for which the money has been paid, provided, that the receipt shall not be assignable. Such receipt is not an endorsement of the licensee or his product.

(Code 1970, § 3-306; Code 1990, § 10-16)

⁶² Legal or Editorial Change: Code 1990, § 10-14. Payment. Changed clerk-treasurer to treasurer.

⁶³ Legal or Editorial Change: Code 1990, § 10-16 Receipt as Authority to Conduct Business. Changed clerk-treasurer to treasurer.

Secs. 18-52--18-75. Reserved.

ARTICLE IV. STREET VENDORS

DIVISION 1. GENERALLY

Sec. 18-76. Definitions.

When used in this article, the following words, terms, and phrases and their derivations, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Conveyance includes any public or privately owned vehicle, method or means of transporting people, bicycles, motorized or nonmotorized vehicle, handcart, pushcart, lunchwagon or any other device or thing, whether or not mounted on wheels.

Goods, wares, merchandise includes, but is not limited to, fruits, vegetables, farm products or provisions, dairy products, fish, game poultry, meat, plants, flowers, appliances, wearing apparel, jewelry, ornaments, artwork, toys, cosmetics and beauty aids, health products, medicines, household needs or furnishings, food of any kind, whether or not for immediate consumption, confections or drinks; except that this article shall not apply to those residents of the county, who are selling or delivering for sale home-raised fruits and vegetables.

Intersection means the convergence of two or more public ways and, for purposes of this article, proximity measurements will be taken from the outermost perimeters of said converging public ways.

Motor vehicle means any vehicle used for displaying, storing, or transporting articles for sale by a vendor which is required to be licensed and registered by the state department of motor vehicles of any state.

Private space shall include privately owned property, whether developed or undeveloped, which is properly zoned for retail sales.

Public space includes all city-owned parks and city-owned property within street rights-of-way, including any roadways and sidewalks.

Public way means all areas legally open to public use such as public streets, sidewalks, roadways, highways, parkways, alleys, parks, as well as the areas surrounding and immediately adjacent to public buildings.

Pushcart means any wheeled vehicle approved by the city and in accordance with this article designed for carrying property and for being pushed by a person without the assistance of a motor or motor vehicle.

Sidewalk means all areas legally open to public use as a pedestrian public way between the curblin and the legal building line of the abutting property.

Special event means any occasion including but not limited to fairs, shows, exhibitions, citywide celebrations, and festivals taking place within a specifically defined area within the jurisdiction of the city, for a specific period of time.

Stand means any showcase, table, bench, rack, handcart, pushcart, stall or any other fixture or device, upon a sidewalk, that is used for the purpose of displaying, exhibiting, carrying, transporting, storing, selling, or offering for sale any food, beverages, goods, wares or merchandise.

Street means all that area legally open to public use as public streets, and sidewalks, roadways, highways, parkways, alleys and any other public way.

Vehicle means every device in, upon, or by which a person or property may be transported or drawn upon a street or sidewalk, including, but not limited to, devices moved by human power.

Vendor means any person, traveling by foot, wagon, vehicle or any other type of conveyance from street to street carrying, conveying or transporting goods, wares or merchandise, and offering and exposing them for sale, or making sales and delivering articles to purchasers; or who, without traveling from place to place, exhibits, displays, sells or offers for sale such products from a wagon, handcart, pushcart, motor vehicle, conveyance or from his person while on the public ways of the city, or upon private space. The term "vendor" also includes any street vendor, hawker, huckster, itinerant merchant, transient vendor or door-to-door salesperson.

(Ord. No. 2300, § 1(13-1.2), 7-26-2011)

~~Sec. 00-00. Penalties.~~⁶⁴

~~The penalty for violating any provision of this article or any other applicable section of this Code shall be, in addition to any other sanctions provided, a fine not exceeding \$500.00 for each offense together with revocation or suspension of the vendor's license. The vendor's license of a person who violates the provisions of this article is subject to revocation or suspension. Each violation of this article shall be evidenced by a separate written notice presented at the time of citation for the offense. Each day of violation shall be deemed a separate offense. Any business activity in violation of this article is further declared to be a nuisance as being against the public health, safety and welfare, and in addition to any penalty imposed, the court may enter an order of abatement as part of the judgment of that case.~~

~~(Ord. No. 2300, § 1(13-1.14), 7-26-2011)~~

Sec. 18-77. Purpose and intent.

(a) It is the intent of the council in enacting this article to:

- (1) Serve and protect the health, safety and welfare of the general public;
- (2) Establish a uniform set of rules and regulations that are fair and equitable;
- (3) Develop a vending system that will enhance the overall appearance and environment along public streets, pedestrian ways and other public properties;
- (4) Provide economic development opportunities to small entrepreneurs in the city; and
- (5) Promote stable vendors who will enrich the city's ambiance and be assets to public security.

(b) The regulations contained in this article are not intended to prohibit or hamper speech that is protected by the First Amendment of the United States Constitution, but merely to regulate specific activities that are commercial in nature.

(Ord. No. 2300, § 1(13-1.1), 7-26-2011)

~~Sec. 13-1.18 Construction.~~⁶⁵

~~No part of this article or the article itself shall be construed to be an amplification or derogation of the rights or responsibilities of abutting property owners. Any remedies, rights or obligations provided to such property owners or their successors in interest under the law of real property or their successors in interest under the law of real property or the laws of the state shall be in addition to the remedies, rights, obligations or penalties provided hereunder.~~

~~(Ord. No. 2300, § 1(13-1.18), 7-26-2011)~~

⁶⁴ Legal or Editorial Change: Code 1990, § 13-1.14 Penalties. Deleted material covered by Code chapter 1.

⁶⁵ Legal or Editorial Change: Code 1990, § 13-1.18 Construction. Deleted as inapplicable.

Sec. 18-78. Exemptions.

(a) The provisions of this article do not apply to:

- (1) Goods, wares or merchandise temporarily deposited on the sidewalk in the ordinary course of delivery, shipment or transfer;
- (2) The placing and maintenance of unattended stands or sales devices for the sale, display or offering for sale of newspapers, magazines, periodicals and paperbound books;
- (3) The distribution of free samples of goods, wares and merchandise by any individual from his person;
- (4) Produce grown in the county;
- (5) Recognized, established, charitable organizations which have a business location in the county;
- (6) Vendors participating in special events;
- (7) Merchants offering goods for sale from a permanent structure in an appropriate zoning area of the city;
- (8) Fireworks stands licensed and regulated by the state.

(b) Any person claiming to be legally exempt from the regulations set forth in this article, or from the payment of a license fee, shall cite to the city clerk the statute or other legal authority under which exemption is claimed and shall present to the city clerk, proof of qualification for such exemption. The city clerk shall respond within 30 days.

(Ord. No. 2300, § 1(13.1-10, 13-1.11), 7-26-2011)

Sec. 18-79. Littering and trash removal.

(a) Vendors shall keep the sidewalks, roadways and other spaces adjacent to their vending sites or locations clean and free of paper, peelings and refuse of any kind generated from the operation of their businesses. All trash or debris accumulating within 100 feet of any vending stand shall be collected by the vendor and deposited in a trash container.

(b) Persons engaged in food vending shall affix to their vending station, vehicle, pushcart or other conveyance a receptacle for litter that shall be maintained and emptied regularly and marked as being for litter.

(Ord. No. 2300, § 1(13-1.12), 7-26-2011)

Sec. 18-80. Prohibited conduct.

No person authorized to engage in the business of vending under this article shall do any of the following:

- (1) Obstruct traffic signals or regulatory signs;
- (2) Stop, stand or park any vehicle, pushcart or another other conveyance upon any street for the purpose of selling during the hours when parking, stopping and standing have been prohibited by signs or curb markings;
- (3) Leave any conveyance unattended at any time; or store, park or leave such conveyance in a public space overnight;
- (4) Use an conveyance that, when fully loaded with merchandise, cannot be easily moved and maintained under control by the licensee, his employee or an attendant;

- (5) Sound any device that produces a loud and raucous noise, or operate any loudspeaker, public address system, radio, sound amplifier or similar device to attract public attention, or otherwise violate noise regulations of this Code;
- (6) Conduct his business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, create a nuisance, increase traffic congestion or delay, constitute a hazard to traffic, life or property, or obstruct adequate access to emergency and sanitation vehicles; and
- (7) Sell any goods, wares or merchandise within districts or on streets that have been or shall be hereafter so designated by the city council, to wit: any public space or private space located within 400 feet of the centerline of Plum Creek Parkway, from the right-of-way of Interstate Highway 80, north to Prospect Road.

(Ord. No. 2300, § 1(13-1.13), 7-26-2011)

Sec. 18-81. Advertising signs.

All signs advertising a permitted vending business hereunder must conform to the following requirements:

- (1) A maximum of two signs are allowed per vending location;
- (2) Each sign allowed may not exceed 16 square feet in area;
- (3) The signs must be attached to the trailer, tent, table or other display area of the licensed vendor; and
- (4) Freestanding signs are not permitted.

(Ord. No. 2300, § 1(13-1.19), 7-26-2011)

Secs. 18-82--18-105. Reserved.

DIVISION 2. LICENSE

Sec. 18-106. Required.

It shall be unlawful for any person to engage in the business of vending unless he has first obtained a license from the city. All licenses shall be issued according to regulations established by the city. Each conveyance or location must obtain separate license.

(Ord. No. 2300, § 1(13-1.3), 7-26-2011)

Sec. 18-107. Application.

The application for a vending license shall contain all information relevant and necessary to determine whether a particular license may be issued, including but not limited to:

- (1) The applicant's full name, permanent address, telephone number and proof of identity;
- (2) A brief description of the nature, character and quality of goods, wares or merchandise to be offered for sale;
- (3) The specific location, if any, in which the vendor intends to conduct business, and the length of time during which it is proposed the business will be conducted;
- (4) If the applicant is employed by another, the name and address of the person, firm, association, organization, company or corporation;
- (5) If a motor vehicle is to be used, a description of the vehicle together with the motor vehicle registration number and license number;
- (6) A sales tax permit as required by R.R.S. 1943, § 77-2705; and

- (7) If the applicant intends to operate from a private space, the location, and written permission of the record title owner of the private space.

(Ord. No. 2300, § 1(13-1.4), 7-26-2011)

Sec. 18-108. Health inspection certificate.

Any application for a vending license to engage in the sale of prepared food or beverages shall be required to furnish and maintain a certificate of health inspection from the state department of agriculture. The applicant's equipment shall be subject to inspections at the time of application and at periodic intervals thereafter.

(Ord. No. 2300, § 1(13-1.5), 7-26-2011)

Sec. 18-109. Denial; issuance; identification badges.

- (a) The city shall deny any application for license when:

- (1) It shall appear that a license shall be in conflict with any of the provisions of this article;
- (2) The applicant shall not provide the required information;
- (3) A license shall be in conflict with a license previously issued for a specific location; or
- (4) It appears that the application is for a private space that does not have:
 - a. Adequate access; or
 - b. An improved surface which will provide groundwater runoff and allow for litter removal.

(b) The applicant shall be notified in writing by the city of the city's decision to issue or deny the vending license no later than 30 days after the applicant has filed a completed application with the city.

- (c) Each license shall show:

- (1) The name and address of the licensee;
- (2) The type of license issued, the kind of goods to be sold;
- (3) The amount of the license fee;
- (4) The date of issuance;
- (5) The license number;
- (6) The expiration date;
- (7) An identifying description of any vehicle or conveyance used by the licensee plus, where applicable, the motor vehicle registration number.

(d) In addition to the vending license and any other permit required by this article, the city shall issue a numbered identification badge to each vendor. The vendor must provide the city with names of employees or other individuals who will help operate the business. If a badge becomes damaged or obscured, the vendor shall return it to the city and receive another badge.

(e) All licenses, permits and identification badges issued under this section are valid for the term of the license fee paid by the vendor, unless suspended or revoked, and shall be both nonassignable and nontransferable.

(Ord. No. 2300, § 1(13-1.6), 7-26-2011)

Sec. 18-110. Fees.

Any vendor granted a vending license under this article shall pay a license fee as established by resolution.

(Ord. No. 2300, § 1(13-1.7), 7-26-2011)

Sec. 18-111. Renewals.

A vending license may be renewed, provided an application for renewal and license fees are received by the city no later than the expiration date of the current license. Any application received after that date shall be processed as a new application. The city shall review each application for renewal, and upon determining that the applicant is in full compliance with the provisions of this article, shall issue a new license.

(Ord. No. 2300, § 1(13-1.17), 7-26-2011)

Sec. 18-112. Display of identification badges and other permits.

(a) Any license or permit issued by the city shall be carried with the licensee whenever he is engaged in vending. Identification badges and certificates of health inspection shall also be properly and conspicuously displayed at all times during the operation of the vending business.

(b) An identification badge shall be deemed to be properly displayed when it is attached to the outer garment of the vendor and clearly visible to the public and law enforcement officials. A certificate of health inspection shall be deemed to be properly displayed when attached to the vending pushcart, vehicle, stand or other conveyance, and clearly visible to the public and law enforcement officials.

(Ord. No. 2300, § 1(13-1.8), 7-26-2011)

Sec. 18-113. Notification of changes.

(a) All vendors shall ensure that a current and correct name, residence address, mailing address and telephone number are on file with the city.

(b) Whenever either the name or address provided by a licensed vendor on his application for a vending license changes, the licensee shall notify the city in writing within seven days of such change and provide the same with the name change or address change.

(c) The vendor must notify the city whenever he changes the nature of the vending operation, such as adding prepared food merchandise when food was previously not offered.

(Ord. No. 2300, § 1(13-1.9), 7-26-2011)

Sec. 18-114. Suspension and revocation.

(a) In addition to the penalties contained in this article, any license issued under this article may be suspended or revoked for any of the following reasons:

- (1) Fraud, misrepresentation or knowingly false statement:
 - a. Contained in the application for the license;
 - b. In the course of carrying on the business of vending;
- (2) Conducting the business of vending in any manner:
 - a. Contrary to the conditions of the license; or
 - b. As to create a public nuisance, cause a breach of the peace, constitute a danger to the public health, safety, welfare or morals, or interfere with the rights of abutting property owners.

(b) The city shall provide written notice of the suspension or revocation in a brief statement setting forth the complaint, the grounds for suspension or revocation, and notifying the licensee of his right to appeal. Such notice shall be mailed to the address shown on the license holder's application by certified mail, return receipt requested.

(c) If the city revokes a vending license or permit, the fee already paid for the license or permit shall be forfeited. A person whose license or permit has been revoked under this section may not apply for a new license for a period of one year from the date that the revocation took effect.

(Ord. No. 2300, § 1(13-1.15), 7-26-2011)

Sec. 18-115. Appeals.

(a) If the city denies the issuance of a license or permit, suspends or revokes a license or permit, or orders the cessation of any part of the business operation conducted under the license or permit, the aggrieved party may appeal the city’s decision to the city manager.

(b) The filing of an appeal stays the action of the city in suspending or revoking a license or permit or any part of the business operation being conducted under such license or permit until the city manager makes a final decision, unless the city building inspector determines that continued operation of the vending business constitutes an imminent and serious threat to the public health or safety, in which case the city shall take or cause to be taken such action as is necessary to immediately enforce the suspension, revocation or order.

(Ord. No. 2300, § 1(13-1.16), 7-26-2011)

Ordinance No. 2242⁶⁶

~~An ordinance to provide regulation of street vendors; to repeal all ordinances or sections of ordinances in conflict herewith; and to provide for an effective date and for publication in pamphlet form.~~

~~Be it ordained by the mayor and council of the City of Lexington, Nebraska, as follows:~~

~~Sec. 1. Purpose and intent.~~

~~It is the intent of the council in enacting this article:~~

- ~~(1) To serve and protect the health, safety and welfare of the general public;~~
- ~~(2) To establish a uniform set of rules and regulations that are fair and equitable;~~
- ~~(3) To develop a vending system that will enhance the overall appearance and environment along public streets, pedestrian ways, and other public properties;~~
- ~~(4) To provide economic development opportunities to small entrepreneurs in the city; and,~~
- ~~(5) To promote stable vendors who will enrich the city's ambiance and be assets to public security.~~

~~The regulations contained in this article are not intended to prohibit or hamper speech that is protected by the First Amendment of the United States Constitution, but merely to regulate specific activities that are commercial in nature.~~

~~(Ord. No. 2242, § 1, 11-13-192997)~~

~~Sec. 2. Definitions.~~

~~When used in this article, the following words, terms, and phrases, and their derivations, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

⁶⁶ Legal or Editorial Change: Ord. No. 2232. Street Vendors. Deleted as superseded by Ord. No. 2300.

~~Conveyance includes any public or privately owned vehicle, method or means of transporting people, bicycles, motorized or nonmotorized vehicle, handcart, pushcart, lunch wagon or any other device or thing, whether or not mounted on wheels;~~

~~Goods, wares, merchandise shall include, but not be limited to, fruits, vegetables, farm products or provisions, dairy products, fish, game poultry, meat, plants, flowers, appliances, wearing apparel, jewelry, ornaments, art work, toys, cosmetics and beauty aids, health products, medicines, household needs or furnishings, food of any kind, whether or not for immediate consumption, confections or drinks; except that this article shall not apply to those residents of the county, who are selling or delivering for sale home raised fruits and vegetables;~~

~~Intersection means the convergence of two or more public ways and, for purposes of this article, proximity measurements will be taken from the outermost perimeters of said converging public ways;~~

~~Motor vehicle means any vehicle used for displaying, storing, or transporting articles for sale by a vendor which is required to be licensed and registered by the state department of motor vehicles of any state;~~

~~Public space includes all city owned parks and city owned property within street rights of way, including any roadways and sidewalks;~~

~~Public way means all areas legally open to public use such as public streets, sidewalks, roadways, highways, parkways, alleys, parks, as well as the areas surrounding and immediately adjacent to public buildings;~~

~~Pushcart means any wheeled vehicle approved by the city and in accordance with this article designed for carrying property and for being pushed by a person without the assistance of a motor or motor vehicle;~~

~~Sidewalk means all areas legally open to public use as a pedestrian public way between the curbline and the legal building line of the abutting property;~~

~~Special event means any occasion including but not limited to fairs, shows, exhibitions, city-wide celebrations, and festivals taking place within a specifically defined area within the jurisdiction of the city, for a specific period of time;~~

~~Stand means any showcase, table, bench, rack, handcart, pushcart, stall or any other fixture or device that is used for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise upon a sidewalk;~~

~~Street means all that area legally open to public use as public streets, and sidewalks, roadways, highways, parkways, alleys and any other public way;~~

~~Vendor means any person, traveling by foot, wagon, vehicle or any other type of conveyance from street to street carrying, conveying, or transporting goods, wares, or merchandise and offering and exposing them for sale, or making sales and delivering articles to purchasers; or who, without traveling from place to place, exhibits, displays, sells or offers for sale such products from a wagon, handcart, pushcart, motor vehicle, conveyance or from his person while on the public ways of the city. A "vendor" also includes any street vendor, hawker, huckster, itinerant merchant, transient vendor, door to door salesperson; and~~

~~Vehicle means every device in, upon, or by which a person or property may be transported or drawn upon a street or sidewalk, including, but not limited to, devices moved by human power.~~

(Ord. No. 2242, § 2, 11-13-192997)

~~Sec. 3. License required.~~

~~It shall be unlawful for any person to engage in the business of vending unless he has first obtained a license from the city. All licenses shall be issued according to regulations established by the city. Each conveyance or location must obtain separate license.~~

~~(Ord. No. 2242, § 3, 11-13-192997)~~

~~Sec. 4. Application for license.~~

~~The application for a vending license shall contain all information relevant and necessary to determine whether a particular license may be issued, including but not limited to:~~

- ~~(1) The applicant's full name, permanent address, telephone number and proof of identity;~~
- ~~(2) A brief description of the nature, character and quality of goods, wares or merchandise to be offered for sale;~~
- ~~(3) The specific location, if any, in which the vendor intends to conduct business, and the length of time during which it is proposed the business will be conducted;~~
- ~~(4) If the applicant is employed by another, the name and address of the person, firm, association, organization, company or corporation;~~
- ~~(5) If a motor vehicle is to be used, a description of the vehicle together with the motor vehicle registration number and license number; and,~~
- ~~(6) A sales tax permit as required by R.R.S. § 77-2705.~~

~~(Ord. No. 2242, § 4, 11-13-192997)~~

~~Sec. 5. Health inspection certificate.~~

~~Any application for a vending license to engage in the sale of prepared food or beverages shall be required to furnish and maintain a certificate of health inspection from the Nebraska Department of Agriculture. The applicant's equipment shall be subject to inspections at the time of application and at periodic intervals thereafter.~~

~~(Ord. No. 2242, § 5, 11-13-192997)~~

~~Sec. 6. Issuance of license and identification badges.~~

~~The applicant shall be notified in writing by the city of the city's decision to issue or deny the vending license no later than 30 days after the applicant has filed a completed application with the city.~~

~~Each license shall show the name and address of the licensee, the type of license issued, the kind of goods to be sold, the amount of the license fee, the date of issuance, the license number, the expiration date, an identifying description of any vehicle or conveyance used by the licensee plus, where applicable, the motor vehicle registration number.~~

~~In addition to the vending license and any other permit required by this article, the city shall issue a numbered identification badge to each vendor. Vendor must provide the city with names of employees or other individuals who will help operate the business. If a badge becomes damaged or obscured, the vendor shall return it to the city and receive another badge.~~

~~All licenses, permits and identification badges issued under this section are valid for the term of the license fee paid by the vendor unless suspended or revoked and shall be both non-assignable and non-transferable.~~

~~(Ord. No. 2242, § 6, 11-13-192997)~~

~~Sec. 7. License fees.~~

~~Any vendor granted a vending license under this article shall pay a license fee as established by resolution.~~

~~(Ord. No. 2242, § 7, 11-13-192997)~~

~~Sec. 8. Display of identification badges and other permits.~~

~~Any license or permit issued by the city shall be carried with the licensee whenever he is engaged in vending. Identification badges and certificates of health inspection shall also be properly and conspicuously displayed at all times during the operation of the vending business.~~

~~An identification badge shall be deemed to be properly displayed when it is attached to the outer garment of the vendor and clearly visible to the public and law enforcement officials. A certificate of health inspection shall be deemed to be properly displayed when attached to the vending pushcart, vehicle, stand or other conveyance, and clearly visible to the public and law enforcement officials.~~

~~(Ord. No. 2242, § 8, 11-13-192997)~~

~~Sec. 9. Notification change.~~

~~All vendors shall ensure that a current and correct name, residence address, mailing address and telephone number are on file with the city. Whenever either the name or address provided by a licensed vendor on his application for a vending license changes, the licensee shall notify the city in writing within seven days of such change and provide the same with the name change or address change. The vendor must notify the city whenever he changes the nature of the vending operation, such as adding prepared food merchandise when food was previously not offered.~~

~~(Ord. No. 2242, § 9, 11-13-192997)~~

~~Sec. 10. Exemptions.~~

~~The provisions of this article do not apply to:~~

- ~~(1) Goods, wares, or merchandise temporarily deposited on the sidewalk in the ordinary course of delivery, shipment or transfer;~~
- ~~(2) The placing and maintenance of unattended stands or sales devices for the sale, display or offering for sale of newspapers, magazines, periodicals and paperbound books;~~
- ~~(3) The distribution of free samples of goods, wares and merchandise by any individual from his person;~~
- ~~(4) Produce grown in the county;~~
- ~~(5) Recognized, established charitable organizations which have a business location in the county; or~~
- ~~(6) Vendors participating in special events.~~

~~(Ord. No. 2242, § 10, 11-13-192997)~~

~~Sec. 11. Claims of exemption.~~

~~Any person claiming to be legally exempt from the regulations set forth in this article, or from the payment of a license fee, shall cite to the city clerk the statute or other legal authority under which exemption is claimed and shall present to the city clerk proof of qualification for such exemption. The city clerk shall respond within 30 days.~~

~~(Ord. No. 2242, § 11, 11-13-192997)~~

~~Sec. 12. Littering and trash removal.~~

~~Vendors shall keep the sidewalks, roadways and other spaces adjacent to their vending sites or locations clean and free of paper, peelings and refuse of any kind generated from the operation of their businesses. All trash or debris accumulating within 100 feet of any vending stand shall be collected by the vendor and deposited in a trash container.~~

~~Persons engaged in food vending shall affix to their vending station, vehicle, pusheart or other conveyance a receptacle for litter that shall be maintained and emptied regularly and marked as being for litter.~~

~~(Ord. No. 2242, § 12, 11-13-192997)~~

~~Sec. 13. Prohibited conduct.~~

~~No person authorized to engage in the business of vending under this article shall do any of the following:~~

- ~~(1) Obstruct traffic signals or regulatory signs;~~
- ~~(2) Stop, stand or park any vehicle, pusheart or another other conveyance upon any street for the purpose of selling during the hours when parking, stopping and standing have been prohibited by signs or curb markings;~~
- ~~(3) Leave any conveyance unattended at any time; or store, park, or leave such conveyance in a public space overnight;~~
- ~~(4) Use any conveyance that, when fully loaded with merchandise, cannot be easily moved and maintained under control by the licensee, his employee, or an attendant;~~
- ~~(5) Sell any goods, wares or merchandise within districts or on streets that have been or shall be hereafter so designated by the city council;~~
- ~~(6) Sound any device that produces a loud and raucous noise or operate any loudspeaker, public address system, radio, sound amplifier, or similar device to attract public attention, or otherwise violate noise regulations of this Code; and~~
- ~~(7) Conduct his business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, create a nuisance, increase traffic congestion or delay, constitute a hazard to traffic, life or property, or obstruct adequate access to emergency and sanitation vehicles.~~

~~(Ord. No. 2242, § 13, 11-13-192997)~~

~~Sec. 14. Penalties.~~

~~The penalty for violating any provision of this article or any other applicable section of this Code shall be, in addition to any other sanctions provided, a fine not exceeding \$500.00 for each offense together with revocation or suspension of the vendor's license. Each violation shall be evidenced by a separate written notice presented at the time of citation for the offense. Each day of violation shall be deemed a separate offense.~~

~~(Ord. No. 2242, § 14, 11-13-192997)~~

~~Sec. 15. Suspension and revocation of license.~~

~~In addition to the penalties contained in this article, any license issued under this article may be suspended or revoked for any of the following reasons:~~

- ~~(1) Fraud, misrepresentation or knowingly false statement contained in the application for the license;~~

- ~~(2) Fraud, misrepresentation or knowingly false statement in the course of carrying on the business of vending;~~
- ~~(3) Conducting the business of vending in any manner contrary to the conditions of the license; or~~
- ~~(4) Conducting the business of vending in such a manner as to create a public nuisance, cause a breach of the peace, constitute a danger to the public health, safety, welfare or morals, or interfere with the rights of abutting property owners.~~

~~The city shall provide written notice of the suspension or revocation in a brief statement setting forth the complaint, the grounds for suspension or revocation, and notifying the licensee of his right to appeal. Such notice shall be mailed to the address shown on the license holder's application by certified mail, return receipt requested.~~

~~If the city revokes a vending license or permit, the fee already paid for the license or permit shall be forfeited. A person whose license or permit has been revoked under this section may not apply for a new license for a period of one year from the date that the revocation took effect.~~

~~(Ord. No. 2242, § 15, 11-13-192997)~~

~~Sec. 16. Appeals.~~

~~If the city denies the issuance of a license or permit, suspends or revokes a license or permit, or orders the cessation of any part of the business operation conducted under the license or permit, the aggrieved party may appeal the city's decision to the city manager.~~

~~The filing of an appeal stays the action of the city in suspending or revoking a license or permit or any part of the business operation being conducted under such license or permit until the city manager makes a final decision, unless the city building inspector determines that continued operation of the vending business constitutes an imminent and serious threat to the public health or safety, in which case the city shall take or cause to be taken such action as is necessary to immediately enforce the suspension, revocation or order.~~

~~(Ord. No. 2242, § 16, 11-13-192997)~~

~~Sec. 17. Renewals.~~

~~A vending license may be renewed, provided an application for renewal and license fees are received by the city no later than the expiration date of the current license. Any application received after that date shall be processed as a new application. The city shall review each application for renewal, and upon determining that the applicant is in full compliance with the provisions of this article, shall issue a new license.~~

~~(Ord. No. 2242, § 17, 11-13-192997)~~

~~Sec. 18. Construction.~~

~~No part of this article or the article itself shall be construed to be an amplification or derogation of the rights or responsibilities of abutting property owners. Any remedies, rights or obligations provided to such property owners or their successors in interest under the law of real property or their successors in interest under the law of real property or the laws of the state shall be in addition to the remedies, rights, obligations or penalties provided hereunder.~~

~~(Ord. No. 2242, § 18, 11-13-192997)~~

~~Sec. 19. Advertising signs.~~

~~All signs advertising a permitted vending business hereunder must conform to the following requirements:~~

- ~~(1) A maximum of two signs are allowed per vending location;~~

- ~~(2) Each sign allowed may not exceed 16 square feet in area;~~
- ~~(3) The signs must be attached to the trailer, tent, table or other display area of the licensed vendor; and~~
- ~~(4) Free standing signs are not permitted.~~

~~(Ord. No. 2242, § 19, 11-13-192997)~~

~~Sec. 20. Effective date.~~

~~This ordinance shall take effect on January 1, 2008.~~

~~(Ord. No. 2242, § 20, 11-13-192997)~~

~~Sec. 21. All Ordinances or sections of ordinances in conflict herewith are hereby repealed.~~

~~(Ord. No. 2242, § 21, 11-13-192997)~~

~~Sec. 22. This Ordinance shall be published in pamphlet form and take effect as provided by law.~~

~~(Ord. No. 2242, § 22, 11-13-192997)~~

~~Sec. 4-1 Carnivals, etc.⁶⁷~~

~~The holding of carnivals or shows or exhibitions of like character within the city, or within one half mile of the city, excluding the grounds of the county agricultural society, is hereby prohibited, except by express written permit issued by the city manager.~~

~~It shall be unlawful for any person to be a party to or instrumental in procuring any such carnivals or show or exhibition of like character to exhibit within the city, or within one half mile of the city, excluding the grounds of the county agricultural society, without express written permission of the city manager.~~

~~(Code 1970, §§ 5-401, 5-402; Code 1990, § 4-1; Ord. No. 1746)~~

~~Sec. 4-2 Billiard rooms, bowling alleys, etc. operating without a license declared to be a nuisance.~~

~~Any pool or billiard room or bowling alley, kept or maintained within the City with a view of gain or where money is charged, either directly or indirectly, for playing or bowling therein, and for which no license has been granted, is hereby declared to be a public nuisance and shall be abated as such.~~

~~(Code 1970, § 5-304; Code 1990, § 4-2)~~

~~Sec. 4-4 Public dance license; hours of operation of billiard halls, bowling alleys, etc.; playing musical instruments in billiard halls, bowling alleys, etc., prohibited.~~

~~It shall be unlawful for any person to have or conduct a public dance in the city without first procuring from the city clerk treasurer a license therefor. It shall be unlawful for all persons, being the owner of or conducting any pool or billiard hall, to keep open or allow or permit to be kept open such place of business between the hours of 11:00 p.m. and 6:00 a.m. on all weekdays, except Saturday, and between the hours of 12:00 midnight on Saturday and 6:00 a.m. on the following Monday. It shall be unlawful for any person being the owner of or conducting any bowling alley, to keep open or allow or permit to be kept open such place of business between the hours of 11:00 p.m. and 6:00 a.m. on all weekdays, except Saturday, and between the hours of 12:00 midnight on Saturday and 12:00 noon on the following Sunday, and between the hours of 11:00 p.m. Sunday and 6:00 a.m. on the following Monday. It shall be unlawful for any person to play or allow or~~

⁶⁷ Legal or Editorial Change: Code 1990, ch. 4. Amusements. Deleted as obsolete.

~~permit to be played, within any room in which shall be conducted any such pool or billiard hall or bowling alley, any musical instrument of any kind, except a radio.~~

~~(Code 1970, § 5-201; Code 1990, § 4-4)~~

~~Article II. Skating Rink License~~

~~Sec. 4-5 Required.~~

~~It shall be unlawful for any person to open, operate or run a skating rink or room in which the public generally are invited to congregate and skate on roller skates, where money is charged for admission and for the privilege of skating, with a view of gain, unless such person shall first obtain in the manner provided in this article, a license for keeping and operating the skating rink.~~

~~(Code 1970, § 5-701; Code 1990, § 4-5)~~

~~Sec. 4-6 Application; issuance.~~

~~Any person desiring to open and operate a skating rink as a place of public amusement in the city for the purpose mentioned in section 4-5, shall make application, in writing, to the city council asking for such license and describing the premises in or upon which it is proposed to be conducted, signed by the full name of the applicant for such license, whereupon the council may grant or reject such application. In case the application is granted, the city council shall instruct the clerk-Treasurer to issue such license to the applicant for the conduct of such business, in or upon the premises described in the application, upon the applicant depositing a receipt for the occupation tax required by this Code for conducting the business.~~

~~(Code 1970, § 5-702; Code 1990, § 4-6)~~

~~Sec. 4-7 Nonassignable; business to be personally conducted by licensee.~~

~~A license issued under this Article shall not be assignable and the licensee shall be required to personally conduct or supervise the business carried on under the license.~~

~~(Code 1970, § 5-703; Code 1990, § 4-7)~~

~~Sec. 4-8 Cancellation; use of rink by minors; hours of operation of rink.~~

~~The city council shall have the right, and may, with or without cause, cancel the license issued under this article if any of the provisions of this article are violated by the licensee or when they find that the public good requires the cancellation thereof, or if, in the opinion of the council, the licensee is not conducting the business in a proper manner or for the welfare of the inhabitants of the city. No person operating a skating rink in the city shall permit minors to enter the rink or to skate therein after being so notified by the parents or guardian of the minors, in writing. All skating rinks shall close and skating shall be prohibited between the hours of 11:30 p.m. and 7:00 a.m. on weekdays and between the hours of 11:30 p.m. on Saturday night and 12:00 noon on Sunday.~~

~~(Code 1970, § 5-705; Code 1990, § 4-8)~~

~~Sec. 4-9 Occupation tax.~~

~~No license shall be issued to any applicant under this article unless the occupation tax assessed and levied against the business, as provided by section 10-9, shall be paid in advance.~~

~~(Code 1970, § 5-704; Code 1990, § 4-9)~~

City of Lexington, Nebraska⁶⁸

Ordinance No. _____

~~An ordinance granting to sourcegas distribution llc, its successors and assigns, the right, permission and authority to construct, maintain and operate a gas transmission and distribution system, including mains, pipes, conduits, services and other structures, in, under, upon, over, across and along the streets, alleys, bridges and public places within the present and future corporate limits of the City of Lexington, Nebraska for the furnishing, transmission, distribution and sale of gas whether artificial, natural, mixed or otherwise, for lighting, heating, domestic, industrial and other uses in said city and elsewhere, limiting the term of said grant, prescribing the terms and conditions under which said company may operate, and repealing Ordinance Nos. 1761 and 2096.~~

~~Be it ordained by the mayor and the city council of the City of Lexington, Nebraska~~

~~Section 1. That in consideration of the benefits to be derived by the City of Lexington, Nebraska, hereinafter referred to as "municipality," and its inhabitants from the construction and operation of a gas transmission and distribution system in said municipality there be and hereby are granted to Source Gas Distribution LLC, its successors and assigns, hereinafter collectively referred to as "Grantee", the right, permission and authority to construct, maintain and operate a gas transmission and distribution system within the limits of said municipality, as the same now exists or may hereafter be extended for a period of 25 years from and after the final passage date of this ordinance, and for said purpose there are hereby further granted to the grantee the right, permission and authority during said period to lay, install, construct, maintain and operate in, under, upon, over, across and along all of the streets, alleys, bridges and public places within the present and future corporate limits of said municipality all mains, pipes, services, conduits and structures necessary or convenient for the furnishing, transmission, distribution and sale of gas whether artificial, natural, mixed or otherwise for lighting, heating, domestic, industrial and other uses, and for transmitting such gas into, through or beyond the limits of said municipality to other cities, villages and customers.~~

~~Section 2. That all mains, services, and pipes laid or installed under this grant shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers or other structures already installed, and all such mains, services and pipes shall be installed subject to approval of the committee on streets and alleys or other authorized representatives of said municipality.~~

~~Grantee, in doing any work in connection with said mains, pipes and services shall avoid, so far as practicable, interfering with the use of any street, alley or public place, and where the paving or surface of any street, alley or public place is disturbed, grantee at its own expense and in a manner satisfactory to the authorized representatives of said municipality shall replace such paving or surface in as good condition as before such work was commenced.~~

~~In the event that at any time hereafter said municipality shall lawfully elect to change or alter the grade of any street, alley or public place, or to construct new or additional water or sewer lines, grantee, upon being directed by resolution of the mayor and city council of said municipality so to do, shall where the same becomes necessary by reason of said change of grade or construction of water or sewer lines, move or relay its mains or service pipes; provided, grantee shall be compensated by municipality for costs incurred by grantee in moving or relaying its lines or~~

⁶⁸ Legal or Editorial Change: Ord. No. 2257. Gas franchise. Deleted as not of a general and permanent nature. Ordinances of this nature or saved from repeal generically in Code chapter 1.

~~facilities or raising or lowering the same where required by the construction of new or additional or the replacement of existing water or sewer lines.~~

~~Section 3. Grantee shall have the right to make all such reasonable rules and regulations in the conduct of its business as it may deem necessary or expedient, including without limitation meter deposits in such amounts as may be required to ensure payment of bills. Grantee shall make such reasonable extensions of its mains from time to time as may be required to furnish service within said Municipality to parties making application therefor; but grantee shall not be required to make any extension for the purpose of serving any consumer or consumers if grantee is, for any reason, unable to obtain an adequate supply of gas to warrant the construction of said extension nor where the estimated revenue to be derived from serving such new consumer or consumers is not sufficient to show an adequate return upon the total additional investment required to serve such consumer or consumers.~~

~~Whenever the delivery or supply capability of grantee's system, due to any cause whatsoever not limited to force majeure, is such that grantee is unable to deliver to consumers served by grantee the quantity of gas which the consumers require, available quantities of gas among such consumers will be allocated pursuant to grantee's tariff.~~

~~Section 4. Grantee in the construction of said gas system within the limits of said municipality shall use tested and approved pipes, material and equipment.~~

~~Section 5. Grantee at all times will keep a map in the office of grantee or of the clerk of said municipality, showing the size and location of its mains laid in said distribution system in said municipality. This map will be replaced each May with a revised map showing new construction for the previous calendar year or if no new construction took place, as requested by the municipality.~~

~~Section 6. In case the available supply of gas shall at any time fail or become insufficient to supply the needs of the public of said municipality, or should grantee for any reason be unable to furnish the service herein contemplated, or upon the termination of this franchise for any reason whatsoever, grantee shall have the right to remove any and all of its pipe and other equipment or property from said municipality, but in such event grantee shall restore the streets, alleys and other public places to as good condition as before such removal, and will hold said municipality harmless from damage and expense incident to such removal.~~

~~Section 7. Grantee shall be required, and by the acceptance hereof agrees, to save harmless said municipality from and against all lawful claims and demands, and from all loss and expense necessarily incurred as a result thereof, arising out of the negligence of grantee in the construction, removal, replacement, inspection or repair of any mains, pipes, services or appliances of Grantee, or in the use and operation thereof during the term of this ordinance.~~

~~Section 8. In consideration of the rights and privileges herein granted, the grantee shall assess, effective the first billing cycle after this franchise becomes effective, to residential (commonly known as domestic) and commercial customers within the City of Lexington, Nebraska, a franchise tax or fee equivalent to \$0.0085 per therm for gas delivered to residential and commercial customers within the municipality on grantee's distribution system. Grantee shall pay to the city treasurer an annual payment for each year of the duration of this franchise, in an amount equal to the franchise fee or tax funds collected by grantee hereunder. Payment shall be made on or before March 1 of each year for the preceding year and each such payment shall be accompanied by a statement supporting the payment.~~

~~Such payment shall be in lieu of any and all other fees, charges, licenses, taxes or assessments which the municipality may impose for the rights and privileges herein granted or for the privilege of doing business within the municipality and, in the event any such fee, charge, license, tax or assessment shall be imposed by the municipality, the payment to be made in accordance with the~~

~~provisions of this section shall be refunded in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon the grantee. Ad valorem property taxes imposed generally upon all real and personal property within the municipality shall not be deemed to affect the obligation of the grantee under this section.~~

~~Section 9. This ordinance and the respective rights and obligations of the parties hereunder are subject to all present and future valid governmental legislation or regulation, whether federal or state, of duly constituted authorities which have jurisdiction over this ordinance, one or both of the parties, or any transaction hereunder.~~

~~Section 10. This ordinance and the rights, authority and franchise herein and hereby granted shall terminate and be of no further force and effect:~~

- ~~(a) unless within six months after final passage of this ordinance grantee shall file with the clerk of said municipality a written acceptance hereof; also~~
- ~~(b) if and when, after such acceptance grantee shall file with the clerk of said municipality a surrender hereof in writing.~~

~~Section 11. Ordinance No. 1761, passed under date of August 28, 1984, is hereby repealed and of no further force or effect. Ordinance No. 2096, passed under date of February 24, 1998, is hereby repealed and of no further force or effect.~~

~~Section 12. Wherever the term "grantee" is used herein it shall be held to mean and include SourceGas Distribution LLC, its successors and assigns.~~

~~Section 13. This ordinance shall be in full force and effect from and after its final passage and publication as required by law and upon acceptance by grantee shall be held to constitute a binding contract between said municipality and grantee, subject to its terms and conditions.~~

~~Passed this _____ day of _____, 20____.~~

~~_____~~

~~Mayor~~

~~City of Lexington, Nebraska~~

~~ATTEST: _____~~

~~Clerk~~

~~(SEAL)~~

CERTIFICATE AS TO ORDINANCE

~~The undersigned hereby certifies that she/he is the duly appointed, qualified and acting Clerk of the City of Lexington, Nebraska, and that the within and foregoing is a true and correct copy of Ordinance No. _____ passed by the Mayor and City Council of the City of Lexington, Nebraska, this _____ day of _____, 20____.~~

~~_____~~

~~City Clerk~~

~~(SEAL)~~

Chapter 19
RESERVED

PROOFS

Chapter 20
NUISANCES*

***State law reference**—General authority relative to nuisances, R.R.S. 1943, § 16-240; authority relative to weeds, grass and litter, R.R.S. 1943, § 16-230.

Sec. 20-1. Enumerated.

The following specific acts, omissions, places, conditions and things are hereby declared to be nuisances and are hereby prohibited, and shall be construed as defined by R.R.S. 1943, § 28-1321, except as otherwise specifically defined by this section:

- (1) Violations of the International Property Maintenance Code as adopted.
- (2) Permitting or allowing any growth of 12 inches or more in weeds, grasses, or other worthless vegetation on lots and grounds and on the streets and alleys on which the same abut.
- (3) Permitting or causing the escape of such quantities of soot, cinders, noxious acids, fumes and gases in such place or manner as to be detrimental to any person or to the public or to endanger the health, comfort and safety of any such person or of the public, or in such manner as to cause or have a tendency to cause injury to property or business.
- (4) Permitting property to remain defaced with graffiti. The term "graffiti" means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property.
- (5) Permitting the parking, storing or leaving of any motor vehicles of any kind which are in a wrecked, dismantled, inoperable, junked or partially dismantled condition; provided, this section shall not apply to any vehicle located on private property and enclosed within a building, or to any vehicle held in connection with a business enterprise, lawfully operated within the city in a nonresidential zoning area.
- (6) The burning of fuels used in solid fuel heating appliances which contain substances which are hazardous chemicals or cancer causing agents, such as wood preservatives of pentachlorophenol, creosote and arsenates. Substances which are hereby declared unlawful for burning shall include, but not be limited to, such items as railroad ties, light poles and fence posts containing wood preservatives.

(Code 1990, § 18-1)

Sec. 20-2. Notice to abate.

(a) Whenever any lot owner, or owner of any tract of land, or occupant of a lot or tract of land, permits a nuisance to exist, such owner or any occupant shall be notified of the existence of such nuisance by the city manager, and upon failure of said owner or occupant to abate such nuisance within the time stated in such notice, the owner or occupant shall be guilty of creating a nuisance. Notice may be served by personally handing a copy thereof to each owner, or owner's duly authorized agent and to the occupant, or by leaving at his usual place of residence, or in the event the owner is a nonresident of the city, and his residence is known, notice may be served upon him by certified mail. Service of notice by certified mail shall be deemed complete when the notice is delivered to the owner by the United States mail. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed.

(b) The owner shall have the right to appeal the notice to abate, by filing a notice of appeal with the city clerk within the time originally required for abatement of said nuisance. Said appeal shall be to the board of adjustment.

(c) Upon failure of the owner or occupant to comply with the notice to abate, the city may, in addition to or in lieu of filing charges for violation of this chapter, proceed as follows:

- (1) The city may cause any wrecked, dismantled, inoperable, junked or partially dismantled condition motor vehicle to be towed from the property, at the expense of the owner of said motor vehicle. Such towed vehicle shall thereafter be handled pursuant to chapter 26, article II, division 2-~~chapter 16 of article IX.~~
- (2) When any other nuisance is to be removed, the city may have such work done, and the costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may collect such cost and expense as provided in R.R.S. 1943, § 16-230.

(Code 1990, § 18-2)

PROOFS

Chapter 21
RESERVED

PROOFS

Chapter 22

OFFENSES AND MISCELLANEOUS PROVISIONS*

*State law reference—State criminal code. R.R.S. 1943, ch. 28.

ARTICLE I. IN GENERAL

Sec. 22-1. Littering.⁶⁹

(a) *Definitions.* For the purposes of this section the following terms, phrases, words, and their derivations shall have the meaning given herein: ~~When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.~~

Aircraft means any contrivance now known or hereafter invented, used or designated for navigation or for flight in the air. The term "aircraft" includes helicopters and lighter-than-air dirigibles and balloons.

Authorized private receptacle means a litter storage and collection receptacle as required and authorized in this section ~~19-7.~~

~~*City* means the city of Lexington, Dawson County, Nebraska.~~

Garbage means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Litter means garbage, refuse, and rubbish as defined in this subsection and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

Park means a park, reservation, playground, beach, recreation center or any other public area in the city, owned or used by the city and devoted to active or passive recreation.

~~*Person* means any person, firm, partnership, association, corporation, company or organization of any kind.~~

Private premises means any dwelling, house, building or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and includes any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.

Public place means any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings.

Refuse means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.

Rubbish means nonputrescible solid wastes consisting of both combustible and noncombustible wastes such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials.

⁶⁹ Legal or Editorial Change: Code 19-7 Littering. Deleted material covered by Code chapter 1.

Vehicle means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.

(b) *Litter in public places; composting and recycling centers.*

(1) No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the city except in public receptacles, in authorized private receptacles for collection or in other designated areas.

(2) The city may, by the posting of appropriate signs, designate areas available for public deposit of materials for composting, recycling, or as a transfer station for transport to a landfill. No person shall deposit litter other than specifically permitted by such signs, and no person shall deposit litter in any place not specifically designated by such signs.

(c) *Penalties.* Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding \$100.00 or be imprisoned in the county jail for a period not exceeding 30 days or be both so fined and imprisoned. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

(d) *Placement of litter in receptacles so as to prevent scattering.* Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

(e) *Sweeping litter into gutters prohibited.* No person shall sweep into or deposit in any gutter, street or other public place within the city, the accumulation of litter from any building, lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter.

(f) *Merchants' duty to keep sidewalks free of litter.* No person owning or occupying a place of business shall sweep into or deposit in any gutter, street, or other public place within the city the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying places of business within the city shall keep the sidewalk in front of their business premises free of litter.

(g) *Litter thrown by persons in vehicles.* No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the city, or upon private property.

(h) *Truck loads causing litter.* No person shall drive or move any truck or other vehicle within the city unless such vehicle is so constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place. Nor shall any person drive or move any vehicle or truck within the city, the wheels or tires of which carry onto or deposit in any street, alley or other public place, mud, dirt, sticky substances, litter or foreign matter of any kind.

(i) *Litter in parks.* No person shall throw or deposit litter in any park within the city except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place. Where public receptacles are not provided, all such litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere as provided in this section.

(j) *Litter in lakes and fountains.* No person shall throw or deposit litter in any fountain, pond, lake, stream, bay or any other body of water in a park or elsewhere within the city.

(k) *Dropping litter from aircraft.* No person in an aircraft shall throw out, drop or deposit within the city any litter, handbill or any other object.

(l) *Litter on occupied private property.* No person shall throw or deposit litter on any occupied private property within the city, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place or upon any private property.

(m) *Owner to maintain premises free of litter.* The owner or person in control of any private property shall at all times maintain the premises free of litter; provided, however, that this section shall not prohibit the storage of litter in authorized private receptacles for collection.

(n) *Litter on vacant lots.* No person shall throw or deposit litter on any open or vacant private property within the city whether owned by such person or not.

~~(a) Separability. If any section, subsection, sentence, clause, phrase or portion of this section is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.~~

(Code 1990, § 19-7; Ord. No. 1978; Ord. No. 2231, 5-22-2007)

State law reference—Littering, R.R.S. 1943, § 28-523.

Secs. 22-2--22-20. Reserved.

ARTICLE II. OFFENSES INVOLVING PUBLIC SAFETY*

*State law reference—Offenses against public health and safety, R.R.S. 1943, § 28-1201 et seq.

Sec. 22-21. Carrying concealed weapons.⁷⁰

(a) No person shall carry any ~~pistol~~, bowie knife, dirk, metal knuckles or other deadly and dangerous weapon concealed on or about his person.

(b) This section shall not apply to any officer authorized by law of this city, the state or the United States to preserve the peace or to make arrests, or to any person whose calling or employment, or the circumstances in which he may be placed shall be such as to justify a prudent man in carrying such weapon for the necessary defense of his person, family or property.

(Code 1970, § 7-501; Code 1990, § 19-6; Ord. No. 2231, 5-22-2007)

State law reference—Carrying concealed weapon, R.R.S. 1943, § 28-1202.

Sec. 22-22. Discharge of firearms.

No person shall wantonly or unnecessarily fire off or discharge any firearms of any kind or air rifles within the city.

(Code 1970, § 7-502; Code 1990, § 19-2; Ord. No. 1766, § 2; Ord. No. 2231, 5-22-2007)

Sec. 22-23. Fireworks possession and sale.

(a) Possession and sale. It shall be unlawful for any person to have possession of, for sale or for any other purpose, to offer for sale, or to use, within the city, any fireworks of any kind, except as defined as consumer fireworks by R.R.S. 1943, § 28-1241(6), and except as defined as a display

⁷⁰ Legal or Editorial Change: Code 1990, § 19-6 Weapons--Carrying Concealed. Deleted the reference to pistols. The power to regulate the ownership, possession, or transportation of a concealed handgun is preempted to the state. See R.R.S. § 18-1703.

fireworks by R.R.S. 1943, § 28-1241(7). Such fireworks shall be used, or sold at retail, only on those dates of each year when sale of such fireworks is permitted by R.R.S. 1943, § 28-1249 and by regulation of the state fire marshal.

(b) *Permit for display; other use prohibited.*

- (1) Any person desiring to have or to hold a fireworks display within the city shall file with the city clerk an application in writing for a permit therefor, which application shall set forth and specifically designate the place where such fireworks display is to be held, the kind and quantity of fireworks to be used, the time thereof and the person to have supervision thereof, and the city manager and city clerk may thereupon issue, or refuse to issue, a permit in writing for the holding of such fireworks display, excluding all firecrackers, at the time and place and under the supervision of the person as set forth in the application, and upon the issuance of any permit may require such additional supervision as shall be deemed necessary or proper, which requirement shall be stated in the permit.
- (2) For any fireworks display permit issued pursuant to this section, the city manager shall have authority to designate an area for public observation of such fireworks display, and shall post reasonable notice of such observation area. During the time of such fireworks display it shall be unlawful for any other person to have in his possession, to set off or otherwise cause to discharge or burn any fireworks within such area, or to discharge or throw fireworks into such area from any adjacent land or highway.

(Code 1970, §§ 7-505, 7-505.01; Code 1990, §§ 19-3, 19-4; Ord. No. 1638, § 1; Ord. No. 1986; Ord. No. 2231, 5-22-2007; Ord. No. 2286 § 1, 10-12-2010)

State law reference—Fireworks, R.R.S. 1943, § 28-1241 et seq.

Sec. 22-24. Sexual predator residency restrictions.⁷¹

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning: ~~For purposes of this ordinance:~~

Child care facility means a facility licensed pursuant to the Child Care Licensing Act (R.R.S. 1943, § 79-1908 et seq.).

Reside means to sleep, live or dwell at a place, which may include more than one location, and may be mobile or transitory.

Residence means a place where an individual sleeps, lives or dwells, which may include more than one location, and may be mobile or transitory.

School means a public, private, denominational or parochial school which meets the requirements for state accreditation or approval.

Sex offender means an individual who has been convicted of a crime listed in R.R.S. 1943, § 29-4003, and who is required to register as a sex offender pursuant to the Sex Offender Registration Act (R.R.S. 1943, § 29-4001 et seq.).

Sexual predator means an individual who is required to register under the Sex Offender Registration Act (R.R.S. 1943, § 29-4001 et seq.), who has committed an aggravated offense as defined in R.R.S. 1943, § 29-4001.01, and who has victimized a person 18 years of age or younger.

⁷¹ Legal or Editorial Change: Code § 9-8 Sexual Predator Residency Restrictions. Deleted subsection D as not needed.

(b) *Prohibited location of residence.* It is unlawful for any sexual predator to reside within 500 feet from a school or child care facility.

(c) *Measure of distance.* For purposes of determining the minimum distance separation, the 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.

~~D. *Penalties.* A person who violates this section shall be punished as provided in this Code.~~

(d) *Exceptions.* This section shall not apply to a sexual predator who:

- (1) Resides within a prison or correctional or treatment facility operated by the state or a political subdivision;
- (2) Established a residence before July 1, 2006, and has not moved from that residence; or
- (3) Established a residence after 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.

(Code 1990, § 19-8; Ord. No. 2216, 8-23-2006; Ord. No. 2231, 5-22-2007; Ord. No. 2311, § 1, 1-24-2012)

State law reference—Local restrictions on sex offenders, R.R.S. 1943, § 29-4017.

Secs. 22-25--22-51. Reserved.

ARTICLE III. OFFENSES INVOLVING PUBLIC PEACE AND ORDER

Sec. 22-52. Disorderly conduct.⁷²

No person shall publicly ~~curse or swear, or within the hearing of others,~~ use profane, obscene, indecent, abusive or offensive language that is reasonably foreseeable to provoke an immediate breach of the peace. No person shall disturb the peace of others or the good order and quiet of the city by violent, tumultuous or disorderly conduct, or by menacing, threatening, traducing, assaulting, striking, wounding, challenging to fight or fighting another or others or by quarreling or rioting, shouting or making unusual or unseemly noises.

(Code 1970, § 7-301; Code 1990, § 19-1; Ord. No. 2231, 5-22-2007)

State law reference—Disturbing the peace, R.R.S. 1943, § 28-1322.

Sec. 22-53. Noise.⁷³

(a) *Findings.* It is found and declared that:

- (1) The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual and unnatural in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.
- (2) The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted, is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting

⁷² Legal or Editorial Change: Code § 19-1 Disorderly Conduct. Altered to avoid constitutional problems.

⁷³ Legal or Editorial Change: Code § 17-1--17-3. Noise. So as to avoid constitutional problem, tied to a reasonable person standard.

the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants.

(b) *General prohibition.* It shall be unlawful for any person to make, continue, or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of ~~others within the city~~ reasonable people.

(c) *Enumeration.* The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article, but the enumeration shall not be deemed to be exclusive, namely:

- (1) ~~*Horns, Signaling devices, etc.* The sounding of any horn or signaling device on any automobile, motorcycle, streetcar or other vehicle on any street or public place of the city, except as a danger warning; the creation by means of any such signaling device of any unreasonable loud or harsh sound; and the sounding of any such device for an unnecessary and unreasonable period of time.~~ The use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason held up.
- (2) *Radios, phonographs, etc.* The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for ~~the person or~~ reasonable persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.
- (3) *Loudspeakers; amplifiers for advertising.* The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of ~~commercial~~ advertising or attracting the attention of the public to any building or structure.
- (4) *Yelling, shouting, etc.* Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m., or at any time or place so as to annoy or disturb the quiet, comfort or repose of reasonable persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.
- (5) *Animals, birds, etc.* The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of ~~any~~ reasonable persons in the vicinity.
- (6) *Whistles.* The blowing of any locomotive whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper city authorities.
- (7) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

- (8) *Defect in vehicle or load.* The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- (9) *Loading, unloading, opening boxes.* The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.
- (10) *Construction or repairing of buildings.* The erection (including excavating), demolition, alteration or repair of any building other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, except in the case of urgent necessity in the interest of public health and safety, and then only with the permit from the building inspector, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for periods of three days or less while the emergency continues. If the building inspector should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the hours of 6:00 p.m. and 7:00 a.m., and if he shall further determine that the loss of inconvenience would result to any party in interest, he may grant permission for such work to be done within the hours of 6:00 p.m. and 7:00 a.m., upon application being made at the time the permit for the work is awarded or during the progress of the work.
- (11) *Schools, courts, churches, hospitals.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the working of such institution, or which disturbs or unduly annoys ~~patients~~ reasonable persons in the hospital; provided, that conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street.
- (12) *Hawkers, peddlers.* The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of ~~the neighborhood~~ reasonable persons.
- (13) *Drums.* The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.
- (14) *Pile drivers, hammers, etc.* The operation between the hours of 10:00 p.m. and 7:00 a.m. of any piledriver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise.
- (15) *Blowers.* The operation of any noise-creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.

(Code 1990, §§ 17-1--17-3)

Secs. 22-54--22-79. Reserved.

ARTICLE IV. OFFENSES INVOLVING UNDERAGE PERSONS

Sec. 22-80. Curfew.⁷⁴

(a) *Definitions.* For the purpose of this section, the following terms, phrases, words and their derivations shall have the meaning given herein:

⁷⁴ Legal or Editorial Change: Code § 19-5 Curfew. Deleted definition of city, the severability clause and certain other provisions as covered by Code chapter 1.

~~*City* means the city of Lexington, Dawson County, Nebraska, with administrative offices at 406 East 7th Street.~~

Emergency means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term "emergency" includes, but is not limited to, a fire, natural disaster, or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

Establishment means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

Juvenile or *minor* means any unemancipated person under the age of 18 or, in equivalent phrasing often herein employed, any person 17 or less years of age.

Parent means any person having legal custody of a juvenile as a:

- (1) Natural or adoptive parent;
- (2) Legal guardian;
- (3) Person who stands in loco parentis; or
- (4) Person to whom legal custody has been given by court order.

Public place means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, common areas of schools, shopping centers, parking lots, parks, playgrounds, transportation facilities, theaters, restaurants, shops, bowling alleys, taverns, cafes, arcades and similar areas, that are open to the use of the public. As a type of public place, a street is a way or place, or whatever nature, open to the use of the public as a matter of right for purposes of vehicular travel or in the case of a sidewalk thereof for pedestrian travel. The term "street" includes that legal right-of-way, including but not limited to the cartway of traffic lanes, the curb, the sidewalks whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street.

Remain means to stay behind, to tarry and to stay unnecessarily in a public place including the congregating of groups (or of interacting minors) totaling four or more persons in which any juvenile involved would not be using the streets for ordinary or serious purposes such as mere passage or going home, or to fail to leave the premises of an establishment when requested to do so by a police officer or the operator of an establishment. To implement this provision with additional precision and precaution, numerous exceptions are expressly defined in this section. More and more exceptions become available with a juvenile's increasing years and advancing maturity, as appropriate in the interest of reasonable regulation.

Time of night means based upon the prevailing standard of time, whether Central Standard Time or Central Daylight Saving Time, generally observed at that hour by the public in the city; prima facie the time then observed in the city administrative offices and police station.

~~When not inconsistent with the context, words used in the present tense include the future, words in the plural tense include the singular and words in the singular number, the plural. The word "shall" is always mandatory and not merely directory.~~

(b) *Penalties.* Any minor under the age of 16 years violating the provisions of this section shall be dealt with in accordance with the juvenile court laws of the state and procedure thereunder. Any other person violating this section shall be served with a citation to appear in court, and upon conviction be fined not more than \$500.00 for each offense or shall be imprisoned in jail for a period not to exceed 30 days, or both such fine and imprisonment.

(c) *Curfew for juveniles.* It shall be unlawful for any person 15 or less years of age to be or remain in or upon a public place within the city during the period beginning at 10:30 p.m. and ending at 5:00 a.m. on any day of the week, and it shall be unlawful for any person 16 or 17 years

of age to be or remain in or upon a public place within the city during the period and beginning at 12:00 midnight and ending at 5:00 a.m. on any day of the week.

(d) *Exceptions.* The following shall constitute valid exceptions to the operation of this section:

- (1) When a juvenile is accompanied by a parent of such juvenile.
- (2) When a juvenile is accompanied by an adult authorized by a parent of such juvenile to take said parent's place in accompanying said juvenile for a designated period of time and purpose within a specified area.
- (3) In the event of an emergency, or when the juvenile is on an errand as directed by his parent.
- (4) When a juvenile is 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, by first delivering to the person designated by the city's chief of police to receive such information a written communication, signed by the juvenile and countersigned, if practicable, by a parent of the juvenile with their home address and telephone number, specifying when, where and in what manner the juvenile will be in a public place during hours when this section is applicable to said minor in the exercise of a First Amendment right specified in such communication.
- (5) When a juvenile is on the sidewalk or property where the juvenile resides.
- (6) When a juvenile is returning home from and within one hour of the termination of a school activity or an activity of a religious or other voluntary association, or a place of public entertainment, such as a movie, play or sporting event.
- (7) When the juvenile is legally employed and the juvenile is either in the course of his employment or traveling to or from such place of employment.
- (8) When the juvenile is, with parental consent, engaged in normal interstate travel through the city or originating or terminating in the city.
- (9) When the juvenile is married or has been married pursuant to state law.
- (10) Each of the foregoing exceptions, and their several limitations such as provisions for notification, are severable, as hereinafter provided but here reemphasized, and will be considered by council when warranted by future experience illuminated by the views of student government associations, school personnel, citizens, associations, parents, officers and persons in authority concerned positively with juveniles, as well as with juvenile delinquency.

(e) *Parental responsibility.* It shall be unlawful for a parent having legal custody of a juvenile knowingly to permit or by inefficient control to allow the juvenile to remain in any city public place under circumstances not constituting an exception to, or otherwise beyond the scope of, this section. The term "knowingly" includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a juvenile in that parent's legal custody. This requirement is intended to hold a neglectful or careless parent up to a reasonable community standard of parental responsibility through an objective test. It shall therefore, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile.

~~F. Construction and severability. Severability is intended throughout and within the provisions of this section. If any provision, including any exception, part, phrase, or term, or the application thereof to any person or circumstances is held invalid, the application to other persons or circumstances shall not be affected thereby and the validity of the ordinance in any and all other respects shall not be affected thereby.~~

(Code 1990, § 19-5; Ord. No. 2066; Ord. No. 2231, 5-22-2007)

PROOFS

Chapter 23
RESERVED

PROOFS

Chapter 24

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

***State law reference**—General authority relative to streets, R.R.S. 1943, §§ 16-207, 16-219; general authority relative to sidewalks, R.R.S. 1943, §§ 16-250, 16-661 et seq., 19-2417 et seq.

ARTICLE I. IN GENERAL**Sec. 24-1. Obstructing streets prohibited; violations and penalties.⁷⁵**

No person shall erect, or cause to be erected, or shall leave or place, or permit to be left or placed, in any street or alley or on or in any sidewalk, any vehicle, wood, stone, metal or any mailbox or any other object, article or thing, whatsoever in such manner as to obstruct or interfere in any manner with the public use of the street, alley, or sidewalk, except as provided in section 24-3. However, property owners who have placed mailboxes in or on sidewalks prior to June 1, 1977, may, at their option, leave said mailboxes in or on the sidewalk, provided that the mailboxes were not negligently erected or are not negligently maintained and do not create a hazard or dangerous condition and provided further that the property owners sign an agreement with the city holding the city harmless and agreeing to indemnify the city for any personal or property damages suffered by any persons that the city becomes liable to pay as a result of the negligence in erection or maintenance of such mailbox by the property owner. ~~Any person who shall violate, neglect or refuse to comply with section 1 shall be guilty of a misdemeanor punishable as provided in section 1-7 and shall be liable for all damages or injury suffered by any person who is injured by the failure or neglect of the owner and occupant of the real estate to comply with section 1.~~

(Code 1970, § 7-601; Code 1990, § 24-1; Ord. No. 1184, § 1; Ord. No. 1506)

State law reference—Authority of city to regulate and prevent street obstructions, R.R.S. 1943, § 16-227.

Sec. 24-2. Vision clearance.

No shrubs, trees, bushes or other plant material shall be planted, maintained, allowed to grow, and no structures shall be erected so as to hinder vision in the vicinity of an intersection of two streets, within a sight distance triangle bounded by the edges of the roadway or the curb on the two sides and a line diagonally across the corner lot meeting the edges of the roadway or the curb 40 feet from their intersection at the corner. The term "to hinder vision" means the plant material has leaves, needles, branches or other foliage during any period of the year, and structures of any type as defined in chapter 115, zoning regulations, exist between levels two feet and eight feet above the crown of the street adjacent. Structures in C-2 district shall be exempt from this section.

(Ord. No. 2293, § 2(24-1.1), 3-22-2011)

Sec. 24-3. Display of merchandise on streets and sidewalks.

(a) No vehicles, machinery or other articles of merchandise shall be displayed for sale on the streets or sidewalks of the city, except as follows:

- (1) The city manager may permit the use of sidewalks to all merchants for display of merchandise.

⁷⁵ Legal or Editorial Change: Code 1990, § 24-1 Obstructing Streets Prohibited; Violations and Penalties. Deleted last sentence as not needed or beyond the power of the city to provide.

- (2) The city manager may permit a temporary use of streets and sidewalks to civic groups and nonprofit organizations, and other civic and nonprofit enterprises.

(b) The city manager shall grant all permits and permissions provided for in this section upon a showing that the proposed displays or temporary uses will not endanger public peace and public safety.

(Code 1970, § 9-204.08; Code 1990, § 24-2; Ord. No. 1184, § 2; Ord. No. 1778)

Sec. 24-4. Cuts and alterations; permits; fees.⁷⁶

(a) No person shall begin to construct, reconstruct, repair, alter or grade any sidewalk, curb, curb cut, driveway or street on the public streets and alleys, without first obtaining a permit from the city building official, and providing plans therefor.

(b) Upon issuance of a permit, the work shall be subject to inspection as provided by ~~section 304 of volume I of Uniform~~ the building code, and prior to the pouring of any concrete; the work shall be done according to the standards and specifications of the city for public works of like character, and that the operation will not unreasonably interfere with vehicle and pedestrian traffic, or the necessity for parking spaces and means of egress to and from the property affected and adjacent properties.

(c) Wherever there has been a curb cut made for a driveway or other entrance, the area between the curb cut and the nearest sidewalk line shall be paved with concrete in accordance with the specifications of the city.

(d) ~~The construction permit fee shall be \$5.00 for each inspection required for pavement cuts totaling up to 100 square feet. For cuts over 100 square feet, the permit fee shall be \$0.05 per square foot up to a maximum fee of \$50.00 as established by the city.~~

(e) The contractor or utility company doing any construction as provided in this section shall remove and replace any pavement cut which settles or becomes cracked within one year of the initial placement of the concrete.

(Code 1990, § 24-3; Ord. No. 1063, § 1; Ord. No. 1667, § 1)

Sec. 24-5. Performance of repair, installation, etc., work by city and assessment of cost.

On the failure to perform the work as provided in section 24-4, in a workmanlike manner, or failure to repair defective sidewalks after notice requiring such repair, or failure to install sidewalks after notice requiring such installation, the city shall perform the work and repair and paving and installation and assess the costs against the premises and the owner thereof as provided by law.

(Code 1990, § 24-4; Ord. No. 1063, § 1)

Sec. 24-6. Assessments of benefits in improvement districts.

(a) *Amount.* For all improvement districts after District No. 184, the benefits of various categories of street improvement will be levied and assessed on all lots, parts of lots, lands and real estate to the extent of the special benefit of such lots, parts of lots, lands and real estate by reason of such improvement, or in the case of a new subdivision, as provided in the subdivision agreement. Such shall be determined by the council sitting as a board of equalization, using 100

⁷⁶ Legal or Editorial Change: Code 1990, § 24-3 Cuts and Alterations Generally, Permits, Fees. Changed "Section 304 of Volume I of the Uniform Building Code" to "building code." Tied fee to city action.

percent of the actual cost (including engineering, publication, intersection and alley costs and excluding storm sewer costs) as a basis to determine the benefits.

(b) *Procedure.* Assessments for street improvements shall be made as follows:

- (1) To the depth of a lot as shown on the recorded plat, but not to exceed 150 feet, if the width of the lot abuts the improved street and if the length of the lot does not extend to another street.
- (2) To one-half of the depth of a lot, but not to exceed 150 feet if the width of the lot abuts the improved street and if the lot extends to another street.
- (3) In all other cases, against the lots or tracts for a depth of 150 feet deep from the improved street, or one-half of the block, whichever is shorter.
- (4) In the event the property to be assessed is owned by various owners, it shall for 125 feet to 150 feet, be assessed as follows:
 - a. The first 50 feet: 75 percent;
 - b. The second 50 feet: 15 percent; and
 - c. The last 50 feet or fraction thereof: ten percent.
- (5) In the event the property to be assessed is 125 feet or less to the middle of the block, it shall be assessed as follows:
 - a. The first one-third: 75 percent;
 - b. The second one-third: 15 percent; and
 - c. The last one-third: ten percent.

(c) *Certain assessments set by city county.* In the event the property to be assessed cannot be assessed under the ~~above~~ rules for assessment set forth in this section such property shall be assessed equitably as determined by the city council at the time of assessment.

(Code 1970, § 10-103; Code 1990, §§ 24-5, 24-6; Res. No. 943, § 5; Ord. No. 1228, § 1; Ord. No. 1290, § 1; Ord. No. 1360, § 1; Ord. No. 1742, § 1)

~~Sec. 24-7 Street Names—Generally.~~⁷⁷

~~The streets of the city are hereby named as follows:~~

~~Running north and south~~

~~The street running north and south on the west line of section 5, township 9 north, of range 21, is named Adams Street.~~

~~The first street east thereof is named Johnson Street.~~

~~The second street east thereof is named Taylor Street.~~

~~The third street east thereof is named Harrison Street.~~

~~The fourth street east thereof is named Madison Street.~~

~~The fifth street east thereof is named Lincoln Street.~~

~~The sixth street east thereof is named Washington Street.~~

~~The seventh street east thereof is named Grant Street.~~

⁷⁷ Legal or Editorial Change: Code 1990, §§ 24-7, 24-8. Street names. Deleted as not of a general and permanent nature. Ordinances of this nature are saved from repeal in Code chapter 1.

~~The eighth street east thereof is named Jackson Street.~~

~~The ninth street east thereof is named Jefferson Street.~~

~~The tenth street east thereof is named Tyler Street.~~

~~The eleventh street east thereof is named Monroe Street.~~

~~The twelfth street east thereof is named Fillmore Street.~~

~~The thirteenth street east thereof is named Pierce Street~~

~~The fourteenth street east thereof is named Garfield Street.~~

~~The street running north and south on the east line of section 5, township 9, range 21, is named Taft Street.~~

~~The first street west of the west line of section 5, is named Ontario Avenue.~~

~~The second street west thereof is named Lake Avenue.~~

~~The third street west thereof is named Erie Avenue.~~

~~The north and south street in the Mesa Addition is named Cleveland Street.~~

~~The north and south street in Kelly's Addition is named Hoover Street.~~

~~The north and south street on the east side of Park Addition is named Park Street.~~

~~The north and south street on the west side of Rose Park Addition is named Polk Street.~~

~~The street east of Polk Street in Rose Park Addition is named Roosevelt Street.~~

~~The north and south street in Fairacres Addition is named Van Buren Street.~~

~~The north and south street commencing on Thirteenth Street between Tracts H and I and continuing as the west street in Woodlawn Addition and leaving Woodlawn Addition between lots 51 and 52 of Woodlawn Addition is named Jackson Street.~~

~~The street east of Jackson Street in Woodlawn Addition is named Woodlawn Avenue.~~

~~The street on the east side of Bowen's First Addition, Maxwell's Addition and Fairacres Addition, and continuing to the South City limits as Highway 283 is named Plum Creek Parkway.~~

~~Running East and West~~

~~The street running from southeast to northwest along the north line of the Union Pacific Railroad right-of-way is named Pacific Avenue.~~

~~The first street north thereof, running east and west, is named Second Street.~~

~~The second street north thereof is named Third Street.~~

~~The third street north thereof is named Fourth Street.~~

~~The fourth street north thereof is named Fifth Street.~~

~~The fifth street north thereof is named Sixth Street.~~

~~The sixth street north thereof is named Seventh Street.~~

~~The seventh street north thereof is named Eighth Street.~~

~~The eighth street north thereof is named Ninth Street.~~

~~The ninth street north thereof is named Tenth Street.~~

~~The tenth street north thereof is named Eleventh Street.~~

~~The eleventh street north thereof is named Twelfth Street.~~

~~The twelfth street north thereof is named Thirteenth Street.~~

~~The thirteenth street north thereof is named Fourteenth Street.~~

~~The fourteenth street north thereof is named Fifteenth Street.~~

~~The fifteenth street north thereof is named Sixteenth Street.~~

~~The sixteenth street north thereof is named Seventeenth Street.~~

~~The street on the north side of Suburban Addition as has been subdivided, is named Twentieth Street.~~

~~The street running from northwest to southwest along the south line of the Union Pacific Railroad right of way is named Ivan Street.~~

~~The street running east and west and lying directly north of Blocks three and four in May's Addition to the City is named Vine Street.~~

~~The first street south of Vine Street, running east and west, is named Elm Street.~~

~~The second street south thereof is named Spruce Street.~~

~~The third street south thereof is named Maple Street.~~

~~The fourth street south thereof is named Walnut Street.~~

~~The fifth street south thereof is named High Street.~~

~~The sixth street south thereof is named Cedar Street.~~

~~The seventh street south thereof is named Oak Street.~~

~~The eighth street south thereof is named Ash Street.~~

~~Other Streets, Boulevards and Avenues.~~

~~The street running through Fairacres Addition from Washington Street to Plum Creek Parkway is named Washington Boulevard.~~

~~Tenth Street running from the west line of Eric Street through Grand Prairie Addition is named Freeman Street.~~

~~Eleventh Street running from the west line of Eric Street through Grand Prairie Addition is named Buffalo Bend.~~

~~(Code 1970, § 10-101; Code 1990, § 24-7; Ord. No. 1448, Sec. 1; Ord. No. 1999)~~

~~Sec. 24-8 Same Future Extensions, Additions and Subdivisions.~~

~~Any extension of a present street in any future addition or subdivision shall continue the use of the name of the street. Any new street in such addition or subdivision shall be named as shown on the plat.~~

~~(Code 1970, § 10-101.01; Code 1990, § 24-8)~~

Sec. 24-7. Vacation of streets and alleys.

An ordinance vacating any street or alley shall be recorded in the register of deeds office of the county.

(Code 1970, § 10-102; Code 1990, § 24-9)

Secs. 24-8--24-32. Reserved.

ARTICLE II. SIDEWALKS*

*State law reference—Construction, repair, etc., of sidewalks, see R.R.S. 1943, §§ 16-250, 16-661 et seq.

Sec. 24-33. Grade.

All sidewalks within the city shall be laid to conform to the grade established by the city engineer, and shall be laid under the direction of the person having charge of the sidewalks of the city. It is hereby made the duty of the person having charge of the sidewalks to see that all new sidewalks are laid to conform to the grade, as established by the city engineer and shall be in conformance with the building codes and inspection as provided in article II of chapter 103 ~~chapter 6~~.

(Code 1970, § 10-401; Code 1990, § 24-10; Ord. No. 1216, § 7)

Sec. 24-34.⁷⁸ Location.

All sidewalks outside of the business district of the city shall be laid two feet from the lot line, and the space between the lot line and the sidewalk shall be graded up to the level of the sidewalk; provided, that on any street which is paved or curbed, guttered or graveled, the sidewalk may be laid next to and abutting the curb along the entire side of any one block, by agreement of all the property owners owning property abutting on the street in the block; and where the sidewalk is to be laid next to the curb as herein provided, a written agreement shall be executed by all the owners of property abutting on the street along the side of the block proposed to be so improved, agreeing to the construction of such sidewalk along the curb in the block, which agreement shall be filed with the city clerk ~~treasurer~~, and the city council shall, by motion, if such agreement is properly executed and filed, authorize the sidewalks to be constructed along the curb as provided herein shall be constructed in strict accordance with plans and specifications to be furnished by the city manager.

(Code 1970, § 10-402; Code 1990, § 24-11)

Sec. 24-12 Construction specifications.⁷⁹

~~All sidewalks constructed within the city shall be constructed of a good quality of cement concrete not less than four inches in thickness and of the width provided in this article.~~

(Code 1970, § 10-403; Code 1990, § 24-12)

Sec. 24-13 Width.⁸⁰

~~The sidewalks within the fire limits of the city on Washington Street shall be 12 feet wide, and on all other streets within the fire limits, eight feet wide.~~

~~All sidewalks on Washington Street from Seventh Street to Tenth Street, shall be six feet wide, and the sidewalk shall be six feet wide on the north side of Tenth Street from Washington Street to Taylor Street, and the sidewalk shall be six feet wide on the north side of Sixth Street from Washington Street to Tyler Street. In all blocks, parts of which are in the fire limits, the sidewalks on streets running east and west shall be eight feet wide. All other sidewalks within the city shall be not less than four feet wide and not more than six feet wide, and all sidewalks on the same side of a block shall be of the same width. In the event that the location of a sidewalk or the width of a sidewalk cannot be distinguished on any paved area or concrete area, the city manager shall cause sidewalk lines to be painted defining and designating the parts set aside for sidewalks.~~

⁷⁸ Legal or Editorial Change: Code 1990, § 24-11 Location. Changed city clerk treasurer to city clerk.

⁷⁹ Legal or Editorial Change: Code 1990, § 24-12 Construction Specifications. Deleted as not of a general and permanent nature.

⁸⁰ Legal or Editorial Change: Code 1990, § 24-13 Width. Deleted as obsolete (there are no fire limits) or not of a general and permanent nature.

~~(Code 1970, § 10-404; Code 1990, § 24-13; Ord. No. 1222, § 2)~~

Sec. 24-35. Condemnation of sidewalk.

All concrete and other sidewalks within the city which are in a dilapidated or dangerous condition shall, upon complaint of any citizen of the city, be examined by the city manager, and if the sidewalk is found to be in such dilapidated or dangerous condition, the same shall, by the city manager, be at once condemned, and the city manager shall cause employees of the city to remove such condemned sidewalk.

(Code 1970, § 10-405; Code 1990, § 24-14)

Sec. 24-36. Duty to replace condemned sidewalk.⁸¹

Where sidewalks are condemned and ordered removed, it shall be the duty of the owner or person having charge or control of the premises abutting the street where the sidewalk was, to construct or cause to be constructed, a concrete sidewalk as provided for in this article, and the sidewalk shall be built within 60 days, unless prevented by snow, rain or cold, after the sidewalk shall have been condemned, and the notice of the condemnation and required construction of the new sidewalk given to the owner or person having the premises in charge. Such notice shall be given by the city manager and attested by the city clerk ~~treasurer~~ and served either personally in writing or by publishing in the city, once in a weekly newspaper of general circulation.

(Code 1970, § 10-405.01; Code 1990, § 24-15)

~~Sec. 24-16 Curbing.⁸²~~

~~At the time of the construction of walks provided for by this article, on Washington Street, and within the fire limits of the City, there shall be constructed along the outer edge of the City sidewalks curbing of cement concrete not less than four inches thick and not less than fifteen inches deep, and the same shall be placed in uniform manner along the sidewalk.~~

~~(Code 1970, § 10-406; Code 1990, § 24-16)~~

Sec. 24-37. When construction required.

Sidewalks to be constructed as provided by this article may be ordered by the city council at any time to be laid where sidewalks have not before existed, or where sidewalks have been condemned, or defective or unsafe walks ordered to be repaired by the city council, by a three-fourths vote thereof. Sidewalks shall be ordered by the city council when petitioned for by a majority of the resident owners of property abutting the proposed walk, when no sidewalk exists or when sidewalks have been condemned, and notice of such order shall be served upon the owner or persons having charge of the premises abutting the proposed walk, in the manner provided for in this article, and in the case of the failure of such owner or person having the premises in charge, to build or repair the walk as so ordered, the city may proceed to rebuild or repair the walk and assess the cost thereof upon the property abutting thereon in the manner provided by the laws of the state.

(Code 1970, § 10-407; Code 1990, § 24-19)

⁸¹ Legal or Editorial Change: Code 1990, § 24-15 Duty to Replace Condemned Sidewalk. Changed city clerk treasurer to city clerk.

⁸² Legal or Editorial Change: Code 1990, § 24-16 Curbing. Deleted as obsolete (there are no fire limits) or not of a general and permanent nature.

Sec. 24-38. Removal of snow.

(a) The owner, occupant and person having control of any lots or real estate, along which there is a sidewalk, or of any lots or real estate along which a sidewalk may be constructed, shall remove all snow and sleet from the sidewalk within 48 hours after the same have fallen. The owner, occupant and person having control of such lot or real estate shall each be severally liable under all provisions of this article for the performance of the things required herein. Whenever any owner, occupant or person having control of any lot shall fail to remove such snow or sleet, the same shall constitute a nuisance, and said owner, occupant or person in control shall be notified of the existence of such nuisance by the city manager, and if the nuisance is not abated within three days from the service of the notice, he shall be guilty of creating a nuisance. The notice may be served by personally handing a copy thereof to the owner, occupant or person in control, or by leaving at his usual place of residence, or in the event that owner is a nonresident of the city, and his residence is known, notice may be served upon him by certified mail.

(b) In addition to the ~~foregoing remedies set forth in subsection (a) of this section~~, the city may clear away any snow and ice from any sidewalk as hereinbefore provided, or cause this to be done. The actual cost of such snow and ice removal shall immediately become due and payable and shall be collectible against the owner, occupant or person in control of such property by a suit at law. The city shall also have the power and authority to assess the actual cost of such snow and ice removal against the property abutting such sidewalk, and collect such cost in the same manner as a special assessment, by sale and conveyance of such property.

(c) The owner, occupant and person having control shall be severally liable for damages in favor of any person who is injured by the failure or neglect of such owner, occupant or person having control to comply with the terms of this article. The owner, occupant or person having control of the property shall be deemed to have waived all right or claim to damages for injury caused on such property as a result of snow and ice removal by the city.

(Code 1970, § 10-408; Code 1990, § 24-18; Ord. No. 1772, § 1)

~~Sec. 24-19 Gasoline pumps and tanks prohibited.~~⁸³

~~The use and occupancy of the streets and sidewalks in the city for the purpose of placing gasoline storage tanks therein, and the placing and maintaining of pumps and appliances connected therewith on the sidewalks of the street, are a nuisance and dangerous menace and an unlawful obstruction to the use of the street and sidewalks thereof, and the city officers are hereby authorized, empowered and directed to cause such tanks or pumps to be removed forthwith from the street and sidewalks and to prohibit the installation of any such pumps or tanks or appliances on the street.~~

~~(Code 1970, § 10-409; Code 1990, § 24-19)~~

Secs. 24-39--24-64. Reserved.

ARTICLE III. PARKS AND CEMETERIES*

***State law reference**—Cemeteries in cities less than 25,000, R.R.S. 1943, § 12-401 et seq.; municipal cemeteries, R.R.S. 1943, § 12-1001 et seq.; cemeteries in cities of the first class, R.R.S. 1943, § 16-241 et seq.; parks and recreational areas generally, R.R.S. 1943, § 16-695.

⁸³ Legal or Editorial Change: Code 1990, § 24-19 Gasoline Pumps and Tanks Prohibited. Deleted as obsolete.

~~Sec. 20-1 Plum Creek Park.~~⁸⁴

~~The park owned by the city and located on blocks 17, 18, 23 and 24, in MacColl's Addition to the city is hereby designated as Plum Creek Park.~~

~~(Code 1970, § 6-101; Code 1990, § 20-1)~~

~~Sec. 20-2 Pioneer Park.~~

~~The park owned by the city and located on block 13 in Lexington Heights Addition to the city is hereby designated as Pioneer Park.~~

~~(Code 1970, § 6-101.01; Code 1990, § 20-2)~~

~~Sec. 20-3 Kirkpatrick Memorial Park.~~

~~The park owned by the city and located on part of tract B of the subdivision of the east half of Section 5, Township 9, North, Range 21, west of the 6th P.M., and in Kirkpatrick's Addition in the city is hereby designated as Kirkpatrick Memorial Park.~~

~~(Code 1970, § 6-101.02; Code 1990, § 20-3; Ord. No. 2250, § 1, 6-10-2008)~~

~~Sec. 20-4 Arbor Park.~~

~~The park owned by the city and located in Bowen's Addition to the city is hereby designated as Arbor Park.~~

~~(Code 1970, § 6-101.03; Code 1990, § 20-4)~~

~~Sec. 20-5 Oak Park.~~

~~The park owned by the city and located in blocks 4 and 5, James Ervin's Second Subdivision in the city is hereby designated as Oak Park.~~

~~(Code 1970, § 6-101.04; Code 1990, § 20-5)~~

~~Sec. 20-05.1 Optimist Park.~~

~~The park owned by the city and located in Lot 1, Optimist Addition to the city, is hereby designated as Optimist Park.~~

~~(Code 1990, § 20-05.1)~~

Sec. 24-65. Park rules; destruction of property and fireworks.

No person in a park or cemetery shall:

(1) *Buildings and other property.*

- a. *Disfigure and removal.* Willfully mark, deface, disfigure, injure, tamper with or displace or remove any building, tables, benches, fireplaces, railings, cemetery monuments, stones or markers, other public utilities or parts or appurtenances thereof, of signs, notices, placards, monuments, whether temporary or permanent, or other structures or equipment facilities of park and cemetery property or appurtenances whatsoever, either real or personal.
- b. *Restrooms and washrooms.* Fail to cooperate in maintaining restrooms and washrooms in a neat and sanitary condition.

⁸⁴ Legal or Editorial Change: Code 1990, §§ 20-1--20-05.1. Parks designated and named. Deleted as not of a general and permanent nature. Language in chapter 1 saves material of this nature from repeal.

- c. *Construction.* Construct or erect any building or structure of whatever kind, whether permanent or temporary in character, or operate any business in or upon, string any public service utility into, upon or across such lands, except on special written permit issued by the city manager.
- (2) *Trees, shrubberies and lawns.* Damage, carve, transplant or remove any tree or plant or injure the bark or pick the flowers or seeds of any tree or plant.
- (3) *Fireworks.* Have in his possession, set off or otherwise cause to discharge or burn any fireworks, or discharge or throw fireworks into such park or cemetery from any adjacent land or highway.

(Code 1990, § 20-6; Ord. No. 1236; Ord. No. 1986)

~~Sec. 20-7 Trash to be deposited in receptacles.~~⁸⁵

~~No person shall dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage or refuse or other trash in any park or cemetery except in receptacles provided therefor.~~

~~(Code 1990, § 20-7; Ord. No. 1236, § 3)~~

Sec. 24-66. Vehicle regulations.

All vehicles of every kind are prohibited from driving on any other area except designated roads. Such vehicles shall only be parked in designated parking areas or parallel parking on roads, leaving space for moving vehicles to use road, unless otherwise prohibited by signs erected.

(Code 1990, § 20-8; Ord. No. 1236, § 4)

Sec. 24-67. Operation policy.

(a) Except for unusual and unforeseen emergencies, parks and cemeteries shall be opened to the public every day of the year from 7:00 a.m. to 11:00 p.m., unless special permission is granted in writing by the city manager. No person or vehicle shall be within any park or cemetery except during the operating hours.

(b) Any park, part of a park or cemetery may be declared closed to the public by the city manager at any time and for any interval of time, either temporarily or at regular and stated intervals and may be entirely limited to certain uses as the city manager shall find reasonably necessary.

(c) Camping trailers, as defined in section 113-1 shall be permitted to park for a limited period of time, including overnight parking, within the parks of the city, when specific permission for such parking is granted by the city manager. The city manager is hereby authorized to grant such permission only when the parking of such camping trailer is in connection with a special event held at such park or elsewhere within the city.

(Code 1990, § 20-8; Ord. No. 1236, § 5; Ord. No. 1986, § 1)

Sec. 24-68. Enforcement.

The city police, the city manager or anyone appointed by him for the purposes of caring for the cemeteries and parks shall have the power to enforce the provisions of this article and shall have the authority to eject from the park or cemetery any person acting in violation of any of the provisions of this Code or laws of the state.

⁸⁵ Legal or Editorial Change: Code 1990, § 20-7 Trash to be Deposited in Receptacles. Deleted as superseded by Code § 19-7.

(Code 1990, § 20-10; Ord. No. 1236, § 6)

Sec. 24-69. Rules and regulations.

More specific rules and regulations not contrary to the provisions of this article may be established by the city manager and a copy of such regulations shall be kept by the city clerk and made available for any citizen who desires to read them.

(Code 1990, § 20-11; Ord. No. 1236, § 7)

PROOFS

Chapter 25
RESERVED

PROOFS

Chapter 26

TRAFFIC AND VEHICLES*

*State law reference—Traffic generally, R.R.S. 1943, § 60-101 et seq.; rules of the road, R.R.S. 1943, § 60-601 et seq.; local traffic regulations, R.R.S. 1943, §§ 60-680, 60-681.

ARTICLE I. IN GENERAL

Sec. 26-1. Definitions.⁸⁶

(a) For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

~~*Alley.* The entire width between property lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for vehicular traffic.~~

~~*Authorized Emergency Vehicle.* Vehicles of the fire department, police vehicles and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated by the city manager.~~

~~*Crosswalk.* That portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections.~~

~~*Driver.* Any person who drives or is in actual physical control of a vehicle.~~

~~*Intersection.* The area embraced within the prolongation or connection of the lateral curblines, or, if none, then the later boundary lines of the roadways of two highways which join one another, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.~~

Motor truck means any motor vehicle which is 18 feet or more in length from the extreme front to the rear of such vehicle; or any vehicle which is 72 inches or more in width.

~~*Motor Vehicle.* All vehicles propelled by any power other than muscular power, except however, traction engines, road rollers and auto glides, which shall be construed to mean two-wheeled vehicles propelled by an engine of less than two horsepower capacity.~~

Official traffic control devices means all signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

Official traffic signals means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and proceed.

~~*Park.* The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.~~

~~*Pedestrian.* Any person afoot.~~

⁸⁶ Legal or Editorial Change: Code 1990, § 16-1. Definitions. Added language adopting definitions in R.R.S. R.R.S. 1943 ch. 60, art. 6 (R.R.S. 1943, § 60-601 et seq.). In light of this various definitions are deleted as covered by and in conflict with R.R.S. 1943, §§ 60-607, 60-610, 60-616, 60-642, 60-627, 60-638, 60-647, 60-649, 60-655, 80-656, 60-662, 60-667, 60-669, 60-676, except that the definitions of driver, pedestrian, private road or driveway, stop, and traffic do not conflict with statute.

Police officer means every officer of the city police department or any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~*Private road or driveway.* Every way or place in a private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.~~

~~*Right of way.* The privilege of the immediate use of the roadway.~~

~~*Roadway.* That portion of a street improved, designed or ordinarily used for vehicular travel.~~

~~*Sidewalk.* That portion of a street between the curblines, or the lateral lines of a roadway and the adjacent property lines, intended for the use of pedestrians.~~

Standing means any stopping of a vehicle, whether occupied or not.

~~*Stop.* When required means complete cessation of movement.~~

~~*Stop or stopping.* When prohibited means any stopping of a vehicle except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or traffic control sign or signal.~~

~~*Street or highway* means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.~~

~~*Traffic.* Pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using any street for purpose of travel.~~

~~*Vehicle.* Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power.~~

(b) The definitions in R.R.S. 1943, ch. 60, art. 6 (R.R.S. 1943, § 60-601 et seq.) also apply to this chapter.

(Code 1970, § 9-201; Code 1990, § 16-1)

Sec. 26-2. Rules of the road adopted by reference.⁸⁷

(a) The provisions of the Nebraska Rules of the Road as found in R.R.S. 1943, ch. 60, art. 6 (R.R.S. 1943, § 60-601 et seq.) are hereby adopted by reference.

(b) Any act within which there is a misdemeanor or traffic infraction under R.R.S. 1943, ch. 60, art. 6 (R.R.S. 1943, § 60-601 et seq.) shall be deemed unlawful and a violation of this chapter.

Sec. 26-3. Obedience.

It shall be a misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter.

(Code 1970, § 9-202; Code 1990, § 16-2)

⁸⁷ Legal or Editorial Change: Code 1990, ch. 15. Motor vehicles and traffic. As this chapter contains numerous provisions that conflict with R.R.S. 1943, § 60-601 et seq. and does not contain all offenses found in such provisions, added language adopting such provisions by reference. In light of this offenses in this chapter that are covered by such statutes have been deleted.

Sec. 26-4. Duty of vehicle owners.⁸⁸

The owner of any vehicle or any person employing or otherwise directing the driver of any vehicle shall not require or knowingly permit the operation of such vehicle in any manner contrary to the provisions of this chapter.

State law reference—Similar provisions, R.R.S. 1943, § 69-6,116.

Sec. 26-5. Parental duties; child less than 16.⁸⁹

The parent or guardian of any child who is less than 16 years old shall not knowingly permit any such child to violate any provision of this chapter.

State law reference—Similar provisions, R.R.S. 1943, § 69-6,117.

Sec. 26-6. Applicability of chapter to persons propelling pushcarts, riding bicycles, etc.⁹⁰

Every person propelling any pushcart or riding a bicycle or an animal upon a roadway, and every person driving any animal-drawn vehicle, shall be subject to the provisions of this chapter applicable to the driver of any vehicle, except those provisions of this chapter which by their nature can have no application. Any person who rides an animal or drives an animal-drawn vehicle, a farm tractor or an implement of husbandry upon a roadway shall be granted all of the rights and shall be subject to all of the duties made applicable to the driver of a vehicle by this chapter except those provisions which by their very nature can have no application.

State law reference—Similar provisions, R.R.S. 1943, § 69-6,111.

(Code 1970, § 9-202.04; Code 1990, § 16-7)

Sec. 26-7. Public employees to obey traffic regulations.

The provisions of this chapter shall apply to the driver of any vehicle owned by or used in the service of the United States government, the state, county or city, and it shall be unlawful for any such driver to violate any of the provisions of this chapter, except as otherwise permitted in this chapter or by statute of the state.

(Code 1970, § 9-202.02; Code 1990, § 16-5)

State law reference—Similar provisions, R.R.S. 1943, § 69-6,113.

Sec. 26-8. Exceptions for road work, government employees and public utility vehicles.⁹¹

Unless specifically made applicable, the Nebraska Rules of the Road, except those provisions relating to careless driving, reckless driving, and driving while under the influence of alcoholic liquor or drugs, shall not apply to:

- (1) Persons, teams of draft animals, motor vehicles and other equipment while actually engaged in work upon the surface of a highway, but the rules shall apply to such persons and vehicles when traveling to or from such work; or
- (2) Government employees and public utility employees to the extent that there would be a conflict between the rules and the performance of their official duties.

⁸⁸ Legal or Editorial Change: Added R.R.S. 1943, § 69-6,116.

⁸⁹ Legal or Editorial Change: Added R.R.S. 1943, § 69-6,117.

⁹⁰ Legal or Editorial Change: Code 1990, § 16-7 Applicability of Chapter to Persons Propelling Pushcarts, Riding Bicycles, etc. Conformed to R.R.S. 1943, § 60-6,111(1).

⁹¹ Legal or Editorial Change: Added R.R.S. 1943, § 60-6,112.

State law reference—Similar provisions, R.R.S. 1943, § 69-6,112.

Sec. 26-9. Exemptions for authorized emergency vehicles.⁹²

~~(a) The provisions of this chapter regulating the operation, parking and standing of vehicles shall apply to authorized emergency vehicles, as defined in this chapter, except as follows: A driver when operating any such vehicle in an emergency, except when otherwise directed by a police officer, may:~~

- ~~(1) Park or stand notwithstanding the provisions of this chapter.~~
- ~~(2) Proceed past red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.~~
- ~~(3) Exceed the prima facie speed limits so long as he does not endanger life or property.~~
- ~~(4) Disregard regulations governing direction of movement or turning in specified directions so long as he does not endanger life or property.~~

~~(b) The foregoing exemptions shall not, however, protect the driver of any such vehicle from the consequence of his reckless disregard of the safety of others.~~

(a) Subject to the conditions stated in the Nebraska Rules of the Road (R.R.S. 1943, § 60-601 et seq.), the driver of an authorized emergency vehicle, when responding to an emergency call, when pursuing an actual or suspected violator of the law, or when responding to but not when returning from a fire alarm, may:

- (1) Stop, park or stand, irrespective of the provisions of the rules, and disregard regulations governing direction of movement or turning in specified directions; and
- (2) Except for wreckers towing disabled vehicles and highway maintenance vehicles and equipment:
 - a. Proceed past a steady red indication, a flashing red indication or a stop sign but only after slowing down as may be necessary for safe operation; and
 - b. Exceed the maximum speed limit so long as he does not endanger life, limb or property.

(b) Except when operated as a police vehicle, the exemptions granted in subsection (a) of this section shall apply only when the driver of such vehicle, while in motion, sounds an audible signal by bell, siren or exhaust whistle as may be reasonably necessary and when such vehicle is equipped with at least one lighted light displaying a red light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle.

(c) The exemptions granted in subsection (a) of this section shall not relieve the driver from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect such driver from the consequences of his reckless disregard for the safety of others.

(d) Authorized emergency vehicles operated by police and fire departments shall not be subject to the size and weight limitations of R.R.S. 1943, §§ 60-6,288--60-6,290 and 60-6,294.

(Code 1970, § 9-202.03; Code 1990, § 16-6)

State law reference—Similar provisions, R.R.S. 1943, § 69-6,114.

⁹² Legal or Editorial Change: Code 1990, § 16-6 Exemptions to Authorized Emergency Vehicles. Conformed to R.R.S. 1943, § 60-6,114.

Sec. 26-10. Zone of quiet.

Whenever authorized signs are erected indicating a zone of quiet, no person operating a motor vehicle within any such zone shall sound the horn or other warning device of the vehicle except in an emergency.

(Code 1970, § 9-203.04; Code 1990, § 16-10)

Sec. 26-11. Mini-bikes and off-road vehicles.⁹³

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

~~Mini bike shall mean a 2-wheeled motor vehicle which has a total wheel and tire diameter of less than 14", or an engine rated capacity of less than 45 cubic centimeters displacement or a seat height less than 25" from the ground or any other 2-wheeled motor vehicle primarily designed by the manufacturer for off road use only.~~

Public street means the entire width between the boundary limits of any street, alley or road, including sidewalks constructed on the public right-of-way, when any part thereof is opened to the use of the public for the purpose of vehicular or pedestrian travel.

~~*Snowmobile* means a self-propelled vehicle designed to travel on snow or ice or a natural terrain steered by wheels, skis or runners, and propelled by a belt-driven track, with or without steel cleats.~~

(b) Except as otherwise provided in this section, no person shall operate an snowmobile, mini-bike or other off-road vehicle upon the public streets in the city.

(c) Except as otherwise provided in this section, no person shall operate an snowmobile, mini-bike or off-road vehicle within the boundaries of the city parks or cemeteries except in areas and upon paths specially designated and marked for such use.

(d) Snowmobiles, mini-bikes and other Off-road vehicles shall be exempt from the provisions of this section during any public emergency or while being used in a parade sponsored by a recognized charitable, social, educational or community service organization.

(e) Nothing in this section shall prohibit the occasional necessary movement of snowmobiles, mini-bikes, and off-road vehicles on streets for purposes of moving the vehicle across streets or a turnaround on the streets.

(f) Nothing in this section shall prohibit the operation of motorized wheelchairs or other vehicles used for transportation of a person with a physical disability.

(Code 1991, § 16-78.1; Ord. No. 1720)

State law reference—Snowmobiles, R.R.S. 1943, § 60-6,320 et seq.; minibikes and other off-road vehicles, R.R.S. 1943, § 60-6,347 et seq.

⁹³ Legal or Editorial Change: Code 1990, § 16-78.1 Mini-Bikes and Off-Road Vehicles. In subsection (a), deleted the definition of snowmobile as covered by R.R.S. 1943, § 60-664 and deleted the definition of minibike as covered by and in conflict with R.R.S. 1943, § 60-636.

Secs. 26-12--26-40. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

DIVISION 1. GENERALLY

Sec. 26-41. Temporary traffic control measures; authority to prohibit left turns.

The city manager is hereby authorized to provide temporary traffic control at any point within the city for a period not to exceed 90 days, and to erect, or cause to be erected, all necessary signs for such temporary control of traffic at any location. The city manager is also authorized to provide for and to install "No Left Turn" signs at intersections, during such hours and at such locations as he may deem advisable.

(Code 1970, § 9-203.03; Code 1990, § 16-4)

State law reference—Authority to regulate or prohibit the turning of vehicles, R.R.S. 1943, § 60-680(1)(j).

Sec. 26-42. Law enforcement in private parking lots.

(a) It is specifically found to be in the public interest of the city, and in the interest of maintaining the public peace and traffic control that provision be made for regulation of the use of privately owned parking lots.

(b) Upon written request made to the chief of police, and a copy to be filed with the city clerk, the city police department is hereby authorized to patrol upon and enforce the ordinances of the city and the laws of the state relating to trespass, use of alcohol and morals, upon privately owned parking lots within the city.

(c) Upon written request by the owner of such private parking lot, subject to approval by the chief of police, and subject to posting of appropriate signs by the lot owner, traffic control regulations for such parking lot shall be established.

(d) Upon written request of the owner of such private parking, subject to approval by the chief of police, and upon appropriate signs being posted, restricted parking rules shall be enforced. The term "restricted parking" includes restrictions in regard to time, place and manner of parking or of persons authorized to park.

(e) Any persons who shall violate any of the provisions of ~~this section~~ ~~the foregoing ordinance~~, or any provisions of the parking or traffic regulations established under the terms of this section shall be punished as provided in section 1-8.

(Code 1991, § 16-82; Ord. No. 1691)

Secs. 26-43--26-72. Reserved.

DIVISION 2. VEHICLE TOWING AND IMPOUNDMENT

Sec. 26-73. Removal of vehicles from streets.

It is hereby declared necessary and for the best interest, health, safety and welfare of the city that the city manager have general power, in addition to other authorizations granted in this chapter, to order the removal of all vehicles from parking areas in the city for the purpose of maintaining, repairing, cleaning, controlling traffic and parking on such streets. The city manager may issue such order personally or through one of the regular police officers to the owner or the person in charge of the vehicle or may cause a notice of the order to be placed on the vehicle for at least 12 hours prior to the removal of the vehicle. Such notice shall be placed on the steering wheel if practical and under the windshield wiper of the vehicle. Such notice shall constitute sufficient and reasonable notice to the owner of, or all persons in charge of the vehicle. Violation of the order shall constitute violation of this section and the declared powers of the city. The city manager upon

finding a vehicle parked or standing in violation of the order after notice as provided herein or upon finding a vehicle parked in violation of this Code or other ordinances of the city is hereby authorized to remove the vehicle from the streets. The provisions of this section shall in no way be construed to detract from the city's inherent powers to remove a vehicle or any object, animate or inanimate, from the streets without notice of any kind for reason affecting the health, safety and general welfare of the city and its citizens, if the circumstances or the urgency of the situation reasonably require the exercise of such power.

(Code 1970, § 9-215; Code 1990, § 16-13; Ord. No. 1749, § 1)

Sec. 26-74. Removal and impoundment for unpaid parking violations.

Any vehicle having against it five or more unpaid summonses or other process, issued within a 12-month period, charging that such vehicle was parked, stopped or standing in violation of any ordinance of the city, shall be deemed a public nuisance and the police department and any other agent of the city assigned to traffic duty are hereby authorized to remove, or cause the vehicle to be removed, at the sole cost and expense of the owner of the vehicle. Such police authority shall have the power and is hereby authorized to remove the vehicle by either private or governmental equipment to the city impoundment lot or elsewhere, as he may deem advisable.

(Code 1990, § 16-13.1; Ord. No. 1749, § 2)

Sec. 26-75. Notice of impoundment.

Whenever the police department has impounded a vehicle described ~~above~~ as set forth in sections 26-73 and 26-74, a notice of such removal and the storage place of such vehicle shall be mailed to the last registered owner of such vehicle, if the name and address of such owner can be ascertained with reasonable diligence. Such notice shall state that if the owner fails to reclaim such vehicle within 30 days from the date of the mailing, title to such vehicle will vest in the city and such vehicle will be sold at public auction to be held not sooner than ten days after the expiration of the 30-day period contained in the notice.

(Code 1990, § 16-13.2; Ord. No. 1749, § 3)

Sec. 26-76. Owner responsibility.

The registered owner of a vehicle which has been impounded pursuant to the authority herein shall be presumed to be the owner at the time the removal order, violation notice or outstanding parking summonses were in fact issued, and shall be severally responsible for the offenses and the impoundment, except where the use of the vehicle was secured by the operator without the owner's consent. Upon receipt of notice of impoundment, the owner shall be entitled to a hearing before the city manager to determine such responsibility. Such hearing, if requested, shall be held as soon as reasonably possible, and not later than the next full business day after hearing is requested.

(Code 1990, § 16-13.3; Ord. No. 1749, § 4)

Sec. 26-77. Records.

It shall be the duty of the police department to provide for the safekeeping of any impounded vehicle until such vehicle shall have been repossessed by the owner or person legally entitled to possession thereof or otherwise disposed of as provided in this division. The police department shall cause to be kept an accurate record of the description of such vehicle, including the name of the officer from whom such a vehicle was received, the officer employed to tow or have delivered the same to said impoundment or authorized garage, the date in time when received, the place where found, seized or taken possession of, the make and color of car, style or body, year built, serial number, and state license number, if any, and general description of condition, the name and address of the person redeeming said vehicle, the date of redemption, and the manner and date of disposal of said vehicle in case the same shall not be redeemed, together with cost of

outstanding summonses and the towing and storage charges. This record shall be in the form prescribed by the chief of police.

(Code 1990, § 16-13.4; Ord. No. 1749, § 5)

Sec. 26-78. Release of vehicle.

Vehicles impounded pursuant to the authority herein will be released to their lawful owner or other person entitled to possession upon showing adequate evidence of a right to its possession and paying the payment of all accrued fines and costs for each outstanding unpaid summons, and, in addition thereto, the charges for towing and storage. The release shall be signed by an authorized officer.

(Code 1990, § 16-13.5; Ord. No. 1749, § 6)

Sec. 26-79. Sale of vehicle.

(a) Whenever any vehicle so impounded shall remain unclaimed by the owner or other person legally entitled to possession thereof for a period of 30 days from the date the notice to owner was mailed, it shall be the duty of the police department to sell such vehicle. Such sale shall be at public auction to the highest bidder for cash, and the time and place of such sale to be published at least once in a newspaper of general circulation in the city, not less than ten days nor more than 15 days prior to such sale. Said notice shall contain a full description of the vehicle to be sold and the time and place of sale; provided, that any such vehicle not sold at the first sale may be offered for sale and sold at any subsequent sale without further notice or publication. The proceeds of such sale shall first be applied to all reasonable charges and expenses incurred by the police department, including the cost of receiving, towing, storage, preparing and giving notices, advertising for sale; and the balance of sale proceeds, after paying all liens shall be held by the city treasurer in compliance with the abandoned motor vehicle law of the state, R.R.S. 1943, § 60-1901ff.

(b) Whenever any such vehicle shall not be purchased at any such auction sale, any such vehicle may be given to the use of any department of the city or other government agency desiring the same, or such vehicle may be sold for salvage.

(c) No member of the police department, nor any other employee of the city, directly or indirectly, shall purchase or participate in the bidding for, or purchase of any vehicle offered for sale as aforesaid.

(d) If an impounded vehicle shall be deemed by the chief of police to be of less than \$100.00 value, notice of its removal shall be mailed to any owner whose name and address can be ascertained with reasonable diligence, which notice shall contain a statement that the vehicle is deemed to be of no value or of insufficient value to warrant storage and sale, and that it is the intention to dispose of or destroy such vehicle if not reclaimed within five days. Such vehicle as ~~above~~ provided in this subsection shall thereupon be conclusively deemed of no value and to be abandoned property, and such vehicle shall be disposed of as determined by the city manager.

(Code 1990, § 16-13.6; Ord. No. 1749, § 7)

Secs. 26-80--26-101. Reserved.

ARTICLE III. TRAFFIC CONTROL SIGNS, SIGNALS, DEVICES AND MARKINGS

Sec. 26-102. Compliance with required; exceptions.

The driver of any vehicle shall obey the instruction of any official traffic control device applicable thereto placed in accordance with this chapter, unless otherwise directed by a police officer, subject to the exemptions granted the driver of any authorized emergency vehicle in this chapter.

(Code 1970, § 9-203; Code 1990, § 16-15)

State law reference—Similar provisions, R.R.S. 1943, § 60-6,119.

Sec. 26-103. Erection of signs required prior to enforcement of certain provisions.

No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective without signs being erected to give notice thereof.

(Code 1970, § 9-203.01; Code 1990, § 16-16)

Sec. 26-104. Installation and location of automatic traffic control devices.⁹⁴

The city manager shall place and maintain automatic traffic control signs, signals and devices as required by the city council to regulate traffic in the city. The schedule for location at intersections of such automatic traffic control devices shall be as established by resolution. ~~is as follows:~~

~~5th and Washington Streets.~~

~~6th and Washington Streets.~~

~~7th and Washington Streets.~~

~~Grant and 6th Streets.~~

(Code 1990, § 16-18.1; Ord. No. 1232, § 2)

State law reference—Authority to regulate traffic by means of traffic control devices, R.R.S. 1943, § 60-680(1)(b); traffic control signal legend, R.R.S. 1943, § 60-6,123.

Sec. 26-105. Through streets.⁹⁵

~~Those streets and parts of streets described in this section are hereby declared to be through streets for the purpose of this chapter.~~ Through streets shall be as established by resolution.

~~(a) Primary arterials.~~

~~Pacific Avenue~~

~~Washington Street~~

~~(b) Arterials.~~

~~Adams Street~~

~~Bridge Street~~

~~Fifth Street, Washington Street to Highway No. 30~~

~~Grant Street, Thirteenth Street to Pacific Avenue~~

~~Lincoln Street, Thirteenth Street to Pacific Avenue~~

~~Madison Street, Pacific Avenue to Oregon Trail Road~~

~~Sixth Street, Washington Street to east city limits~~

⁹⁴ Legal or Editorial Change: Code 1990, § 16-18.1 Installation and Location of Automatic Traffic control Devices. See recommendation for Code § 16-14, *supra*.

⁹⁵ Legal or Editorial Change: Code 1990, § 16-21 Through Streets--Designated. Tied through streets to resolution.

~~Thirteenth Street~~

~~Walnut Street.~~

(Code 1970, §§ 9-205, 9-312; Code 1990, § 16-21; Ord. No. 1050; Ord. No. 1982)

State law reference—Authority to establish through streets, R.R.S. 1943, § 60-680(1)(f).

Sec. 26-106. One-way traffic.⁹⁶

The city council may, by resolution, provide for one-way travel in any street or alley located in the city and shall provide for appropriate signs and markings when said streets have been so designated by resolution.

~~B. That East 12th Street from Washington Street to Grant Street shall be designated for one-way traffic, from west to east, and shall be marked with appropriate signs.~~

(Code 1990, § 16-21.1(A); Ord. No. 2046)

State law reference—Authority to establish one-way streets, R.R.S. 1943, § 60-680(1)(d); one-way roadways, R.R.S. 1943, § 60-6,138.

Sec. 26-107. Speed limits.⁹⁷

~~Sec. 16-40 Same—Twenty Miles Per Hour.~~

(a) The speed limit shall be 20 miles per hour on the ~~following~~ streets or parts of streets designated by resolution.

~~Fifth Street, Grant Street to Lincoln Street.~~

~~Fourth Street, Grant Street to Pacific Avenue.~~

~~Seventh Street, Grant Street to Lincoln Street.~~

~~Sixth Street, Grant Street to Lincoln Street.~~

~~Washington Street, Pacific Avenue to Seventh Street.~~

(b) The speed limit shall be 30 miles per hour on the ~~following~~ streets or parts of streets designated by resolution.

~~Plum Creek Parkway and Jackson Street, Maple to Fifth Street.~~

~~Fifth Street, Grant to Jefferson.~~

~~Grant Street, Fifth Street to Pacific Avenue.~~

~~Jefferson Street, Pacific Avenue to Fifth Street.~~

(c) The speed limit shall be 35 miles per hour on the ~~following~~ streets or parts of streets designated by resolution.

~~Adams Street, from Drainage District No. 1 drainage ditch to Oak Street, and U.S. Highway 30 to the city Limits north of 20th Street.~~

~~Pacific Avenue, 700 feet East of Monroe Street to 600 feet West of Adams Street.~~

~~Taft Street, Pacific Avenue to 13th Street.~~

~~West Walnut Street, Adams Street West to the city limits~~

⁹⁶ Legal or Editorial Change: Code 1990, § 16-21.1 One-Way Traffic. Deleted subsection B as not needed in light of subsection A.

⁹⁷ Legal or Editorial Change: Code 1990, §§ 16-40, 16-41. Speed limits on specific streets. Tied speed limits to resolution.

~~East Walnut Street, Plum Creek Parkway East to the city limits.~~

~~Cattlemen Drive, Adams Street to Plum Creek Parkway.~~

~~East Industry Drive, Walnut Street to Prospect Road.~~

~~Prospect Road, Plum Creek Parkway West to the city limits.~~

~~Airport Road, Highway 30 North to the city limits.~~

(d) The speed limit shall be 40 miles per hour on the ~~following streets~~ or parts of streets designated by resolution.

~~Bridge Street, Maple to 550 feet south of Sagebrush Lane.~~

(e) The speed limit shall be 45 miles per hour on the ~~following streets~~ or parts of streets designated by resolution.

~~Pacific Avenue, east city limits to 700 feet East of Monroe Street.~~

~~Pacific Avenue, 600 feet west of Adams to west city limits.~~

~~Plum Creek Parkway, 550 feet south of Sagebrush Lane to south city limits.~~

(f) The speed limit shall be 15 miles per hour in the school zone on the ~~following streets~~ or parts of streets designated by resolution, while flashing lights are in operation.

~~Walnut Street, Lincoln Street to Madison Street.~~

~~West 13th Street, from the alley one half block east of Harrison street to the alley one half block west of Harrison Street.~~

~~East 13th Street, from Tyler Street to Jefferson Street.~~

~~West 10th Street from Taylor Street to one half block east of Harrison Street.~~

(Code 1970, § 9-312; Code 1990, §§ 16-40, 16-41; Res. No. 9-25-56, § 1, 8-26-1969; Ord. No. 1311, § 1; Ord. No. 1561, § 1; Ord. No. 1687, § 1; Ord. No. 1751, § 1; Ord. No. 1763, § 1; Ord. No. 1795, § 1; Ord. No. 1890, § 1; Ord. No. 2045; Ord. No. 2071; Ord. No. 2104; Ord. No. 2229)

State law reference—Speed limits, R.R.S. 1943, § 60-680(1)(k), 60-6,185 et seq.

Secs. 26-108--26-127. Reserved.

ARTICLE IV. OPERATION OF VEHICLES

Sec. 26-128. Allowing certain persons to operate motor vehicle. ⁹⁸

No person, without a license or permit, as required by the laws of the state, ~~and no person while under the influence of alcoholic liquor or any drug shall drive a motor vehicle upon any public street within the city, nor shall~~ or any owner or person in control of any motor vehicle shall permit any person deprived of a driver's license for operating a vehicle under the influence of alcoholic liquor or any drug, to drive a motor vehicle upon any public street within the city.

(Code 1970, § 9-214; Code 1990, § 16-31)

State law reference—Driver's licenses, R.R.S. 1943, § 60-462 et seq.

⁹⁸ Legal or Editorial Change: Code 1990, § 16-31 Certain Persons Prohibited from Operating Motor Vehicle. Deleted material covered by R.R.S. 1943, § 60-6,196.

Sec. 26-129. Negligent driving.⁹⁹

Any person who shall operate a vehicle upon any street in the city in a ~~careless or~~ negligent manner, or ~~without due caution and circumspection~~, in such a manner so as to endanger, or be likely to endanger a person or property, shall be deemed guilty of a misdemeanor.

(Code 1990, § 16-42; Ord. No. 1002, § 3; Ord. No. 1133, § 1; Ord. No. 1538, § 1)

State law reference—Careless driving, R.R.S. 1943, § 60-6,212.

Sec. 26-130. Entering intersection when passage obstructed.

No driver shall enter an intersection or marked crosswalk unless there is sufficient space on the other side of the intersection to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

(Code 1970, § 9-206.01; Code 1990, § 16-23)

Sec. 26-131. No-turn signs and turning markers.

Whenever authorized signs are erected indicating that no right turn, left turn or U-turn is permitted, no driver of a vehicle shall disobey the directions of any such sign, and when authorized marks, buttons or other indications are placed within an intersection indicating the course to be traveled by vehicles turning thereat, no driver of a vehicle shall disobey the directions of such indications.

(Code 1970, § 9-203.02; Code 1990, § 16-17)

State law reference—Authority to regulate or prohibit the turning of vehicles, R.R.S. 1943, § 60-680(1)(j).

Sec. 26-132. U-turns.

The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street unless such movement can be made in safety and without interfering with other traffic.

(Code 1970, § 9-208; Code 1990, § 16-26)

State law reference—Authority to regulate or prohibit the turning of vehicles, R.R.S. 1943, § 60-680(1)(j); turning in opposite direction, R.R.S. 1943, § 50-6,160.

Sec. 26-133. Driving through processions.

No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated. This provision shall not apply at intersections where traffic is controlled by traffic control signals or police officers.

(Code 1970, § 9-207; Code 1990, § 16-25)

Sec. 26-134. Backing movements.¹⁰⁰

The driver of a vehicle shall not back the same into an intersection or over a crosswalk. ~~and shall not in any event or at any place back a vehicle unless such movement can be made in safety.~~

(Code 1970, § 9-209; Code 1990, § 16-27)

⁹⁹ Legal or Editorial Change: Code 1990, § 16-42 Negligent Driving. Deleted material covered by R.R.S. 1943, § 60-6,212.

¹⁰⁰ Legal or Editorial Change: Code 1990, § 16-27 Backing movements. Deleted material covered by R.R.S. 1943, § 60-6,169.

State law reference—Limitations on backing vehicles, R.R.S. 1943, § 60-6,169.

Secs. 26-135--26-151. Reserved.

ARTICLE V. SNOW EMERGENCY ROUTES

Sec. 26-152. Emergency declarations of the city manager.

(a) The city manager shall cause each declaration of a snow emergency which shall be made by him, pursuant to this article, to be publicly announced by means of broadcast or telecast from broadcasting stations with a normal operating range covering the city, and he may, in addition, cause such declaration to be announced in newspapers of general circulation within the city when feasible. Each announcement shall describe the action taken by the city manager, including the time the emergency became or will become effective. The announcement shall specify the streets or areas affected. The city manager shall make or cause to be made a record of each time and date when an emergency declaration is announced to the public by issuing an executive order as soon after the declaration of any emergency as is feasible.

(b) Whenever the city manager shall find that some or all of the conditions which gave rise to a parking prohibition placed in effect pursuant to the provisions of this article no longer exist, he shall declare the prohibition terminated, in whole or in part, effective immediately upon announcement or at a later specified time.

(Code 1991, § 16-89; Ord. No. 1740, § 7)

Sec. 26-153. Provisions temporarily effective to take precedence.

Any provision of this article which becomes effective by declaration of the city manager upon the occurrence of a snow emergency, while temporarily in effect, takes precedence over other conflicting provisions of law, except that it shall not take precedence over provisions of law relating to traffic accidents, emergency travel of authorized emergency vehicles or emergency traffic directions by a police officer.

(Code 1991, § 16-90; Ord. No. 1740, § 8)

Sec. 26-154. Establishment. ¹⁰¹

Certain ~~The following~~ streets are declared to be snow emergency routes within the city. The city manager (or someone designated by him, but always referred to herein as the city manager) shall, at his discretion, place appropriate signs or other traffic control devices indicating the existence of snow emergency routes. A designation of any street, avenue, road, or highway, or portion thereof as a snow emergency route shall in no way affect any previous designation of that street, avenue, road, or highway for any other purposes but shall be in addition thereto. ~~The following~~ streets or highways designated as emergency snow arterial streets shall be as established by resolution.

~~(a) Highway 30 -- Taft to Erie Street.~~

~~(b) Highway 21 -- Highway 30 to Cherokee.~~

~~(c) Taft Street -- Highway 30 to 13th Street.~~

~~(d) 13th Street -- Taft to Liberty Street.~~

~~(e) Highway 283 -- Cattlemen's Drive north to 13th and Jackson Street.~~

~~(f) Adams Street -- West 8th Street to Cattlemen's Drive.~~

¹⁰¹ Legal or Editorial Change: Code 1990, § 16-83 Establishment of Snow Emergency Routes Same--Created; Description. Deleted specific streets and tied to resolution.

~~(g) Walnut Street—West city Limits to Highway 283.~~

~~(h) Eric Street—Highway 30 to 18th and Eric Street.~~

~~(i) 10th Street—Jackson to Eric Street.~~

~~(j) Cattlemen's Drive—South Adams Street to Highway 283.~~

(Code 1991, § 16-83; Ord. No. 1740, § 1; Ord. No. 2193)

Sec. 26-155. Declaration of emergency; parking prohibited on snow emergency routes.

Whenever the city manager shall determine, on the basis of the falling snow, sleet or freezing rain, or on the basis of an official forecast by the U.S. Weather Bureau, of snow, sleet or freezing rain, that eminent weather conditions will make it necessary that parking on snow emergency routes as designated at section 26-154 be prohibited or restricted for snow plowing and other purposes, the city manager may place into effect a parking prohibition on all snow emergency routes by declaring that such emergency conditions exist. In such declaration of emergency conditions, the city manager shall state the time that the emergency shall become effective. From the time so designated, all parking of vehicles on snow emergency routes, shall be, and the same hereby is prohibited. While the prohibition is in effect, no person shall park or allow to remain parked any vehicle on any portion of a snow emergency route. Once the emergency is in effect, the parking prohibition imposed by this section shall remain in effect until terminated by declaration of the city manager. However, nothing in this section shall be construed to permit parking at any time or place where it is forbidden by any other provision of law.

(Code 1991, § 16-84; Ord. No. 1740, § 2)

Sec. 26-156. Prohibition of parking on downtown commercial areas during snow emergency. ¹⁰²

Upon declaration of snow emergency, such declaration may include or may later be expanded to include a prohibition of parking on downtown commercial areas. The declaration shall include a statement of the hours during which parking shall be prohibited for the purpose of snow removal from said downtown commercial area. Such prohibition shall not extend beyond the time reasonably required for such snow removal. The areas included are as established by resolution.

~~(a) Madison Street— from Highway 30 to 7th Street.~~

~~(b) Lincoln Street— from Highway 30 to 9th Street.~~

~~(c) Washington Street— from Highway 30 to 8th Street.~~

~~(d) Grant Street— from Highway 30 to 7th Street.~~

~~(e) Jefferson Street— from Highway 30 to 7th Street.~~

~~(f) Tyler Street— from 6th to 7th Street.~~

~~(g) 8th Street— from Lincoln to Jackson Street.~~

~~(h) 7th Street— from Madison to Tyler Street.~~

~~(i) 6th Street— from Madison to Tyler Street.~~

~~(j) 5th Street— from Harrison to Jefferson Street.~~

~~(k) 4th Street— from Washington to Jefferson Street.~~

(Code 1991, § 16-85; Ord. No. 1740, § 3; Ord. No. 1770, § 1)

¹⁰² Legal or Editorial Change: Code 1990, § 16-85 Prohibition of Parking on Downtown Commercial Areas During Snow Emergency. Deleted specific streets and tied same to resolution.

Sec. 26-157. Prohibition of parking on downtown commercial areas for street cleaning purpose.¹⁰³

(a) Parking is prohibited from 2:00 a.m. until 5:00 a.m. on the ~~following streets~~ established by resolution.

a) ~~Washington Street from Highway 30 to 8th Street.~~

b) ~~Grant Street—Highway 30 to 8th Street.~~

e) ~~Lincoln Street—Highway 30 to 7th Street.~~

(b) Parking is prohibited from 2:00 a.m. until 5:00 a.m. on Tuesdays of the calendar year on the north side of the ~~following streets~~ established by resolution.

a) ~~4th Street—Grant to Lincoln Street.~~

b) ~~5th Street—Grant to Lincoln Street.~~

e) ~~6th Street—Grant to Lincoln Street.~~

d) ~~7th Street—Grant to Lincoln Street.~~

(c) Parking is prohibited from 2:00 a.m. until 5:00 a.m. on Fridays of the calendar year on the south side of the ~~following streets~~ established by resolution.

a) ~~4th Street—Grant to Lincoln Street.~~

b) ~~5th Street—Grant to Lincoln Street.~~

e) ~~6th Street—Grant to Lincoln Street.~~

d) ~~7th Street—Grant to Lincoln Street.~~

(d) On all other days parking will be in accordance with other city ordinances.

(Code 1991, § 16-86; Ord. No. 1740, § 4; Ord. No. 2287, § 1, 20-26-2010)

Sec. 26-158. Movement of snow from private property into city streets.

Whenever a snow emergency has been declared, no property owners, lessees or renters shall move the snow from lots, driveways, sidewalks owned or controlled by them onto the streets after snow has been cleared from the streets by agents of the city. Once a street has been cleared it shall be unlawful for persons to move snow into street traffic lanes or street parking lanes.

(Code 1991, § 16-87; Ord. No. 1740, § 5)

Sec. 26-159. Operation of motor vehicles on snow emergency routes.

(a) Whenever an emergency has been declared pursuant to section 26-154, no person operating a motor vehicle on a snow emergency route shall allow such vehicle to become stalled or stuck so that it remains in such a position longer than momentarily.

(b) No person operating a motor vehicle on a snow emergency route during the declaration of emergency snow conditions shall allow such vehicle to become stalled because the motor fuel supply is exhausted or the battery has become inoperative.

(c) Whenever a motor vehicle becomes stalled for any reason, whether or not in violation of this article on any snow emergency route on which there is a parking prohibition in effect, the person operating such vehicle shall take immediate action to have the vehicle towed or pushed off

¹⁰³ Legal or Editorial Change: Code 1990, § 16-86 Prohibition of Parking on Downtown Commercial Areas for Street Cleaning Purpose. Deleted specific streets and tied same to resolution.

the roadway of such snow emergency route. No person shall abandon or leave his vehicle in the roadway of a snow emergency route, except for the purpose of securing assistance for removal.

(Code 1991, § 16-88; Ord. No. 1740, § 6)

Sec. 26-160. Removal of stalled or parked vehicles.

(a) Members of the police department are hereby authorized to remove or cause to be removed a vehicle from a street or private property to another place or location on a street or to a lot, garage, storage yard or other similar facility designated by the police department when:

- (1) The vehicle is parked on a snow emergency route on which a parking prohibition is in effect.
- (2) The vehicle is stalled on a snow emergency route on which there is a parking prohibition in effect and the person who is operating said vehicle does not appear to be removing it in accordance with the provisions of this article.
- (3) The vehicle is parked on any street in violation of any parking prohibition or provision of law contained in this article.

(b) Such vehicle removal may be made by towing to a private lot, garage, storage yard or other similar facility. Any stored vehicle shall not be released from storage except upon payment by the owner of the vehicle to the person or persons in charge of the lot, garage, storage yard or other similar facility of the cost of towing and storage, which fees shall be established from time to time by the city manager. A receipt for such fees shall be issued to the owner of the vehicle.

(c) It shall be the duty of the person in charge of the lot, garage, storage yard or other similar facility designated by the police department for storage to keep a record of the name of the owner of all vehicles towed in under these provisions, together with the registration number of each vehicle, and the nature and circumstances of such violation, and the amount of fees collected hereunder and to deliver a report of each day's transactions to the chief of police not later than one day following the day for which the report is made.

(Code 1991, § 16-91; Ord. No. 1740, § 9; Ord. No. 2027)

Secs. 26-161–26-188. Reserved.

ARTICLE VI. STOPPING, STANDING AND PARKING*

***State law reference**—Authority to regulate or prohibit stopping, standing or parking, R.R.S. 1943, § 60-680(1)(a); stopping, standing and parking, R.R.S. 1943, § 60-6,164 et seq.

DIVISION 1. GENERALLY

Sec. 26-189. Registered owner to be prima facie responsible for violations.

If any vehicle is found upon any street or alley in violation of any of the provisions of this chapter pertaining to stopping, standing and parking, and the identity of the driver cannot be determined, the owner or person in whose name such vehicle is registered shall be held prima facie responsible for such violation.

(Code 1990, § 16-42.1; Ord. No. 1332, § 1)

Sec. 26-190. Permit to park.¹⁰⁴

(a) Permits to park in streets and off-street parking lots without violation of parking time limits may be issued to all persons having businesses in the city, or who service businesses in the city, or perform services within the city to include physicians, telegraphic, communications, plumbing, TV, building and repair, refrigeration repair and maintenance, pickup and delivery services and other businesses who use their automobiles regularly within their business. The permit herein authorized shall not be used for motor vehicles which are otherwise prohibited from parking in such areas. A vehicle having such an authorized permit is also allowed to park in the city off-street parking lots.

(b) Such permits shall include on the permit, the date the permit expires, the name of the person to whom the permit is issued, the make, model and color and license number of the vehicle. The application and permit shall be issued by the city clerk-treasurer.

(c) Permits issued under this section shall expire on April 30 following the date of issue and shall be fastened on the inside of the lower right-hand corner of the windshield of the motor vehicle. The officer issuing the permit shall fasten the permit to the vehicle.

(d) An annual fee in an amount determined by the city manager as directed by the city council shall be paid for such parking permit. When the permit is issued after May 1, the amount to be paid for such parking permit shall be based upon the time then remaining in the permit year.

(e) The permit shall allow the person to whom it is issued to park his vehicle within and on the streets adjoining the off-street parking district No. 1, without violation of time parking limits with the exception of 15-minute parking areas, loading and unloading areas and when vehicles are prohibited from parking or controlled parking as provided by other sections of the Code.

(f) It shall be unlawful for any person to willfully destroy, deface, change or alter any permit issued under the provisions of this section while the same is in force and effect.

(g) The city manager may revoke the permit issued to any violator and in case of revocation, the owner of such permit shall have the right to make claim against the city for refund of the permit he paid in proportion to length of time remaining until such permit expires.

(h) All permits issued under the provisions of this section shall not be transferable from one person to another and the same shall not be transferred from one car to another; provided, that the permit may be transferred to another automobile by the same owner upon payment of a ~~one dollar~~ fee in the amount established by the city to the city clerk-treasurer for making such transfer.

(Code 1991, § 16-65; Ord. No. 1418, § 1)

Sec. 26-191. Parking in hazardous and congested places.

When signs are erected upon approach to hazardous or congested places, no person shall stop, stand or park a vehicle in any such designated place.

(Code 1970, § 9-204; Code 1990, § 16-43)

Sec. 26-192. Parking adjacent to schools.

When signs are erected indicating no parking upon that side of the street adjacent to any school property, no person shall park a vehicle in any such designated place.

(Code 1970, § 9-204.01; Code 1990, § 16-44)

¹⁰⁴ Legal or Editorial Change: Code 1990, § 16-65 Permit to Park. Changed city clerk-treasurer to city clerk and tied transfer fee to city action.

Sec. 26-193. Certain standing and parking restrictions. ¹⁰⁵

(a) No person shall stop, stand or park any vehicle upon a street in such a manner or under such conditions as to have available less than ten feet of the width of the roadway for free movement of vehicular traffic, except, that drivers may stop temporarily during the actual loading or unloading of passengers or when necessary in obedience to traffic regulations or traffic signs or signals or a police officer.

(b) ~~No double parking shall be permitted and no person shall stand or park any vehicle upon the street in the rear of any vehicle which may be parked at an angle or parallel with any vehicle which may be parked parallel with the curb.~~

(c) No person shall park any vehicle in any alley, except a commercial vehicle used for delivery purposes, and then only for such time as it is necessary for the actual loading or unloading thereof. In no case shall the stop for loading or unloading exceed 30 minutes. Every such vehicle, while loading or unloading in an alley, shall be parked in such a manner as will cause the least obstruction possible to traffic in such alley.

(d) No person shall park a vehicle in such a manner as to obstruct a private driveway in either streets or alleys. Owners of private driveways may post a suitable sign, approved by and with the authorization of the city manager, at their own expense.

(e) No person shall park any motor vehicle in the front yard or side yard of residential use property, except upon an established driveway connecting to the street at an approved curb cut.

(f) No person shall stand or park a vehicle at the following times and places:

(1) ~~Adams Street, from Walnut Street North to U.S. Highway No. 30 to Twentieth Street from curb to curb~~ Those streets or portions of streets designated by resolution.

(2) On all streets of the city where proper hoods, sacks, signs or barricades or other recognizable devices have been placed on such parking area as notice, by the city manager. The city manager may prohibit parking for such times as is shown on the notice and limited for such periods as may be required for streets, sidewalks or public utility maintenance, or construction, street flushing, street sweeping, snow removal, tree removal or other instances where the prohibition of parking is necessary or desirable for the protection of workmen or of the public.

(3) Parking in front of all theaters during the period of 45 minutes before the commencement of any theater performance and one hour after completion of such performance. Necessary signs, hoods, sacks or barricades or other recognizable devices as may be approved by the city manager, shall be provided and installed by the owner or operator of such theater.

~~(4) Taft Street, from Pacific Avenue to 5th Street.~~

~~(5) On 13th Street as follows:~~

~~a. From the centerline of Johnson Street west to a point 300 feet west of the intersection with the west line of Adams Street.~~

~~b. Commencing at a point 300 feet west of the intersection of 13th Street and Adams Street, west for a distance of 400 feet, on the north side only, from 8 a.m. to 5 p.m., Monday through Friday.~~

¹⁰⁵ Legal or Editorial Change: Code 1990, § 16-45 Parking Prohibited in Certain Places. Deleted material covered by R.R.S. 1943, § 60-6,166. Deleted prohibitions for specific streets and tied to resolution.

~~e. Both Sides adjoining Lot 1, Optimist Addition.~~

~~(6) Both sides of Jackson Street from 5th Street to 6th Street, and west side of Jackson Street from 8th Street to 13th Street.~~

~~(7) South Bridge Street from Maple Street to Ash Street.~~

~~(8) U. S. Highway 30 (Pacific Avenue) from Erie Street to Taft Street.~~

~~(9) On 15th Street as follows:~~

~~a. The South side of West 15th Street from Lake Street to Adams Street.~~

~~b. The North side of West 15th Street from Lake Street to Adams Street, limited to two-hour parking.~~

~~(10) On the West side of Erie Street adjoining Eagle Run Apartment property;~~

~~(11) South Pedestrian Trail Route: On the West side of South Washington Street from Santa Fe Drive north to Elm Street; On the North side of Elm Street, from Washington Street to Madison Street; and the East side of Madison Street from Elm Street to Vine Street.~~

~~(12) Both sides of Frontier Street.~~

~~(13) On the South side of 5th Street, from Grant Street to Jefferson Street.~~

~~(14) On the West side of Jefferson Street, from 5th Street, one half block south to the alley.~~

(g) No person shall park a vehicle so as to hinder vision in the vicinity of an intersection of two streets, within a sight distance triangle bounded by the centerline of the roadway on the two sides and a line diagonally across the corner lot meeting the centerlines of the roadway 75 feet from their intersection at the corner. The "No Parking Zone" shall be marked by sign or painting of the curb.

(Code 1990, § 16-45; Ord. No. 1729, § 1; Ord. No. 1971; Ord. No. 2065; Ord. No. 2078; Ord. No. 2162, 8-27-2002; Ord. No. 2170, 6-10-2003; Ord. No. 2188; Ord. No. 2201; Ord. No. 2265, § 1, 7-28-2009; Ord. No. 2299, § 1, 7-12-2011; Ord. No. 2303, § 1, 8-9-2011)

Sec. 26-194. No parking zones for trucks.¹⁰⁶

When signs are erected giving notice thereof, no person shall park a truck at any time upon any of the streets ~~described in this section:~~ designated by resolution.

~~Fifth Street, Lincoln Street to Grant Street.~~

~~Fourth Street, Pacific Avenue To Grant Street.~~

~~Lincoln Street, east side, Seventh Street to Eighth Street.~~

~~Lincoln Street, west side, alley between Fifth Street and Sixth Street to Eighth Street.~~

~~Pacific Avenue, Lincoln Street to Grant Street.~~

~~Seventh Street, Lincoln Street to Grant Street.~~

~~Sixth Street, Lincoln Street to Grant Street.~~

(Code 1970, §§ 9-204.03, 9-312; Code 1990, § 16-46)

¹⁰⁶ Legal or Editorial Change: Code 1990, §§ 16-46. No parking for trucks. Deleted specific streets and tied to resolution.

Sec. 26-195. Trucks parking in residential districts.

No trucks shall park on the street in a residential district, as defined in the zoning regulations, except:

- (1) Trucks making deliveries, unloading and loading or temporary parking not to exceed one hour.
- (2) Unloaded pickups classified as one ton or less which have no malodorous, offensive, foul or noxious odors and which do not violate article III of chapter 22~~chapter 17~~.

(Code 1990, § 16-47; Ord. No. 218, § 1)

Sec. 26-196. Parking limited near post office.

When signs are erected, parking in the half block south and in the half block west of and adjacent to the post office building shall be limited to 15 minutes.

(Code 1970, § 9-204.06; Code 1990, § 16-48)

Sec. 26-197. Parallel and angle parking.¹⁰⁷

~~No persons shall stand or park a vehicle in a roadway, other than parallel with the edge of the roadway, headed in the direction of traffic, and with the curbside wheels of the vehicle within 12 inches of the edge of the roadway, except as provided in the following paragraphs:~~

(a) ~~Upon the following streets designated by resolution which have been marked on signs for angle parking, vehicles shall be parked at the angle to the curb indicated by such mark or signs.~~

~~Fifth Street, Lincoln Street to Grant Street.~~

~~Fourth Street, Washington Street to Grant Street.~~

~~Seventh Street, Lincoln Street to Grant Street.~~

~~Sixth Street, Lincoln Street to Grant Street.~~

~~Washington Street, Pacific Avenue to Seventh Street.~~

~~Grant Street, West side, Fifth Street to Eighth Street.~~

~~Lincoln Street, East side, alley north of Fifth Street to Seventh Street.~~

(b) In places where and at hours when stopping for the loading or unloading of merchandise or materials is permitted, vehicles used for the transportation of merchandise or materials may back into the curb to take on or discharge loads.

(Code 1970, §§ 9-204.07, 9-312; Code 1990, § 16-49; Res. No. 9-25-56, § 1; Ord. No. 765, § 1; Ord. No. 798, § 1; Ord. No. 1831, § 1; Ord. No. 1892, § 1)

State law reference—Manner of parking, R.R.S. 1943, § 60-6,167.

Sec. 26-198. Parking on streets at designated times prohibited.

No vehicle of any kind shall be parked on any street of the city where limited parking is not in effect for a period of time in excess of 24 hours.

(Code 1970, § 9-204.08; Code 1990, § 16-50; Ord. No. 1231, § 1; Ord. No. 1417, § 8)

¹⁰⁷ Legal or Editorial Change: Code 1990, § 16-49 Parallel and Angle Parking. Deleted material covered by R.R.S. 1943, § 60-6,167. Deleted specific streets and tied same to resolution.

Sec. 26-199. Limited parking zones.

Limited parking may be established for the purpose of loading and unloading merchandise or materials, for loading and unloading at the entrance of hotels, for the deposit of mail and for other purposes as are shown in this section. No person shall park a vehicle except for such purpose at any time in such zones. Such zones shall be utilized no longer than is necessary to accomplish such purposes. Such loading zones shall not be used so that traffic will be blocked on the streets adjoining the zone unless special permission therefor is given by the city manager. The city manager shall have the authority to establish temporary loading zones until such time as this section may be changed by resolution of the council.

- (1) Parking in front of theaters shall be permitted under the terms of this chapter at times when not prohibited by section 26-193.
- (2) Where no alley service exists for the loading or unloading of merchandise or material, the city manager may authorize the establishment of a loading zone of sufficient size. No person shall park a vehicle in the loading zone during the period of time for which parking is limited or reserved. Any person parking a vehicle for loading or unloading shall utilize the space no longer than is necessary to accomplish such loading or unloading. No more than one loading zone shall be established on one side of the block. It shall be placed to give the maximum service to all users.
- (3) One parking stall in front of each hotel in the city shall be reserved for the use of the patrons of the hotel for loading and unloading purposes only. Such parking stall or space shall be operative only when proper signs approved by the city manager, and placed as directed by the city manager, shall be erected by the hotel owner.

(Code 1970, §§ 9-204.09, 9-312; Code 1990, § 16-51)

Sec. 26-200. Temporary reserved parking spaces.

The city manager may authorize the temporary use of parking space and such parking space may be reserved on streets abutting property where construction, remodeling or where renovation work is in progress or where funerals are being conducted. Application for such reserve parking space shall be made to the city manager, who shall, after approving the same, direct the city forces to adequately mark such reserve space by hood, sack, sign, barricade or other recognizable device. Parking in such reserve parking spaces shall be only for such hours and days as may be designated by the city manager and shall be used only for the purpose for which the application was made.

(Code 1970, § 9-204.10; Code 1990, § 16-52)

Sec. 26-201. Handicap parking area designated.¹⁰⁸

- (a) Handicap parking spaces shall be for the exclusive use of:
 - (1) Handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to handicapped or disabled persons pursuant to R.R.S. 1943, § 60-3,113;
 - (2) Handicapped or disabled persons whose motor vehicles display a distinguishing license plate issued to a handicapped or disabled person by another state;
 - (3) Such other handicapped or disabled persons or temporarily handicapped or disabled persons, as certified by the city or village, whose motor vehicles display the permit specified in R.R.S. 1943, § 18-1739 or the permit specified in R.R.S. 1943, §§ 60-113.01--60-113.08; and

¹⁰⁸ Legal or Editorial Change: Code 1990, § 16-53.1 Handicap Parking. Area designated. Updated statute references. Deleted specific locations and tied to resolution.

- (4) Such other motor vehicles, as certified by the city ~~or village~~, which display the permit specified in R.R.S. 1943, § 18-1739.

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.

(b) Handicap parking spaces shall be marked by posting above ground and immediately adjacent to and visible from each space a sign as described in R.R.S. 1943, § 18-1737. In addition to such sign, the space may also be indicated by blue paint on the curb or edge of the paved portion of the street adjacent to the space.

(c) Handicap parking spaces shall be designated at the ~~following~~ locations designated by resolution.

- ~~1. One parking space immediately adjoining the building at 512 N. Washington Street.~~

(Code 1991, § 16-53.1; Ord. No. 2121, § 1)

Secs. 26-202--26-225. Reserved.

DIVISION 2. OFF-STREET PARKING DISTRICT NO. 1

Sec. 26-226. Penalty.

(a) Any violator who shall appear at the violations bureau prior to the day of filing a complaint shall pay a fine as follows:

- (1) If such violator shall appear on or before the fifth calendar day after the violation, he shall pay \$2.00, \$1.00 which shall be assessed as a fine and \$1.00 which shall be assessed as a fee covering cost of administration.
- (2) Any person appearing after the fifth day and before the filing of a complaint, shall pay the sum of \$5.00, \$2.50 which shall be assessed as a fine, and \$2.50 which shall be assessed as a fee covering cost of administration.

(b) Upon conviction of an offense hereunder after complaint is filed, the person so convicted shall be fined in a sum not less than \$10.00 nor more than \$100.00 for each such conviction.

(Code 1991, § 16-54.4; Ord. No. 1417, § 4; Ord. No. 1743, § 2)

Sec. 26-227. Enforcement.

The enforcement of this article and violation of the provisions thereof shall be under the police jurisdiction of the city and its duly designated officers.

(Code 1991, § 16-54.7; Ord. No. 1417, § 7)

Sec. 26-228. Violations bureau.

(a) There is hereby established a violations bureau within the city, for the handling of nonmoving traffic violations as ~~hereinafter~~ defined in subsection (b) of this section. The city police department shall be the office of the violations bureau, and shall collect all fines and fees for such violations and remit such fees monthly to the city treasurer, and remit such fines to the treasurer of the city school district.

(b) As used in this section, the term "nonmoving traffic violations" means all violations of the two-hour parking limitation set forth in section 26-229.

(Code 1991, §§ 16-54.5, 16-54.6; Ord. No. 1417, § 6, 6)

Sec. 26-229. Time limit.¹⁰⁹

It shall be unlawful for any person to park any motor vehicle along the curb on either side of the street or in the off-street parking lots that are within or adjoining the boundaries of the vehicle off-street parking district No. 1 of the city created by Ordinance No. 1390, for a period of time in excess of two consecutive hours between the hours of 8:00 a.m. and 5:00 p.m., except Thursday, which shall be between the hours of 8:00 a.m. and 9:00 p.m., provided, two-hour parking shall be located in the same areas where parking meters were located at the time of adoption of Ordinance No. 1390 on August 20, 1975. This two-hour parking limitation shall not apply all day Sunday and all legal holidays. This two-hour parking limitation shall not apply to any parking time limit signs for other than two-hour parking, as approved by the city council. This two-hour parking area shall be properly designated by parking time limit signs and there shall be filed with the city clerk a map of the parking time limit areas within and adjoining the off-street parking district No. 1, kept continuously current and available for public inspection. Such map shall be adopted by resolution.

(Code 1991, § 16-54.1; Ord. No. 1390, 8-20-1975; Ord. No. 1417, § 1)

Sec. 26-230. Parking tickets.

Notice of violation of the two-hour parking limitation provided herein shall be given to the owner by placing such notice under a windshield wiper or otherwise securely attaching such notice to the offending motor vehicle. Such notice shall require the owner to appear forthwith at the violations bureau. If the owner of such vehicle shall fail to appear in response to such notice within a period of five days, a written notice shall be sent to the owner of such vehicle, by first-class mail, at the address shown on the registration of such vehicle, notifying the owner to appear at the violations bureau within ten days of the date of mailing such written notice. Upon failure to appear within the time set forth in the mailed notice, the owner of such vehicle shall be subject to immediate prosecution for violation of the parking limits provided herein.

(Code 1991, § 16-54.3; Ord. No. 1417, § 3; Ord. No. 1743, § 1)

Secs. 26-231–26-253. Reserved.**ARTICLE VII. BICYCLES AND MOTORCYCLES***

***State law reference**—Authority to regulate bicycles, R.R.S. 1943, § 60-680(1)(h); bicycles generally, R.R.S. 1943, § 60-6,314 et seq.; motorcycles, R.R.S. 1943, § 60-6,306 et seq.

Sec. 26-254. Applicability of traffic laws and regulations.¹¹⁰

Every person riding a bicycle or motorcycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of the state declaring rules of the road applicable to vehicles, this Code or other traffic ordinances of this city applicable to the driver of a vehicle, except as to those provisions of laws and ordinances which by their nature can have no application, and except as to special regulations in this article. Provisions applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside by the state or city for the exclusive use of bicycles.

(Code 1991, § 16-68; Ord. No. 990, § 1)

State law reference—Similar provisions, R.R.S. 1943, §§ 60-6,306, 60-6,314.

¹⁰⁹ Legal or Editorial Change: Code 1990, § 16-54.1 Time Limit. Tied adoption of map to resolution.

¹¹⁰ Legal or Editorial Change: Code 1990, § 16-68 Applicability of Traffic Laws and Regulations. Altered to be consistent with R.R.S. 1943, § 60-6-314.

Sec. 26-255. Obedience to traffic control devices.

Any person operating a bicycle or motorcycle shall obey the instructions of official traffic control signals, signs and other control devices applicable to vehicles, unless otherwise directed by a police officer. When such operator dismounts such vehicle, the operator shall obey the regulations applicable to pedestrians.

(Code 1991, § 16-69; Ord. No. 990, § 1)

Sec. 26-256. Speed restrictions.

No person shall operate a bicycle or motorcycle at a speed greater than is reasonable and prudent under the conditions existing and not greater than the speed limits of other ordinances and laws applicable.

(Code 1991, § 16-72; Ord. No. 990, § 1)

Sec. 26-257. Emerging from alley or driveway.

The operator of a bicycle or motorcycle emerging from an alley, driveway or building, shall upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on the sidewalk or sidewalk area, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on the roadway.

(Code 1991, § 16-73; Ord. No. 990, § 1)

Sec. 26-258. Parking.

No person shall park a bicycle or motorcycle on any sidewalk or shall park upon a street other than upon the roadway against the curb, except where racks are provided with the consent of the chief of police.

(Code 1991, § 16-75; Ord. No. 990, § 1)

Sec. 26-259. Riding bicycles on sidewalks.¹¹¹

(a) No person shall ride a bicycle upon a sidewalk within the ~~area bounded by Grant Street to Lincoln Street and U.S. Highway 30 to Seventh Street, including both sides of Lincoln Street and Grant Street, and also on both sides of Sixth Street between Jackson Street and Grant streets designated by resolution.~~

(b) Persons riding bicycles on the sidewalks, not in restricted areas, shall yield the right-of-way to any pedestrian and shall not overtake or pass such a pedestrian unless there is adequate and safe space to do so and on the further condition that such pedestrian is made aware of the intended passing or overtaking.

~~(c) The operator of a bicycle who collides with a pedestrian on the sidewalk shall be presumed to be negligent.~~

(Code 1991, § 16-76; Ord. No. 990, § 1; Ord. No. 1841, § 1)

Sec. 16-3 Obedience to Police.¹¹²

~~No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer.~~

¹¹¹ Legal or Editorial Change: Code 1990, § 16-76 Riding Bicycles on Sidewalks. Deleted specific streets in subsection (a) and tied to resolution. Deleted subsection (c) as beyond the power of the city to provide.

¹¹² Legal or Editorial Change: Code 1990, § 16-3 Obedience to Police. Deleted as covered by R.R.S. 1943, § 60-1,110.

~~(Code 1970, § 9-202.01; Code 1990, § 16-3)~~

~~Sec. 00-00. Clinging to vehicles.~~¹¹³

~~No person riding upon any bicycle, motorcycle, coaster, sled, roller skates or any toy vehicle shall attach the same or himself to any moving vehicle upon any roadway.~~

~~(Code 1970, § 9-211; Code 1990, § 16-9)~~

~~Sec. 16-11 Equipment Generally.~~¹¹⁴

~~Every motor vehicle, while in use upon the streets, alleys or public highways of the city, shall be equipped with efficient brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, and shall be further equipped with a good and sufficient horn in good working order, or other efficient signal devices, and shall have from one half hour after sunset until one half hour before sunrise, two or more whitish lights on the front thereof, one on each side, and the lights and all other lighting devices, including a taillight, used on such vehicle, shall be in compliance with the laws of the state. No person shall operate upon the streets, alleys or public highways any motor vehicle equipped with lights that unnecessarily confuse and blind travelers or pedestrians on streets or cross walks of the city. Every motor vehicle having a width of 80 inches or more shall display clearance lights as required by the laws of the state.~~

~~All horns on motor vehicles shall be capable of sending sound audible under normal conditions for a distance of not less than 200 feet. No person shall use a horn or other device on a motor vehicle other than a reasonable warning, and shall not use such horn or other device to make any unreasonable or unnecessary loud or harsh sound. Motorcycles need to be equipped with only one brake. No person shall ride a motorcycle upon the streets, alleys or highways of the city from one-half hour after sunset to one half hour before sunrise, unless the same shall be equipped with at least one and not more than two head lamps visible from the front, and with a lamp at the rear exhibiting a red light visible under normal atmospheric conditions from a distance of at least 500 feet to the rear thereof. Such lamps shall comply with the requirements and limitations of the statutes of the state.~~

~~(Code 1970, § 9-214.02; Code 1990, § 16-11)~~

~~Sec. 16-12 Mufflers and Muffler Cutouts.~~¹¹⁵

~~Every motor vehicle operated within the city shall be provided with a muffler in good working order and in constant operation to prevent excessive or unusual noise. It shall be unlawful to use a muffler cutout on any motor vehicle upon any of the streets. The provisions of this section shall not apply to authorized emergency vehicles.~~

~~(Code 1970, § 9-214.01; Code 1990, § 16-12)~~

¹¹³ Legal or Editorial Change: Code 1990, § 16-9 Clinging to Vehicles. Deleted as covered by R.R.S. 1943, §§ 60-6,316, 60-6,308 & 60-6,354.

¹¹⁴ Legal or Editorial Change: Code 1990, § 16-11 Equipment Generally. Deleted as covered by R.R.S. 1943, § 60-6,219 et seq.

¹¹⁵ Legal or Editorial Change: Code 1990, § 16-12 Mufflers and Muffler Cutouts. Deleted as covered by (and inconsistent with) R.R.S. 1943, § 60-6,286.

~~Sec. 16-14 Chapter Schedules may be Changed by Resolution.~~¹¹⁶

~~Schedules contained in this chapter may be changed by resolution of the city council at any time without the necessity of amending this chapter.~~

~~(Code 1970, § 9-217; Code 1990, § 16-14)~~

~~Sec. 16-18 Automatic Traffic control Legend.~~¹¹⁷

~~Whenever traffic within the city is controlled by official traffic signals exhibiting different colored lights successively, one at a time, the following colors only shall be used, and the lights shall indicate as follows, and it shall be unlawful for any person to violate such signals:~~

~~(a) Green alone.~~

~~(1) Vehicular traffic facing the signal may proceed into the intersection, but shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection at the time such signal is exhibited.~~

~~(2) Pedestrians facing the signal may proceed across roadway within any marked or unmarked crosswalks.~~

~~(b) Yellow alone, when shown following the green signal.~~

~~(1) Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety the vehicle may be driven cautiously through the intersection.~~

~~(2) Pedestrians facing the signal are thereby advised that there is insufficient time to cross a roadway, and any pedestrian then starting to cross shall yield the right of way to all vehicles.~~

~~(c) Red alone.~~

~~(1) Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at an intersection and shall remain standing until green is shown.~~

~~(2) No pedestrian facing the signal shall enter the roadway.~~

~~(Code 1970, § 9-203.05; Code 1990, § 16-18)~~

~~Sec. 16-19 Flashing Signals.~~¹¹⁸

~~Whenever flashing red or yellow signals are used they shall require obedience by vehicular traffic as follows:~~

~~(a) Flashing red (stop signal). When a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or a limit line when marked, and the right to proceed shall be subject to the rules applicable after making a stop at stop sign.~~

¹¹⁶ Legal or Editorial Change: Code 1990, § 16-14 Chapter Schedules may be Changed by Resolution. Deleted. A resolution cannot vary an ordinance. If traffic schedules have been so amended, they should not be included in the code.

¹¹⁷ Legal or Editorial Change: Code 1990, § 16-18 Automatic Traffic control Legend. Deleted as covered by and in conflict with R.R.S. 1943, § 60-6,123.

¹¹⁸ Legal or Editorial Change: Code 1990, § 16-19 Flashing Signals. Deleted as covered by and in conflict with R.R.S. 1943, § 60-6,125

~~(b) Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.~~

~~(Code 1970, § 9-203.06; Code 1990, § 16-19)~~

~~Sec. 16-20 Interference with Signs Prohibited.¹¹⁹~~

~~No person shall interfere with, deface, remove, disturb or destroy any signs, hoods, barricades, sacks or other recognizable devices lawfully used as provided in this chapter.~~

~~(Code 1970, § 9-216; Code 1990, § 16-20)~~

~~Sec. 16-22 Preferential Right of Way; Stop and Yield Signs.¹²⁰~~

~~(a) The Council may provide for preferential right of way at an intersection and indicate such by stop signs and yield signs erected as designated by the council.~~

~~(b) Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle approaching an intersection where a stop is indicated by a stop sign shall stop at a clearly marked stop line, but if there is no such line, before entering the crosswalk on the near side of the intersection or, if no crosswalk is indicated, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, such driver shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching closely on such highway as to constitute an immediate hazard if such driver moved across or into such intersection.~~

~~(c) The driver of a vehicle approaching a yield sign shall slow to a speed reasonable under the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, but if there is no such line, before entering the crosswalk on the near side of the intersection or, if no crosswalk is indicated, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After slowing or stopping, such driver shall yield the right of way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard if such driver moved across or into such intersection.~~

~~(Code 1970, § 9-206; Code 1990, § 16-22; Ord. No. 1409, § 1)~~

~~Sec. 16-24 Emerging from Alley or Private Driveway.¹²¹~~

~~The driver of a vehicle emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or into the sidewalk area extending across any alleyway, and upon entering the roadway shall yield the right of way to all vehicles approaching on the roadway.~~

~~(Code 1970, § 9-206.02; Code 1990, § 16-24)~~

¹¹⁹ Legal or Editorial Change: Code 1990, § 16-20 Interference with Signs Prohibited. Deleted as covered by R.R.S. 1943, § 60-6,130.

¹²⁰ Legal or Editorial Change: Code 1990, § 16-22 Preferential Right-of-Way; Stop and Yield Signs. Deleted as covered by R.R.S. 1943, § 60-6,148.

¹²¹ Legal or Editorial Change: Code 1990, § 16-24 Emerging from Alley or Private Driveway. Deleted as covered by and not consistent with R.R.S. 1943, § 60-6,149.

~~Sec. 16-28 Driving on Sidewalk.~~¹²²

~~The driver of a vehicle shall not drive within any sidewalk area except at a permanent or temporary driveway.~~

~~(Code 1970, § 9-210; Code 1990, § 16-28)~~

~~Sec. 16-29 Operation on Approach of Fire Truck; Parking near Fire.~~¹²³

~~All motor vehicles and vehicles of every kind, except ambulances, shall, upon the approach of any of the fire trucks of the city, drive to the curb or out of the main traveled portion of the street or alley, but not within 20 feet of any fire hydrant, and come to a stop and give to the fire trucks a clear right of way, and it shall be unlawful for any person to obstruct or in any way interfere with the fire trucks of the city while the trucks are responding to a fire alarm, and it shall be unlawful for any person other than the members of the fire department of the city to drive or park any vehicle within a radius of 500 feet of the location of any such fire.~~

~~(Code 1970, § 9-213; Code 1990, § 16-29)~~

~~Sec. 16-30 Driving over Fire Hose.~~¹²⁴

~~It shall be unlawful for any person to drive or permit to be driven any motor vehicle, or vehicles of any kind over or across any of the fire hose owned by the city or being used by the firemen of the city, on any street, alley or other place within the city.~~

~~(Code 1970, § 9-213.02; Code 1990, § 16-30)~~

~~Sec. 16-32 Right of Way at Intersection.~~¹²⁵

~~When two motor vehicles approach a street intersection at or so near the same time that a collision might take place, the motor vehicle on the right hand side shall have the right of way, and the other motor vehicle shall so reduce its speed as to allow such motor vehicle on the right to safely pass.~~

~~(Code 1970, § 9-214.03; Code 1990, § 16-32)~~

~~Sec. 16-33 Overtaking and Passing Vehicle Proceeding in Same Direction.~~¹²⁶

~~Whenever any person operating any motor vehicle shall overtake another vehicle or conveyance on any street or road within the city, traveling in the same direction, and shall by sound of horn or other device indicate to the driver thereof his desire to pass, it shall be the duty of the driver of the motor vehicle or conveyance in front, if the nature of the ground and the condition of the road will permit, to promptly turn to the right of the center of the street or road, and the driver of the motor vehicle behind will then turn to left of the center of the road and pass by, and~~

¹²² Legal or Editorial Change: Code 1990, § 16-28 Driving on Sidewalk. Deleted as covered by R.R.S. 1943, § 60-6,178.

¹²³ Legal or Editorial Change: Code 1990, § 16-29 Operation on Approach of Fire Truck; Parking near Fire. Deleted as covered by and inconsistent with R.R.S. 1943, §§ 60-6,151, 60-6-183, & 60-6,378.

¹²⁴ Legal or Editorial Change: Code 1990, § 16-30 Driving over Fire Hose. Deleted as covered by and inconsistent with R.R.S. 1943, § 60-6-184.

¹²⁵ Legal or Editorial Change: Code 1990, § 16-32 Right-of-Way at Intersection. Deleted as covered by and not consistent with R.R.S. 1943, § 60-6,146.

¹²⁶ Legal or Editorial Change: Code 1990, § 16-33 Overtaking and Passing Vehicle Proceeding in Same Direction. Deleted as covered by and not consistent with R.R.S. 1943, §§ 60-6-133 et seq.

~~the driver of the motor vehicle shall not return to the center of the road until at least 30 feet ahead of the vehicle or conveyance passed.~~

~~(Code 1970, § 9-214.04; Code 1990, § 16-33)~~

~~Sec. 16-34 Driving While Under the Influence of Alcoholic Liquors--Generally.~~¹²⁷

~~It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle while under the influence of alcoholic liquor or of any drug or when that person has 0.10 of one percent or more by weight of alcohol in his body fluid as shown by chemical analysis of his blood, breath or urine. Any person who shall violate this section shall be deemed guilty of an offense, and upon conviction thereof, shall be deemed guilty of an offense and shall be imprisoned in jail for a period not exceeding seven days, or shall be fined in any sum not exceeding \$500.00, or both such fine and imprisonment, and the court, may as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of six months from the date of his final discharge from the county jail, or the date of payment or satisfaction of such fine, whichever is the later, and shall order that the operator's license of such person be revoked for a like period.~~

~~(Code 1990, § 16-34; Ord. No. 1559, § 1; No. 1669, § 1)~~

~~Sec. 16-36 Reckless Driving~~¹²⁸

~~Any person who drives any motor vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property shall be deemed to be guilty of reckless driving.~~

~~(Code 1990, § 16-36)~~

~~Sec. 16-37 Willful Reckless Driving.~~¹²⁹

~~Any person who drives any motor vehicle in such a manner as to indicate a willful disregard for the safety of persons or property is guilty of willful reckless driving.~~

~~Code 1990, § 16-37)~~

~~Sec. 16-38 Operation of Tractors with Lugs.~~¹³⁰

~~It shall be unlawful for any person, within the city, to drive or cause to be driven a tractor with lugs or other projections attached to the wheels of the tractor, so the same will come in contact with the crossings, sidewalks or pavement over and upon any of the streets or alleys in the city, without first planking a roadway for the tractor so as to protect properly the crossings, sidewalks and paved streets.~~

~~(Code 1970, § 9-214.06; Code 1990, § 16-38)~~

¹²⁷ Legal or Editorial Change: Code 1990, § 16-34 Driving While Under the Influence of Alcoholic Liquors--Generally. Deleted as covered by and inconsistent with R.R.S. 1943, § 60-6,196 et seq.

¹²⁸ Legal or Editorial Change: Code 1990, § 16-36 Reckless Driving. Deleted as covered by R.R.S. 1943, § 60-6,213. (As worded no offense is created.)

¹²⁹ Legal or Editorial Change: Code 1990, § 16-37 Willful Reckless Driving. Deleted as covered by R.R.S. 1943, § 60-6,214. (As worded no offense is created.)

¹³⁰ Legal or Editorial Change: Code 1990, § 16-38 Operation of Tractors with Lugs. Deleted as covered by and in conflict with R.R.S. 1943, § 60-6,249 et seq.

~~Sec. 16-39 Speed Limits--Generally.~~¹³¹

~~No person shall drive a vehicle on the streets of the city in excess of 25 miles per hour, except as otherwise provided in this article.~~

~~(Code 1990, § 16-39)~~

~~Sec. 16-41.1 Racing on city streets.~~¹³²

~~No person shall drive any vehicle on any city street in any race, speed competition, contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making any speed record, and no person shall in any manner participate in any said race, competition, contest, test or exhibition. Any person convicted of violating this section shall be guilty of a misdemeanor.~~

~~(Code 1990, § 16-41.1; Ord. No. 1537, § 1)~~

~~Sec. 16-54.2 Method of Changing Parking Time Limit Areas.~~¹³³

~~Any change to the parking time limit areas within and joining the off street parking district No. 1, may be made by resolution of the council and by changing the parking time limit signs affected. Likewise, the map filed with the city clerk shall be updated to reflect the change.~~

~~(Code 1991, § 16-54.2; Ord. No. 1417, § 2)~~

~~Sec. 16-67 Definitions.~~¹³⁴

~~For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:~~

~~Bicycle. Every device propelled by human power upon which any person may ride, having two tandem wheels either of which is over 20 inches in diameter.~~

~~Motoreycle. Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.~~

~~(Code 1991, § 16-67; Ord. No. 990, § 1)~~

~~Sec. 16-70 Riding on Bicycles Generally.~~¹³⁵

~~(a) A person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto.~~

~~(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.~~

~~(Code 1991, § 16-70; Ord. No. 990, § 1)~~

¹³¹ Legal or Editorial Change: Code 1990, § 16-39 Speed Limits--Generally. Deleted as covered by and in conflict with R.R.S. 1943, § 60-6,186.

¹³² Legal or Editorial Change: Code 1990, § 16-41.1 Racing on City Streets. Deleted as covered by and not consistent with R.R.S. 1943, § 66-6,195.

¹³³ Legal or Editorial Change: Code 1990, § 16-54.2 Method of Changing Parking Time Limit Areas. Deleted as not needed in light of other changes.

¹³⁴ Legal or Editorial Change: Code 1990, § 16-67 Definitions. Deleted as covered (and in conflict with R.R.S. 1943, §§ 60-411, 60-639.

¹³⁵ Legal or Editorial Change: Code 1990, § 16-70 Riding on Bicycles Generally. Deleted as covered by and not in conformity with R.R.S. 1943, § 60-6,315.

~~Sec. 16-71 Riding Bicycles on Roadways and Paths.~~¹³⁶

~~(a) Every person operating a bicycle upon a roadway shall ride as near to the right hand side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.~~

~~(b) Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.~~

~~(c) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.~~

~~(Code 1991, § 16-71; Ord. No. 990, § 1)~~

~~Sec. 16-74 Carrying Packages, Articles, etc.~~¹³⁷

~~No person operating a bicycle or motorcycle shall carry any package, bundle or article which prevents the rider from keeping both hands upon the handlebars.~~

~~(Code 1991, § 16-74; Ord. No. 990, § 1)~~

~~Sec. 16-77 Clinging to Vehicles.~~¹³⁸

~~Section 16-9 shall be applicable to all operators of bicycles and motorcycles.~~

~~(Code 1991, § 16-77; Ord. No. 990, § 1)~~

~~Sec. 16-78 Equipment on Bicycles.~~¹³⁹

~~(a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front and with a red reflector or reflector tape on the rear, of a type which shall be visible from all distances from 50 feet to 300 feet to the rear when directly in front of lawful beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector.~~

~~(b) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheel skid on dry, level, clean pavement.~~

~~(Code 1991, § 16-78; Ord. No. 990, Sec. 1)~~

~~Sec. 16-79 District No. 1 Findings.~~¹⁴⁰

~~The mayor and city council hereby find and determine: That as of the date of this section there is no vehicle off-street parking district within the city other than the district created pursuant to section 16-80; that all of the lots and lands located within the boundaries of the district as described in section 16-80 will receive benefit from vehicle off-street parking facilities and are properly included in the district; and that such boundaries include all the land which in~~

¹³⁶ Legal or Editorial Change: Code 1990, § 16-71 Riding Bicycles on Roadways and Paths. Deleted as covered by and in conflict with R.R.S. 1943, § 60-6,317.

¹³⁷ Legal or Editorial Change: Code 1990, § 16-74 Carrying Packages, Articles, etc. Deleted as covered by and in conflict with R.R.S. 1943, § 60-6,315.

¹³⁸ Legal or Editorial Change: Code 1990, § 16-77 Clinging to Vehicles. Deleted as covered by R.R.S. 1943, § 60-6,316.

¹³⁹ Legal or Editorial Change: Code 1990, § 16-78 Equipment on Bicycles. Deleted as covered by and in conflict with R.R.S. 1943, § 60-6,318.

¹⁴⁰ Legal or Editorial Change: Code 1990, §§ 16-79--16-81. Vehicle Off-Street Parking District No. 1. Deleted but saved from repeal generically in Code chapter 1.

~~the opinion of the mayor and city council will be specifically benefited by vehicle off street parking facilities.~~

~~(Code 1991, § 16-79; Ord. No. 1390, § 1)~~

~~Sec. 16-80 Same Created; Description.~~

~~There is hereby created in the city a vehicle off street parking district to be designated vehicle off street parking district No. 1 of the city, the outer boundaries of which district shall be as follows, to wit:~~

~~Commencing at the northeast corner of Lot 12, Block 24, Original Town of Plum Creek, now City of Lexington, Dawson County, Nebraska; Thence south to the southeast corner of Block 62; Thence westerly along the north line of Pacific Avenue to the southwest corner of Block 63; Thence north to the southwest corner of Block 54; Thence west along the north line of 4th Street to the southwest corner of Block 52; Thence north to the northwest corner of Block 34; Thence east to a point 30 feet west of the northwest corner of lot 2, Block 34; Thence north to a point 30 feet west of the northwest corner of Lot 11, Block 27; Thence east to the northwest corner of Lot 7, Block 26; Thence north to the northwest corner of Block 26 Thence east to the northwest corner of Block 25; Thence north to the northwest corner of Lot 7, Block 16; Thence east to the northeast corner of Lot 12, Block 16; Thence south to the northeast corner of Block 25; Thence east to the northeast corner of Lot 5, Block 24; Thence south to the northwest corner of Lot 9, Block 24; Thence east to the point of beginning.~~

~~The district shall include all of the property located within the above described boundaries except for the following described lots and parcels:~~

~~The west 20 feet of Lot 5 and all of Lot 6, Block 26;~~

~~Lots 11 and 12, Block 16;~~

~~Lots 5, 6, 7, 8, and the west ten feet of Lot 9, Block 34;~~

~~Lots 1, 2, 3, and the east 20 feet of Lot 4, Block 37;~~

~~Lots 1, 2, 10, 11, 12, and the east four feet of Lot 9, Block 44;~~

~~Lots 4, 7, 8, and 10, Block 47;~~

~~Lots 1, 2, 3, 4, and 5, Block 62.~~

~~(Code 1991, § 16-80; Ord. No. 1390, § 2)~~

~~Sec. 16-81 Same Purpose.~~

~~The purpose of the district will be to own, purchase, construct, equip, lease, either as lessee or lessor, or operate, within the city, vehicle off street parking facilities for the use of the general public, all as provided for in R.R.S. 1943, §§ 19-3301 to 19-3326, as amended.~~

~~(Code 1991, § 16-81; Ord. No. 1390, § 3)~~

Chapter 27
RESERVED

PROOFS

Chapter 28
UTILITIES

ARTICLE I. IN GENERAL

Sec. 28-1. Storm sewers; when tapping allowed; tapping fees.

(a) No person shall tap into a public storm sewer, except with specific written permission of the city manager. No tap shall be permitted unless the city manager determines that such tap can be accomplished in compliance with the public works specifications of the city, without cutting public streets or sidewalks, and without risk of damage to the storm sewer system.

(b) Application for storm sewer tap, signed by the owner of property benefited by such tap, shall be submitted to the building department, with plans and specifications for the proposed tap, including plans for backflow prevention. As a condition of said application, the applicant will agree to reimburse city for any damage to city storm sewer system caused by such tap, and in addition will require said tap as necessary subsequent landowner to remove said tap as necessary to allow future improvements or repairs of said storm sewer system. Upon approval of such application, a tapping permit shall be issued.

(c) Storm sewer tap fees shall be set by resolution of the city council. The building department shall make at least one inspection of the completed installation before closing, and one inspection of any required backfill.

(Code 1990, § 23-10.3; Ord. No. 2024, § 1; Ord. No. 2138, § 12)

Secs. 28-2--28-20. Reserved.

ARTICLE II. SERVICE APPLICATIONS; COLLECTION REMEDIES AND PROCEDURES

Sec. 28-21. Trade name.

The city's utilities system trade name may be known under the style and name of LEXUS, and LEXUS may be used for all billing and reference to general utilities furnished by the city.

(Code 1990, § 26A-1; Ord. No. 1233, § 2; Ord. No. 1888, § 1)

Sec. 28-22. Application for service.

Every person desiring any utility service or solid waste collection from LEXUS, shall make application therefor at the business office of the city. Applications shall be in the name of the person financially responsible for the service, and shall list the street address of the property where the service is to be used, together with proper identification of the applicant.

(Code 1990, § 26A-2; Ord. No. 1233, § 3; Ord. No. 1888, § 1; Ord. No. 2005; Ord. No. 2138, § 13)

Sec. 28-23. Deposits required.

(a) Applications made for utility services shall be accompanied by a utility service deposit in an amount set by resolution of the city council.

(b) An application for new service will not be accepted nor utility service provided until all delinquent balances associated with an applicant have been paid in full.

(c) When an application for utility service is made outside of regular office hours, the applicant shall execute an agreement to pay a utility service deposit on the next regular working day, and associated after-hour service fees.

(d) Deposits shall be retained by the city for at least two years and then shall be returned to the customer if no bill becomes delinquent during the period. If a bill becomes delinquent, deposits shall be retained for an additional two years from the date of delinquency.

(e) All retained deposits shall be returned without interest.

(Code 1990, § 26A-3; Ord. No. 1233, § 4; Ord. No. 1709, § 1; Ord. No. 1888, § 1; Ord. No. 2138, § 14)

Sec. 28-24. Cyclical billing schedule.

The billing of the utility services to the user shall be done monthly on a cyclical billing schedule determined by the city.

(Code 1990, § 26A-4; Ord. No. 1233, § 5)

Sec. 28-25. Charges for utilities.

Charges for utilities shall be in accordance with the provisions of this chapter establishing such charges. Further regulations and rules concerning each of the utilities of the city shall also be as provided in such chapter, except as may be changed by this article.

(Code 1990, § 26A-6; Ord. No. 1233, § 6; Ord. No. 2005)

Sec. 28-26. When service charges due; collection of delinquent bills; charge for resumption of disconnected service.

All service charges for utilities or solid waste collection shall be due at the date of billing. In the event any bill remains unpaid for more than 15 days after due date, it shall be considered delinquent and the city manager is empowered, instructed and commanded to collect the entire bill. Any payment which does not include the entire amount shall not bind such city, but remain an existing liability against the user and, when appropriate, against his property, and suit for collection of the same may be brought in the name of the city. The city manager is empowered and directed to discontinue and disconnect the utilities of any consumer after his bill has become delinquent. Before resumption of such utility service, the consumer shall pay the delinquent bill plus a service charge for disconnection and reconnection as established by the city manager.

(Code 1990, § 26A-7; Ord. No. 1233, § 7; Ord. No. 1781, § 1; Ord. No. 2005)

State law reference—Collection of utility bills, R.R.S. 1943, § 16-682.

~~Sec. 26A-8. Penalty for violation of chapter.~~ ¹⁴¹

~~A person who shall violate, neglect or refuse to comply, or who resists the enforcement of any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof a penalty shall be imposed as provided by section 1-7.~~

(Code 1990, § 26A-8; Ord. No. 1233, § 8)

Secs. 28-27–28-55. Reserved.

ARTICLE III. ELECTRIC SYSTEM*

***State law reference**—Municipal electric systems, R.R.S. 1943, § 18-412 et seq.

¹⁴¹ Legal or Editorial Change: Code 1990, § 26A-8. Penalty for Violation of Chapter. Deleted as not needed.

DIVISION 1. GENERALLY

Sec. 28-56. Electric service to be furnished under prescribed rules, regulations and rates; electrical installations, etc.; waivers.

(a) Electric service shall be furnished by the city electric department, hereinafter sometimes in this article called the electric department or the department, within the service area of the city, in accordance with the rules and regulations and at the schedules of rates set forth in this article.

(b) Electric service furnished by the electric department shall be subject also to the requirements set forth in this Code and other ordinances of the city relating to electrical installations, inspections, licensing, permits and regulations, and the rules and regulations of the electric department.

(c) Any waiver at any time by the electric department of any of the provisions of the rules and regulations of this article shall not be deemed as a waiver as to any violation or other matter subsequently occurring.

(Code 1990, § 8-1; Ord. No. 1124, § 1; Ord. No. 1583, § 1)

Sec. 28-57. Electric service available; permanent, seasonal and temporary service.

(a) Unless otherwise stated in this article pertaining to specific electric rate schedules, electric service supplied will be 60-cycle alternating current as follows:

- (1) Single-phase.
 - a. 2-wire, 120 volts.
 - b. 3-wire, 120/240 volts.
- (2) Three-phase.
 - a. 3-wire delta, 240 volts.
 - b. 4-wire delta, 120/240 volts.
 - c. 4-wire wye, 120/208 volts.
 - d. 4-wire wye, 277/480 volts.

(b) The electric department shall have the right to specify the phase and nominal voltage at which electric service will be supplied and to serve at different voltages where distribution is made at other nominal voltages.

(c) Unless specific arrangements are made to the contrary, electric service will be considered rendered on a continuous permanent basis subject to termination as provided later in this article.

(d) Temporary service is considered as that service required by such consumers as circuses, construction contractors, carnivals, tent shows and other similar enterprises. Prior to the start of any construction required to provide temporary service, the applicant shall pay to the electric department an amount equal to such department's estimate of the total cost of constructing and removing all facilities necessary to supply the desired service less the salvage value of the materials used. The amount thus paid shall not be refundable, nor applicable to bills for service. The costs of electric service shall be in accordance with the provisions of the application for such service and shall be as stated in the applicable schedules of rates.

(Code 1990, § 8-2; Ord. No. 1124, § 2; Ord. No. 1329, § 1; Ord. No. 1382, § 1; Ord. No. 1583, § 1; Ord. No. 2137, § 1)

Sec. 28-58. Service agreements; deposits; selection of rates.

(a) The original service connection at any location under any schedule of rates shall be preceded by an application for service at the office of the electric department. Such application

shall be subject to the provisions of this article and when approved by the electric department, shall constitute an agreement between the consumer and the city under which the consumer shall pay the city for service rendered in accordance with the applicable rate schedule including any special rules and regulations appertaining thereto. The resulting agreement shall not be assigned without the approval of the electric department. A separate application shall be required for service under each applicable rate schedule at each point of delivery.

(b) Deposits as required under applicable rate schedules shall not be considered as advance payment for service bills and will be applied as credits to consumer's account only after electric service has been discontinued. In the event any person is in arrears to the electric department for electric service, satisfactory arrangements shall be made for paying for the old accounts in full before any application for new service shall be approved. The electric department may return deposits at any time and will return such deposits upon discontinuance of service after withholding therefrom payment for unpaid bills for service.

(c) The electric department shall select the rate for service best suited for each consumer. The consumer shall be responsible for the rate schedule selected. Their use of the service and payment therefor shall be in accordance with the provisions thereof. If the consumer desires to change the rate under which electric service is rendered, they shall make a new application for service.

(Code 1990, § 8-3; Ord. No. 1124, § 3; Ord. No. 1583, § 1; Ord. No. 2137, § 2)

Sec. 28-59. Electric service; contribution in aid-to-construction.

A large commercial or industrial consumer may require a large city expenditure to provide the necessary service to a new or expanded facility. The consumer will furnish sufficient load information in order for the city to prepare a cost estimate for the required service and to estimate the annual revenue. The city will invest, without a contribution, up to five times the estimated annual revenue less associated power costs. Any expense in excess of five times the estimated annual revenue, less associated power costs, shall be paid by the consumer. The contribution in aid-to-construction shall be paid within a three-year period after the new service is in operation. The method of collecting the contribution in aid-to-construction shall be set forth in a written agreement between the city and the consumer.

(Code 1990, § 8-3A; Ord. No. 2137, § 3)

Sec. 28-60. Metering and conditions; rates generally; special rates.

(a) All electric service furnished to consumers by the city shall be metered and sold according to the respective classes of use and under the terms and conditions and at the rate schedules established and prescribed by sections 28-89 to 28-99, except as provided in subsection (b) of this section.

(b) Where in the judgment of the city special conditions affecting the real property of any user shall exist to the extent that the rental charges set out in the ~~above~~ schedule set forth in subsection (a) of this section will result in an inequitable or unfair charge either for the city or the user, the city may levy a special rental or use charge based upon the facts and circumstances of each individual case.

(Code 1990, § 8-4; Ord. No. 1124, § 4; Ord. No. 1329, § 2; Ord. No. 1382, § 2; Ord. No. 1583, § 1; Ord. No. 2137, § 4)

Sec. 28-61. Metering of and billing for electric service; accuracy of meters; billing period; errors in billing; diversion of electric energy; gratuities.

(a) The consumer shall provide at his expense and in connection with his wiring, suitable mounting space or enclosure for the installation of metering equipment in accordance with the

provisions of this Code and other ordinances of the city relating to electrical installation, inspection, licensing, permits and regulations. The city will own and the electric department shall furnish and maintain metering equipment suitable and necessary for measuring the electric energy supplied. Service supplied under each rate schedule shall be separately measured and billed for. With the exception of service to adjoining properties owned and controlled by the consumer as a single commercial or business enterprise, service to the same consumer at different locations will necessitate separate applications for metering and billing. Where electric service is furnished under more than one rate schedule, to a user at one location, such service shall be delivered at the same point of delivery. Meters shall be located outdoors where possible on all new installations where changes were made. Meters shall be of the socket-type using sockets furnished by the electric department or located in enclosures approved by the electric department.

(b) All meters measuring electric service shall be checked by the electric department for accuracy before installation and periodically thereafter. Meters shall be considered accurate which measure within two percent, plus or minus, the true reading at full load and within two percent plus or three percent minus at ten percent at full load. No meter shall be kept in service which registers under no-load conditions.

(c) Meter reading shall be accomplished as nearly as practicable on a 30-day or monthly basis and bills for service shall normally be rendered within 20 days after meters are read. Bills for payment shall become delinquent within ten days thereafter and the service subject to shut off as provided by this article. If the electric department is unable, for any reason, to gain access to or read any meter, the consumption shall be estimated based upon past usage.

(d) The electric department shall use all reasonable means to avoid billing errors and shall, as soon as any error is discovered, rebill for the correct amounts whether this involves payment by the consumer or credit to his account by such department, regardless of the time periods involved. Payments due the electric department for such errors shall be collected in the same manner as payments for regular bills for service. Incorrect billing due to faulty meter measurement beyond the accuracy limits hereinbefore stated shall be corrected by revised billing based upon corrected readings for the period during which the meter inaccuracy existed, but in no event for a period longer than one year. Bills for corrected usage shall be due and payable in the same manner as regular bills for service.

(e) It shall be unlawful to connect any energy consuming devices or equipment ahead of the city's meter or to tamper with or connect to the city's distribution system or to tamper with the city's meter, including breaking of meter seals, which would make possible or result in the consumption of electricity not registered on the city's meter. Finding such connections or tampering shall be prima facie evidence of the intent of the occupier of the premises or the consumer to convert electric current to his own use which is hereby declared unlawful and a person convicted of violation of the same shall be punished as provided by this article.

(f) In the event of such conversion or diversion of electricity, the electric department shall collect from the consumer at the appropriate rate for all additional power and energy estimated by such department which was not registered on the meter because of such conversion or diversion of electricity and also for all expenses incurred by such department on account of such unlawful act. Further service shall not be reconnected until the consumer shall have installed such entrance and service equipment as shall be required by the electric department to prevent further conversion or diversion of electricity.

(g) It shall be unlawful for inspectors, agents and employees of the electric department to accept any personal compensation or gratuities from consumers.

(Code 1990, § 8-14; Ord. No. 1124, § 5; Ord. No. 1583, § 10)

Sec. 28-62. Continuity of service; voltage regulation; service loops; attachment to poles; tree trimming; shortage of electricity; liability for unauthorized acts; underground services.

(a) The electric department does not guarantee uninterrupted electric service and shall not be liable for interruptions due to maintenance functions considered necessary or to causes or contingencies beyond control of such department including but not limited to accidents, breakdown of equipment, acts of God, floods, storms, fires, strikes, riots, war or authority and orders of government, shortage of supply, or for disconnection because of unsafe wiring, operation of equipment detrimental to other users, nonpayment of bills for service or diversion of electricity. The city shall also not be liable to consumers for any injury, loss or damage occasioned by any interruptions arising from the ~~foregoing~~ causes set forth in this subsection, such interruptions shall not relieve the consumer of payments for service under applicable rate schedules.

(b) If the electric department installs more than one service loop or connection to a single premises or property, it shall be connected to the same general delivery point to facilitate disconnection of the property in the event of fire or other emergency. The term "service loop" means the overhead wires or cable from the city's distribution poles or system to the consumer's building or other approved support. Where practicable, all service loops shall be installed by the electric department from the city's secondary distribution at the rear of any lot or premises. If the property of the consumer does not abut on the right-of-way of the city's distribution system, it shall be the consumer's responsibility to provide adequate easements or bring his wiring to a point designated by the electric department.

(c) Attachments to the city's poles or lighting standards shall not be permitted except upon specific written authority of the electric department. The attachment of radio or television antennas is specifically prohibited. Attachment of communications circuits such as telephone or community antenna systems may be made, provided, that a joint use contract has been entered into between the city and those desiring to make such attachments.

(d) The consumer shall permit the electric department to trim the limbs and tops of trees to the extent that such trimming shall be reasonably necessary to avoid interference with the city's lines.

(e) The consumer shall be responsible for such trimming of trees as may be necessary to avoid interference with the city's service loops running from the city's distribution poles to the point of delivery on consumer's premises.

(f) All installations of poles, wire, services, meters, transformers or other materials or equipment made by the city at its expense shall remain the property of the city and it shall be unlawful for the consumer or any other unauthorized persons to tamper or interfere therewith directly or indirectly. The consumer shall be liable for any damage or loss to the electric department's property or injury to such department's employees through such unauthorized tampering or interference.

(g) Instead of the electric department installing an overhead service loop, the consumer may, upon securing the approval of such department, install at his own expense an underground service from the city's distribution system, subject to the approval of the electric department, both as to material and installation. Such underground services shall be owned by the consumer and shall be maintained and replaced, if necessary, by him. The electric department may require such replacement in the event of grounding or other failure of such underground services.

(Code 1990, § 8-15; Ord. No. 1124, § 6; Ord. No. 1329, § 12; Ord. No. 1382, § 12; Ord. No. 1583, § 10)

Sec. 28-63. Underground service from city secondary lines.

Whenever desirable, the city may, at its option and at its expense, install underground service loops from the city's distribution system to a customer. The ownership of the underground service loops shall revert to the customer after installation and shall be maintained and replaced, if necessary, by him.

(Code 1990, § 8-16; Ord. No. 1124, § 6; Ord. No. 1257, § 1; Ord. No. 1329, § 13; Ord. No. 1382, § 13; Ord. No. 1583, § 10)

Sec. 28-64. Discontinuance of service by consumer and by electric department.

(a) Any consumer desiring to discontinue electric service shall give the electric department at least three days' notice prior to the time disconnection is desired to permit meter reading, disconnection and final billing for service rendered. The consumer shall be liable in any event for electric service rendered until final meter reading is obtained. Further, such notice by the consumer shall not relieve him in any way from any minimums or payments guaranteed under his service contract as defined by this article.

(b) If any consumer's wiring or equipment is considered unsafe, service may be discontinued by the electric department after notice and shall not be reconnected until the unsafe condition has been corrected. The electric department shall discontinue service without notice to the consumer if the unsafe condition could be considered dangerous to the life, health or safety of any person.

(c) Service may be discontinued by the electric department after notice to the consumer if service to his equipment is considered detrimental by the electric department to service to other consumers served by such department.

(d) Service may be discontinued by the electric department for nonpayment of past-due service accounts after seven days' notice to the consumer.

(e) No consumer shall connect any energy consuming appliance or device on the electric department's side of a meter nor tamper or otherwise interfere with the proper operation or registration of the electric department's meter or permit others to perform such connection, interference or tampering and for violation of this regulation service shall be disconnected by the electric department without notice and shall not be reconnected until the consumer shall have paid a service bill estimated by the electric department for the period during which such violation existed and shall have installed standard service entrance wiring in accordance with the prevailing requirements of this Code or other ordinances of the city relating to electrical installations, inspections, licensing, permits and regulations.

(f) In the event of discontinuance of electric service by the electric department for any of the foregoing causes, and after evidence is submitted that the cause for discontinuance has been corrected, electric service may not be restored until payment to the electric department of a combined disconnection and reconnection fee in accordance with section 28-26.

(Code 1990, § 8-17; Ord. No. 1124, § 7; Ord. No. 1329, § 14; Ord. No. 1382, § 14; Ord. No. 1413, § 10; Ord. No. 1583, § 10; Ord. No. 2138, § 7)

Sec. 28-65. Consumer's installation; easements; city access; foreign power; resale of electricity; demand-motor limits; welders and X-rays; indemnity to city.

(a) Before acquiring motors or other electric energy consuming devices or providing for the installation of electric wiring for same, the consumer or prospective consumer of electric service shall notify the electric department in ample time of its intent to ascertain if such motors or devices may be connected to the city's system under the electric department's rules and regulations governing electrical installations and if the electric department has electrical service of the desired phase and voltage therefor, or whether extensions and improvements of the city's system will be

required, and to ascertain points of delivery for service and meter locations. Only authorized employees of the electric department shall be permitted to make and energize the connection between such department's service wires and the consumer's service entrance conductors. The costs incurred by the electric department through any change in point of delivery or in the location of the city's meters necessitated by changes on a consumer's premises shall be subject to reimbursement to the electric department by the consumer. Where service is supplied at primary voltages, the consumer shall provide, own, operate and maintain all facilities beyond the point of delivery at the end of the primary service unless specific arrangements are made with the electric department to the contrary. If any consumer desires electric service at voltages either primary or secondary other than those available from the electric department's distribution system, the consumer shall furnish, own and maintain all special transformers and special control and wiring occasioned thereby. If special metering shall be required in such cases, the costs thereof shall likewise be paid by the consumer. Such metering equipment, however, shall be and remain the property of the city and will be tested and maintained by the electric department. It shall be unlawful for any consumer to connect equipment, the operation of which is detrimental to service to other consumers served by the electric department, unless such consumer shall, as approved by the electric department, install motor generators, isolation transformers or transformers of line capacity beyond that normally required, and all such remedial measures shall be paid for by the consumer. At the request of the electric department, the consumer shall furnish and maintain indoor or underground space and facilities for the installation of the city's transformers and other equipment necessary to properly render electric service to such consumer.

(b) By making application for electric service, the consumer agrees to grant or arrange for an easement on consumer's property for the installation, operation and maintenance of electric lines, wires and other equipment of the electric department necessary to render service to the consumer. When requested by the electric department, the consumer shall, without expense to such department, make or procure conveyance to the city of satisfactory right-of-way easements across the property owned or controlled by the consumer for the city's lines or extensions thereof necessary or incidental to the furnishing of service to the consumer. If such installation must be made on or over the property of a third party, the consumer shall obtain the necessary easement for the electric department from the third party before installation is made and service rendered. If, after service is originally rendered, the consumer shall divide his property in such a manner that part of it no longer has access to the right-of-way of the city's distribution system, the consumer shall reserve an easement for the benefit of the city so that the electric department may render electric service to such isolated part when desired.

(c) Authorized employees of the city shall have the right of access to any consumer's premises at all reasonable times for any purpose incidental to the supplying of electric service.

(d) The consumer shall make exclusive use of service provided by the electric department and no other source of electric energy shall be connected to any installation which in turn is connected to the city's electric distribution systems owned by the consumer, provided, that switching arrangements are installed to prevent the possibility of the emergency generator and the electric department's service being connected to the load simultaneously. No emergency generating system shall be installed unless it has been approved by the electric department prior to such installation.

(e) Electric service shall be furnished for the sole use of the consumer at the premises designated in the service application and contract and the consumer shall not directly or indirectly sell or otherwise dispose of such service to any other person. The electric department reserves the right to refuse to furnish electric service to any consumer where such service is to be resold to others. In the event that such resale comes to the attention of the electric department, such

department shall have the right to either discontinue service to the consumer or to furnish service directly to the subconsumer.

(f) Single-phase, fractional horsepower motors may be used on residential or business service, however, motors served at a normal voltage of 120 shall not have locked rotor starting current in excess of 20 amperes. Single-phase fractional horsepower motors having locked rotor currents in excess of the foregoing limits at 120 volts shall be operated from circuits having a normal voltage of 240. By special authorization of the electric department, single-phase motors of greater than fractional horsepower may be operated on service to residential and commercial lighting users depending upon motor and load characteristics including starting frequency and capability of the city's electric system serving the load. Approval of the electric department shall be obtained before installation of any such motors and such approval will be valid only for specific locations. Single-phase, 240-volt motors up to a maximum rating of five horsepower may be operated under the commercial power and combined commercial lighting and power service rate schedules. All five horsepower single-phase motors shall be approved by the electric department before installation is completed and shall have such characteristics or be equipped with starters of such design that the instantaneous current will be limited to 300 percent of normal full load current. Three-phase motors up to 200 horsepower may be supplied under the commercial power or combined commercial lighting and power service rate schedules, provided, that such motors have been manufactured in accordance with NEMA standards and, further provided, that suitable protection equipment and devices have been installed. The installation of reduced voltage starting equipment shall be made by the consumer when required by the electric department.

(g) Single-phase induction type welders with an input exceeding 40 amperes at a normal 240 volts or 20 amperes at a nominal 120 volts shall not be supplied from electric service rendered under residential or commercial lighting rate schedules. Welders requiring less than the foregoing input will be permitted under the residential and commercial lighting schedules where adequate transformer and distribution capacity is available and upon the approval of the electric department. Welders exceeding the foregoing input limitations may be served under commercial power and combined commercial lighting and power rate schedules upon the approval of the electric company.

(h) The city shall not be held responsible for any injury to persons or damage to property occasioned or caused by the acts, omissions or negligence of the consumer or any of his agents, employees or licensees in installing or maintaining, operating or using any of the consumer's lines, wires, equipment, machinery or apparatus and for injury and damage caused by defects in the same. The consumer shall hold the city harmless and indemnify it against all claims and liabilities for injury or damage when such injury or damage results from or is occasioned by the facilities located on the consumers' side of the point of delivery unless caused by the negligence or wrongful acts of the electric department's agents or employees.

(Code 1990, § 8-18; Ord. No. 1124, § 8; Ord. No. 1583, § 10)

Secs. 28-66--28-88. Reserved.

DIVISION 2. RATE CLASSIFICATIONS AND CHARGES*

*State law reference—Rates and charges, R.R.S. 1943, §§ 16-681, 70-408.

Sec. 28-89. Conditions and related criteria--Basic residential users.

The conditions and related criteria for residential service shall be as follows:

- (1) *Application.* Each dwelling unit (apartment, duplex, trailer, etc.) is to be metered separately unless user (owner, apartment house, trailer court) elects to be billed as commercial user. Roominghouses with more than three units for rent shall be considered commercial. This rate is not available for resale service.

- (2) *Agreement period and condition.* All agreements under the residential rate schedule shall be for a minimum period of 30 days and thereafter until terminated. All consumers are required to make a deposit in accordance with section 28-23 before the meter is installed. All bills shall be due and payable upon receipt and become delinquent 15 days from the date of billing.
- (3) *Service.* Service to residential users shall be such phase and voltage as the utility has immediately available to the site. Single-phase service shall not be utilized where the connected load exceeds 20 kW, except at the utility's option.

(Code 1990, § 8-5; Ord. No. 1583, § 1; Ord. No. 2138, § 1)

Sec. 28-90. Same—Residential all electric service.

The conditions and related criteria for residential all electric service shall be as follows:

- (1) *Availability.* This schedule is available for supplying space heating requirements for residential users.
- (2) *Agreement period and condition.* All agreements under the residential all electric rate schedule shall be for a minimum period of 30 days and thereafter until terminated. All consumers are required to make a deposit in accordance with section 28-23 before the meter is installed.
- a. All bills shall be due and payable upon receipt and become delinquent 15 days from the date of billing.
 - b. Service under the foregoing schedule will be rendered only where electricity is to be (not less than 90 percent) of the heating requirement.
 - c. Electric space heating shall be designed to operate at 240 volts, single-phase or 208 volts; 240 volts or 480 volts three-phase and shall be served through one meter for total load requirements of space heating and other use requirements.
 - d. The city reserves the right to require that the voltage applied to resistance-type space heating units rated for 240 volts be reduced to 120 volts for a period of not to exceed two hours per day during the time the city's peak load or during the time the city's operating conditions may dictate. The power factor of heating equipment installed shall not be less than 90 percent lagging.
 - e. All installations shall meet the minimum standards of the National Electrical Code to ensure that the equipment will operate in a satisfactory manner and will not interfere with any operations of the city's system. Prospective users under this schedule shall consult with the city before proceeding to design or erect installations to make sure that equipment, insulation and building construction will meet requirements and the city's available facilities are adequate.
- (3) *Service.* Service to residential users shall be such phase and voltage as the utility has immediately available to the site. Single-phase service shall not be utilized where the connected load exceeds 20 kW, except at utility's option.

(Code 1990, § 8-5A; Ord. No. 2138, § 2)

Sec. 28-91. Same—Commercial, small service.

The conditions and related criteria, for commercial, small service for small business service shall be as follows:

- (1) *Application.* The commercial, small rate is applicable to all commercial, small industrial, agricultural, institutions or other business users (excluding business in the home operated solely by phone or by mail by the resident only) for lighting and power.

Residential use may be included where business is operated in the home, on the same meter as the household, or to service multiple-unit living quarters, such as apartment houses and trailer courts. Each meter is to be considered a separate customer.

- (2) *Agreement period and conditions.* All agreements under the commercial, small business rate shall be for a minimum period of 12 months and thereafter until terminated by ten days' notice in writing. All consumers are required to make a deposit in accordance with section 28-23 before the meter is installed. All bills shall be due and payable upon receipt and become delinquent 15 days from the date of billing.
- (3) *Service.* The service to small business users shall be at such phase and voltage as the utility has immediately available to the site. Single-phase service shall not be utilized where the connected motor load exceeds 15 horsepower, except at the utility's option. All motors over 1 1/2-horsepower are to be nominal 200 volts or higher.
- (4) *Installations.* All installations shall meet the minimum standards of the National Electrical Code to ensure that the equipment will operate in a satisfactory manner and will not interfere with any operations of the city's system. Prospective users under this schedule shall consult with the city before proceeding to design or erect installations to make sure that equipment, insulation and building construction will meet the requirements and that city's available facilities are adequate.

(Code 1990, § 8-6; Ord. No. 1583, § 1; Ord. No. 2138, § 3)

Sec. 28-92. Same--Commercial, large service.

The conditions and related criteria for commercial, large service shall be as follows:

- (1) *Application.* The large use rate is applicable to all business users having a monthly demand greater than 50 kilowatts (kW) or usage exceeding 20,000 kilowatt hours (kWh) during any three consecutive months.
- (2) *Agreement period and conditions.* All agreements under the commercial large business rate shall be for a minimum period of 12 months and thereafter until terminated by ten days' notice in writing. All consumers are required to make a deposit in accordance with section 28-23 before the meter is installed.
 - a. All bills shall be due and payable upon receipt and become delinquent 15 days from the date of billing.
 - b. The billing demand shall be determined by suitable meter measurements of the highest 15-minute integrated demand (or 30-minute integrated demand) occurring during the monthly billing period.
 - c. If the power factor during the time the billing demand is established falls below 90 percent lagging the measured kW demand may be adjusted to a 90 percent power factor to establish the billing demand for that month.
- (3) *Service.* The service to large business users shall be such phase and voltage as the utility has immediately available to the site. Single-phase service shall not be utilized where the total connected motor loads exceeds 15 horsepower, except at the utility's option. All motors over 1 1/2-horsepower are to be nominal 200 volts or higher.
- (4) *Installations.* All installations shall meet the minimum standards of the National Electrical Code to ensure that the equipment will operate in a satisfactory manner and will not interfere with any operations of the city's system. Prospective users under this schedule shall consult with the city before proceeding to design or erect installations to make sure that equipment, insulation and building construction will meet the requirements and the city's available facilities are adequate.

(Code 1990, § 8-7; Ord. No. 1583, § 3; Ord. No. 2138, § 4)

Sec. 28-93. Same--Commercial heat service.

(a) The conditions and related criteria for commercial heat service shall be as follows:

(1) *Availability.* This schedule is available for supplying space heating requirements for commercial users where the user also takes service under another rate. Service is available at three-phase or single-phase at the established voltage of either the city's primary or secondary distribution system.

(2) *Agreement period and conditions.* Service under this schedule is available for a minimum period of the heating season October through the following April, and thereafter until terminated by ten day's notice in writing.

a. Any energy used during the months of May through September shall be billed under the applicable commercial, small or commercial, large service schedule.

b. Service under the foregoing schedule will be rendered only where electricity is to be (not less than 90 percent) of the heating requirement.

c. Electric space heating shall be designed to operate at 240 volts, single-phase or 200 volt; 240 volt or 480 volt three-phase and shall be served through one meter for total load requirements of space heating and other use requirements.

d. The city reserves the right to require that the voltage applied to resistance-type space heating units rated for 240 volts be reduced to 120 volts for a period of not to exceed two hours per day during the time the city's peak load or during the time the city's operating conditions may dictate. The power factor of heating equipment installed shall not be less than 90 percent lagging.

e. All installations shall meet the minimum standards of the National Electrical Code to ensure that the equipment will operate in a satisfactory manner and will not interfere with any operations of the city's system. Prospective users under this schedule shall consult with the city before proceeding to design or erect installations to make sure that equipment, insulation and building construction will meet the requirements and the city's available facilities are adequate.

(b) All terms and conditions that apply to the commercial, small and commercial, large service shall apply to the commercial heat service.

(Code 1990, § 8-8; Ord. No. 1583, § 4; Ord. No. 2138, § 5)

Sec. 28-94. Same--Industrial service.

The conditions and related criteria for industrial service shall be as follows:

(1) *Application.* The industrial service rate is applicable to all industrial users having a monthly demand greater than 200 kilowatts (kW) or usage exceeding 50,000 kilowatt hours (kWh) for three consecutive months. Lighting exceeding ten percent of the connected load may be served hereunder, but only if it is balanced between phases. Each meter is to be considered a separate customer. The term "industrial" means any business user whose primary function is manufacturing or processing, where value is added to the raw materials, or whose function is storage of bulk materials or the pumping of oil or other materials.

(2) *Agreement period and conditions.* All agreements under this schedule shall be for a minimum period of 12 months, and thereafter until termination, where service is no longer required, on ten days' notice in writing. All consumers are required to make a deposit in accordance with section 28-23 before the meter is installed.

- a. The billing demand shall be determined by suitable meter measurements of the highest 15-minute integrated demand (or 30-minute integrated demand) occurring during the monthly billing period, provided, that it shall not be less than 65 percent of the highest billing demand occurring during the preceding months of May through and including October. The consumer shall be required to properly balance his loads, so that the load in any phase is not greater than 15 percent more than the load in either of the two other phases.
 - b. If the power factor during the time the billing demand is established falls below 90 percent lagging, the measured kW demand may be adjusted to 90 percent power factor to establish the billing demand for that month.
 - c. All bills shall be due and payable upon receipt and become delinquent 15 days from the date of billing.
- (3) *Service.* The service to industrial users shall be such phase and voltage as the utility has immediately available to the site. All motors over 1 1/2-horsepower are to be nominal 200 volts or higher.
- (4) *Installations.* All installations shall meet the minimum standards of the National Electrical Code to ensure that the equipment will operate in a satisfactory manner and will not interfere with any operation of the city's system. Prospective users under this schedule shall consult with the city before proceeding to design or erect installations to make sure that equipment, insulation and building construction will meet requirements and that city's available facilities are adequate.

(Code 1990, § 8-8; Ord. No. 1583, § 5; Ord. No. 2138, § 6)

Sec. 28-95. Same--Seasonal irrigation service.

- (a) The conditions and related criteria for seasonal irrigation service shall be as follows:
 - (1) *Application.* This schedule is applicable to and available for service to irrigation pumps on a seasonal basis at the voltage and phases of the city's established secondary distribution system and not for resale.
 - (2) *Agreement period and conditions.* All agreements under this schedule shall be for a minimum of 12 months and thereafter until terminated by ten days' notice in writing.
- (b) All bills shall be due and payable upon receipt and become delinquent 15 days from the date of billing.

(Code 1990, § 8-10; Ord. No. 1583, § 6; Ord. No. 2137, § 11)

Sec. 28-96. Same--Seasonal interruptible irrigation service.

The conditions and related criteria for seasonal interruptible irrigation service shall be as follows:

- (1) *Application.* This schedule is applicable to and available for service to irrigation pumps on a seasonal basis at the voltage and phases of the city's established secondary distribution system and not for resale. This schedule is available to users who agree to the city's direct control (interruption) of irrigation loads.
- (2) *Agreement period and conditions.* All agreements under this schedule shall be for a minimum of 12 months and thereafter until terminated by ten days' notice in writing.
 - a. The city may interrupt service during the months of June through September except during the hours 10:00 p.m. to 10:00 a.m. (CDT) on Sundays and holidays.

- b. The customer will permit the city to place a control device of its selection on the service to the irrigation motor and to control the operation as described in subsection (2)a of this section~~above~~.
- c. All bills shall be due and payable upon receipt and become delinquent 15 days from the date of billing.

(Code 1990, § 8-10A; Ord. No. 2137, § 12)

Sec. 28-97. Same—Municipal light and power service.

The conditions and related criteria for municipal light and power service shall be as follows:
~~(a) Application.~~ Municipal light and power service shall be available only to the city for municipal uses for general lighting and power requirements.

(Code 1990, § 8-11; Ord. No. 1583, § 7; Ord. No. 2137, § 13)

Sec. 28-98. Same—Municipal street lighting service.

The conditions and related criteria for municipal street lighting services are as follows: ~~(a) Application.~~ The municipal street lighting service shall be available only to the city for street and security lighting.

(Code 1990, § 8-12; Ord. No. 1583, § 8; Ord. No. 2137, § 14)

Sec. 28-99. Same—Yard light service.

The conditions and related criteria for yard light service shall be as follows:

- (1) *Application.* Yard light service is available to customers of the city for controlled yard light service furnishing lighting from dusk to dawn.
- (2) *Agreement period and conditions.* All agreements under this schedule shall be for a minimum period of 24 months and thereafter until terminated. Charges will be added to regular billing.
- (3) *Unmetered.* The unmetered rate applies to all installations where the energy used is furnished by the city and not registered through the customers' meter.
- (4) *Metered.* The metered rate applies to all installations where the energy used is registered through the customer's meter.

(Code 1990, § 8-13; Ord. No. 2137, § 15)

Sec. 28-100. Adoption of electric rate charges, service deposits, disconnection and reconnection fees.

The electric rate charges and service deposits shall be set by resolution of the city council and shall be on file in the city offices for public inspection at any reasonable time. Disconnection and reconnection fees shall be set in accordance with section 28-26.

(Code 1990, § 8-19; Ord. No. 1583, § 11; Ord. No. 2138, § 8)

Sec. 28-101. Production cost adder charges.

The city reserves the right to include any production cost adder charge received from the power supplier to the city.

(Code 1990, § 8-20; Ord. No. 2137, § 17)

Sec. 28-102. Primary metering.

Primary metering shall be used where transformation equipment and appurtenances are customer owned and maintained and may be used at any time at the convenience of the city.

Billings derived from primary metering data shall be reduced 1.5 percent for transformer losses and an additional two percent if all transformation is owned and maintained by the customer.

(Code 1990, § 8-21; Ord. No. 2137, § 18)

Secs. 28-103--28-132. Reserved.

ARTICLE IV. WATER SYSTEM

DIVISION 1. GENERALLY

~~Sec. 27-32 Penalty.~~¹⁴²

~~A person who shall violate, neglect or refuse to comply, or who resists the enforcement of any of the provisions of this article shall be guilty of a misdemeanor and on conviction thereof the penalty shall be imposed as provided by section 1-7.~~

~~(Code 1990, § 27-32; Ord. No. 1234, § 9)~~

Sec. 28-133. Article considered part of water contract; discontinuance of service for violation of article, etc.

The rules and regulations and water rates specified in this article shall be considered a part of the contract with every person who is supplied with water through the waterworks system of the city, and every such person by taking water or permitting the use of water on his property, shall be considered held to consent and to be bound thereby, and when any of such rules or regulations are violated, or such other than the city or the city manager may hereafter adopt, the water shall be shut off at the building or places of such violation and shall not be turned on again except by order of the city manager and on payment of any delinquent water charge due from such person and upon such other terms as the city manager may determine.

(Code 1970, § 13-201.01; Code 1990, § 27-1)

Sec. 28-134. Application for service; deposits; separate tap required for each building.

Every person desiring water service shall make application therefor at the business office of the city as provided in article II of this chapter. No more than one house or building shall be supplied from one tap. ~~Effective as of February 28, 1978,~~ A duplex will be considered as separate buildings and will require separate water taps.

(Code 1970, § 13-201.02; Code 1990, § 27-2; Ord. No. 1234, § 1; Ord. No. 1585, § 1)

Sec. 28-135. Water to be furnished only on order of city manager.

Water will not be turned on into any property or service pipe, except upon the order of the city manager or his duly appointed agent, and the same may be turned on only by employees of the city; provided, that in an emergency, the city manager may authorized plumbers to turn on water into a service pipe. No consumer shall supply water to other families, nor permit them to take it off of his premises. Regardless of ownership, each dwelling house shall be served by separate service pipe, from water main to house.

(Code 1970, § 13-201.21; Code 1990, § 27-21)

Sec. 28-136. Hydrants; drinking fountains.

All hydrants erected by the city for the purpose of extinguishing fire are hereby declared to be public hydrants and no person other than members of the fire department, and then only for the use and purpose of the department or person especially authorized by the city manager, and then

¹⁴² Legal or Editorial Change: Code 1990, § 27-32 Penalty. Deleted as not needed.

only in the exercise of the authority delegated by the city council or the city manager, shall open any of such hydrants or attempt to draw water from the same or in any manner interfere with the same. No hydrants except the public fire hydrants aforesaid or except for public drinking fountains shall be placed within the limits of any street; and no drinking fountain shall be so erected which has openings by which it can be used as a source of domestic supply.

(Code 1970, § 13-201.14; Code 1990, § 27-14)

Sec. 28-137. Regulations regarding use of water.

(a) All water leaks shall be repaired within 48 hours of the first indication of such leak or upon notice to the user by the city.

(b) Excessive lawn or garden watering is prohibited. In addition to other evidence of violation of this provision, continuous flowing water into the street from the watering, or formation of ice on the sprinkler attachment or on the surrounding foliage shall be evidence of such excessive watering.

(c) The city reserves a right to suspend the use of water for sprinkling yards, lawns, gardens or for irrigation purposes or other unrestricted or excessive purpose or whenever in the opinion of the council, public exigency may require it. The open flow of water for yards, lawns, gardens or air conditioning without a sprinkler head or other restricting device is expressly prohibited.

(Code 1970, § 13-201.15; Code 1990, § 27-15; Ord. No. 1234, § 4; Ord. No. 1585, § 3)

Sec. 28-138. Procedure upon consumer moving from premises.

If any consumer shall move from the premises from which the application was issued, or such premises shall be destroyed by fire, the property owner shall notify the city manager who shall immediately cause the water to be shut off at the premises.

(Code 1970, § 13-201.16; Code 1990, § 27-16)

Sec. 28-139. Establishment of price of labor and materials.

The city manager shall establish and provide a schedule of prices of materials based on costs and of labor and expenses furnished or used by the city for establishment and maintenance of customers' services on or off of his premises.

(Code 1970, § 13-201.17; Code 1990, § 27-17)

Sec. 28-140. Water for construction purposes.

The city manager shall have the authority to issue permits for the use of water for building and construction purposes. He shall adopt such means by inspection or otherwise as may prove most efficient in finding and determining the amount of water which will be used. Where water is taken from street hydrants or street fountains and used for irrigation or other special purposes, the regular charge shall be paid as though the water was taken direct from the waterworks and he shall collect the rates provided by this article therefor. He may in his discretion put in a meter to measure the water used or he may estimate the amount, if the same can be done with the consumer.

(Code 1970, § 13-201.18; Code 1990, § 27-18)

Sec. 28-141. Addition of fluoride prohibited.¹⁴³

Fluoride shall not be added to the water supply of the city.

(Ord. No. 2256, 11-25-2008)

State law reference—Authority to prohibit fluoridation of water system, R.R.S. 1943, § 71-3305.

Sec. 28-142. Damaging waterworks system prohibited.

No person shall willfully or carelessly break, injure or deface, interfere with or disturb any machinery, apparatus, fixtures, attachments or appurtenances of the waterworks system of the city or any public or private hydrant, hose or water trough or stopcock, meter, water supply or service pipe of any part thereof, nor shall any person deposit anything in any stopcock box or commit any act tending to obstruct or impair the intended use of any of the ~~foregoing mentioned~~ property mentioned in this section.

(Code 1970, § 13-201.19; Code 1990, § 27-19)

~~Sec. 27-20 Regulations in case of fire.~~¹⁴⁴

~~All persons using city water are prohibited from opening any hydrants, taps or any connection of any description during the progress of any fire within the city; and it is hereby made the duty of all consumers upon the sounding of the fire alarm to immediately close and keep closed all water taps during the continuance of the fire.~~

~~(Code 1970, § 13-201.20; Code 1990, § 27-20)~~

Sec. 28-143. Liability claims.

The manager shall be relieved from personal liability. The city shall hold harmless the manager when acting in good faith and without malice, from all personal liability for any damage that may occur to any person or property as a result of any act required or authorized by this ~~article title~~, or by reason of any act or omission of the manager in the discharge of his duties hereunder. Any suit brought carrying out the provisions of the ~~article title~~ shall be defended by the city, or the city's insurance carrier, if any, through final determination of such proceeding.

(Code 1990, § 27-47)

Secs. 28-144–28-167. Reserved.

DIVISION 2. TAPS AND WATER LINES

Sec. 28-168. Tap between main and meter prohibited.

No person shall be permitted to have, make or have made any tap or connection with the service pipe between the meter where meter is installed or required and the main; nor shall any pipes capable of carrying water from a private water supply be connected to any water main of the city.

(Code 1970, § 13-201.04; Code 1990, § 27-4)

Sec. 28-169. Tapping procedure and fees.

(a) Where it is necessary to tap the water main and install a new service, the applicant for water service from the waterworks system of the city shall accompany his application with the

¹⁴³ Legal or Editorial Change. Ord. No. 2256. Addition of Fluoride Prohibited. It is assumed Ord. No. 2256 was approved at referendum. If it were not, fluoride must be added to the water system. See R.R.S. 1943, § 71-3305.

¹⁴⁴ Legal or Editorial Change: Code 1990, § 27-20 Regulations in Case of Fire. Deleted as obsolete.

required tapping fee as specified in the appropriate resolution setting rates and fees for the water system.

(b) The city by its city manager will tap or cause to be tapped the commercial main to which the applicant's service pipe will be joined. For the tap aforesaid or which may be fixed and determined as herein provided, the city will furnish a stop or curb box, curbstop, corporation cock and also provide and install pipe, trenching, labor and all necessary attachments to make installation from commercial main to a point at or near the property line of the applicant where the stop box is installed; provided, that the ~~above-service~~ set forth in subsection (a) of this section shall be furnished for the tap fee aforesaid only in those cases where not more than 60 feet of pipe is required. The applicant at his own expense shall build water service from the curb box in and upon his own premises and shall keep the same in repair. The applicant for water service where property does not abut a commercial main shall pay such tap fee as the city manager shall in each case determine; provided, that this provision shall not be construed as an obligation upon the city to make an installation on property which does not abut or adjoin a commercial main of the city. The city will maintain all water mains from the commercial main to the curb box. Applicants for water service whose property is situated outside the city shall pay the tap and installation fees in such sums as the city manager shall in each case fix; provided, that nothing herein shall be construed to obligate the city to furnish water service to nonresidents. Where meters are required or desired, the city shall specify their location and all meter pits shall be construed and installed by the city. All meters shall be set in a horizontal position so that the same may be visible for reading and also readily accessible for maintenance and operation. All water pits hereafter shall be constructed of such materials and in such design and manner as prescribed by the city manager.

(Code 1970, § 13-202.01; Code 1990, § 27-22; Ord. No. 1234, § 5; Ord. No. 1330, § 3; Ord. No. 1585, § 4)

Sec. 28-170. Responsibility for maintenance of service pipes, etc.; liability for failure of water supply, etc.

All persons taking water shall keep the service pipes, stopcocks and other apparatus in good order and repair and protect the same from frost at their own risk and expense, and it is expressly stipulated by the city and city manager that no claim shall be made against them or either of them by reason of any service cock or, if from any cause, the supply of water should fail, or from damage arising from shutting off water to repair mains, making connections or extensions, or for any purpose that may be deemed necessary, and the right is hereby reserved to cut off the supply of water at any time, any permit granted to the contrary notwithstanding.

(Code 1970, § 13-201.07; Code 1990, § 27-7)

~~Sec. 27-8 Standards for service pipes.~~¹⁴⁵

~~Lead, copper, or 150 psi plastic pipe duly approved by the city may be used at the option of the applicant in introducing water service from the stop box to the structure or the lawn watering system on applicant's premises. Such service pipe shall be no smaller in diameter than the tap from which it is supplied.~~

~~(Code 1970, § 13-201.08; Code 1990, § 27-8; Ord. No. 1330, § 2)~~

¹⁴⁵ Legal or Editorial Change: Code 1990, § 27-8 Standards for Service Pipes. Deleted as covered by the plumbing code.

Sec. 27-9 Depth of service pipe, etc.¹⁴⁶

~~All service pipe and underground piping on the customer's premises shall be laid at a depth not less than the depth of the water main and in all cases be so protected as to prevent rupture from freezing.~~

~~(Code 1970, § 13-201.09; Code 1990, § 27-9)~~

Sec. 28-171. Stop box.

Unless otherwise permitted, stopcocks shall be placed in the service pipe at the edge of or near the curblineline and protected by a box or iron pipe reaching from the top of the stopcock to the surface of the ground of suitable size to admit a stop key for turning on and off the stop; and with cast iron cover having the "W" or the word "Water" marked thereon, visible and even with the surface of the ground. Such stop box or iron pipe shall be kept closed and in good repair. There shall be a service shutoff (stop and waste) in every building accessible and operable by the occupant.

(Code 1970, § 13-201.10; Code 1990, § 27-10)

Sec. 28-172. Requirements for tapping mains.

City employees only shall be permitted to tap mains or distributing pipes or insert stopcocks or ferrules thereon. All taps are to be made between the hours of 8:00 a.m. and 5:00 p.m. ~~of the day~~, and pipes shall in all cases be on the top and not in any case nearer than 15 inches of either end of the pipe, nor nearer than four feet to any other tap.

(Code 1970, § 13-201.11; Code 1990, § 27-11)

Sec. 28-173. Service pipes in paving districts.

In all paving districts the service pipes between the commercial main in the street and the stopcocks shall be of material approved by the city engineer.

(Code 1970, § 13-201.12; Code 1990, § 27-12; Ord. No. 1585, § 2; Ord. No. 2138, § 17)

Sec. 28-174. Connection for fire protection.

Proprietors of business establishments will be permitted to connect unmetered service to mains for purposes of fire protection at their own expense upon application to the city manager and will be allowed to use the water for fire purposes only. If water is taken from the fire protection service for any other uses, then the fire protection service shall be metered. In the event any water is taken through a meter in case of a fire, the proprietor shall forthwith notify the city manager of the use of the water for such purpose. If such notice is not given as ~~above mentioned set forth in this section~~, the proprietor shall be charged and pay for the water taken from the meter at the same rate as provided for other consumers.

(Code 1970, § 13-201.13; Code 1990, § 27-13)

Secs. 28-175--28-201. Reserved.

DIVISION 3. WATER METERS

Sec. 28-202. Metered service required.

(a) All water furnished to industrial, commercial or residential property or establishments shall be furnished at meter rates through a water meter. All water meters installed in connection with the waterworks system of the city shall measure water in terms of gallons.

¹⁴⁶ Legal or Editorial Change: Code 1990, § 27-9 Depth of Service Pipe, etc. Deleted as covered by the plumbing code.

(b) Meters one inch or smaller shall be installed, maintained and repaired at the expense of the city and shall remain the property of the city. All water meters larger than one inch shall be installed, maintained and repaired at the expense of the city and shall remain the property of the city, except that the customer shall reimburse to the city the cost of purchase and installation of any meter over one inch.

(c) Water being furnished to existing residences at a flat rate on the effective date of the ordinance from which this section is derived shall continue to receive water service at a flat rate until a water meter is installed. The city manager shall cause water meters to be installed for all water service within the city. ~~prior to January 1, 2000. During the transitional period prior to January 1, 2000, water meters shall be installed, in order of priority as follows:~~

- ~~1. All new construction;~~
- ~~2. Each change of service order occasioned by change of ownership or change of occupant of an existing location receiving flat rate service;~~
- ~~3. Requests for all metered service from an existing flat rate customer;~~
- ~~4. Installation of sprinkler system;~~
- ~~5. The balance of the city shall be converted according to a systematic plan as prepared and ordered by the city manager.~~

(Code 1970, § 13-201.03; Code 1990, § 27-3; Ord. No. 1234, § 2; Ord. No. 1330, § 1; Ord. No. 1340, § 1; Ord. No. 1899, § 1)

Sec. 28-203. Reading of meter; preparation and delivery of bills.

The owner or tenant on property where a meter is used or required shall provide ready and convenient access to the same so that it may be easily examined, read, maintained or repaired by the employees of the city, and all consumers of water shall permit the city manager, or persons under his direction, at all reasonable hours, to enter the premises or building for the purpose of testing any meter or to examine the pipes, meters or other fixtures thereon. All meters of consumers where required or where used by any consumer each month as provided by the city and the city manager shall make or cause to be made statements for the minimum and any excess over the minimum for such monthly period in cyclical billing as provided by the city, when water bills are due.

(Code 1970, § 13-201.05; Code 1990, § 27-5; Ord. No. 1234, § 3)

Sec. 28-204. Adjustment of bill when meter defective; breaking seal on meter prohibited; testing of meter.

Should any water meter, where a meter is required or used, become out of order or need repair, and fail to register properly, the consumer will be charged an estimated consumption based upon a charge equal to the same month of the preceding year, and if there was no previous billing, the estimated bill shall be the average of the previous three months' consumption. It shall be unlawful to break any seal on any meter except under the direction and supervision of the city manager. All water meters may be tested at the expense of the city at a reasonable time.

(Code 1970, § 13-201.06; Code 1990, § 27-6)

Secs. 28-205--28-231. Reserved.

DIVISION 4. RATES AND DEPOSITS*

*State law reference—Rates and charges, R.R.S. 1943, § 16-681.

Sec. 28-232. Water rates and fees.

The water rates and fee charges shall be set by resolution by the city council for all user classifications and shall be on file in the city offices for public inspection at any reasonable time.

(Code 1970, § 13-202.02; Code 1990, §§ 27-23, 27-34; Ord. No. 1234, § 6; Ord. No. 1330, § 4; Ord. No. 1585, §§ 5, 8)

Sec. 28-233. Water service deposit.

Water service deposits when received in the business office of the city shall be held to the credit of the consumer making the same and refunded to the consumer when water service is discontinued; provided, that such deposit may be applied and credited against any unpaid water rents or charges for service remaining unpaid at the time of the termination of the service.

(Code 1970, § 13-202.03; Code 1990, § 27-24)

Sec. 28-234. Payment of tap fees and deposits.

All tap fees and service deposits shall be paid in advance.

(Code 1970, § 13-202.04; Code 1990, § 27-25)

Sec. 28-235. Advance payment of bills for water service.

Any water user may pay in advance any bills for water service in any amount he desires. Such prepayment shall be posted to the credit of the user in the consumer's ledger and subsequent bills for water service shall be deducted therefrom until the same is exhausted.

(Code 1970, § 13-202.06; Code 1990, § 27-27)

Sec. 28-236. Determination of residential or commercial classification.

In the event residence use of water and commercial use of water are both served in one building by one water service, all water consumption therein shall be billed on the commercial rate and a meter shall be required.

(Code 1970, § 13-202.07; Code 1990, § 27-28)

Sec. 28-237. Billing to multiple consumers.

In the event one metered service serves more than one user in one building, the bill for the water service of all users shall be rendered to the owner of the property or the customer requesting the service. ~~also effective February 28, 1978, A duplex will be considered as separate buildings and will require separate water taps.~~

Code 1970, § 13-202.08; Code 1990, § 27-29; Ord. No. 1585, § 6)

Secs. 28-238–28-267. Reserved.

DIVISION 5. BACKFLOW PREVENTION

~~Sec. 27-35 Title.~~¹⁴⁷

~~Sections 27-35 through 27-47, and any amendments pertaining thereto, shall be known as the backflow prevention ordinance.~~

~~(Code 1990, § 27-35)~~

¹⁴⁷ Legal or Editorial Change: Code 1990, § 27-35 Title. Deleted as not needed.

Sec. 28-268. Definitions.¹⁴⁸

(a) The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. ~~The following definitions shall apply in the interpretation and enforcement of this ordinance.~~

Air-gap separation means the unobstructed vertical distance through the free atmosphere between the lowest opening of any pipe or faucet supplying water to a tank, plumbing fixture or other device and the flood level rim of the said receptacle. An approved air gap shall be at least double the diameter of the supply pipe, measured vertically, above the top of the rim of the receptacle and, in no case less than one inch.

Antisiphon vacuum breaker means a device which restricts the backflow of water into a potable water system by a simple check valve. The vacuum is broken by allowing air to enter upstream of the check valve.

Approved means that a backflow prevention device or method has been accepted by the manager as being suitable for the intended use.

Auxiliary water system means any water supply system available to the premises other than the public water supply system and includes the water supplied by such system. The term "auxiliary water system" may include:

- (1) Water from another owner's public water supply system;
- (2) Polluted or contaminated water, process fluids;
- (3) Used water; or
- (4) Other sources of water which the owner of the public water supply system does not have sanitary control.

Backflow or backsiphonage means the flow of water or other liquids, mixtures, or substances into the water distribution system from any other source than the intended source of the potable water supply.

Backflow prevention device means any device, method or type of construction intended to prevent backflow into a potable water system. Devices such as an approved air-gap, double-check valve assembly, antisiphon vacuum breaker or a reduced-pressure principle device can be used which have been approved by the manager.

Consumer means the owner or person in control of any premises supplied by or in any manner connected to a public water supply system.

Consumers' water supply system means any water supply system, located on the consumer's premises, supplied by or in any manner connected to a public water supply system. The term "consumers' water supply system" includes a household plumbing system ~~is considered to be a consumer's water supply system.~~ and a fire suppression system ~~is also considered a consumer's water supply system.~~

Contamination means an impairment of the quality of the water by sewage, or waste to a degree which could cause an actual hazard to the public health through poisoning or through spread of disease by exposure.

¹⁴⁸ Legal or Editorial Change: Code 1990, § 27-36 Definitions. Deleted definition of person as covered by Code chapter 1.

Cross connection means any arrangement whereby contamination due to backflow or backsiphonage can occur.

Degree of hazard means an evaluation of the potential risk to health and the adverse effects upon the potable water system.

Double-check valve assembly means an assembly composed of two single, independently acting, check valves including 100 percent closing shutoff ball valves located at each end of the assembly and suitable connections for testing the watertightness of each check valve.

Health hazard means any condition, device or practice in a water system or its operation that creates a real or potential danger to the health and well-being of the consumer.

Interchangeable connection means an arrangement or device that will allow alternate but not simultaneous uses of two sources of water.

Manager means the city manager or his authorized representative in the building department.

Nonpotable water means water not safe for drinking, personal or culinary use, or which does not meet the requirements of the state department of health.

Owner means the person delivering water through a public water supply system. The term "owner" means the city.

~~*Person* means the state, any political subdivision, public or private corporation, individual, partnership, or otherwise legal entity. When the term he, or his is used, it shall mean any male or female person.~~

Plumbing hazard means a plumbing-type cross connection in a consumer's potable water system that has not been properly protected by air-gap separation or backflow prevention devices.

Pollution means the presence in water of any foreign substance (organic, inorganic or biological) that degrades the quality of water to a degree which does not necessarily cause an actual hazard to the public health but which does adversely and unreasonably affect such waters for any desired use.

Pollution hazard means a condition through which an aesthetically objectionable or degrading material not dangerous to health may enter the public water supply system or the consumer's water supply system.

Potable water means water which is satisfactory for drinking, culinary and domestic purposes and meets the requirements of the state department of health.

Public water supply system means a water supply system designed and intended to provide potable water to a designated consumer. The term "public water supply system" includes the water supply source and distribution piping network. The term "water supply source" means any artificial or natural accumulation of water used to supply the potable water system. The term "distribution piping network" includes all piping, pumping and treatment devices used to convey an adequate quality and quantity of potable water to the consumer.

Reduced-pressure zone backflow prevention device means a device containing a minimum of two independently acting check valves together with an automatically operated pressure differential relief valve located between two check valves. During normal flow and at the cessation of normal flow, the pressure between these two checks shall be less than the supply pressure. In case of leakage, of either the check valve or the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure between the check valves at less than the supply pressure. The unit must include 100 percent closing shutoff ball valves located at each end of the device, and each device shall be fitted with properly located test cocks.

Service connection means the terminal end of a service line from the public water system. If a meter is installed at the end of the service, then the service connection means the downstream end of the meter.

System hazard means a condition posing an actual or potential threat of damage to the physical properties of the public's or the consumer's water supply system.

Used water means any water supplied by the public water supply system to a consumer's water supply system after it has passed through the service connection and is no longer under the sanitary control of the water supplier.

(b) The consumer as defined in subsection (a) of this section, if requested by the manager, shall designate an individual, who shall be responsible for contact and communications with the manager in matters relating to system alteration and construction, monitoring and sampling, maintenance, operation, recordkeeping, and reporting, as required by law and these regulations. Any change in assigned responsibilities or designated individuals shall be promptly reported to the manager.

(Code 1990, § 27-36)

Sec. 28-269. Policy and purpose.

(a) The purpose of this division is to protect the public water supply system of the city from the possibility of contamination by isolating real or potential sources of contamination or pollution which may backflow into the public water supply system. This division provides for the maintenance of a continuing program of cross connection control which will systematically and effectively prevent the contamination or pollution of the potable water supply systems.

(b) The manager shall be responsible for the implementation of the backflow prevention program as outlined within this division. If in the judgment of the manager an approved backflow prevention device is required for the safety of the public water supply system then the manager shall give notice in writing to the consumer to install said device at each recommended location. The manager shall inspect and approve all installations of the required backflow prevention devices. The costs for purchasing, installing and maintaining a backflow prevention device shall be the responsibility and sole expense of the consumer. The installation of backflow prevention devices, except for outlet fixture vacuum breakers, shall be by a qualified plumber. Annual testing of all double-check valves and reduced pressure zone devices shall be performed by the manager. If deemed necessary by the manager that maintenance or repairs are necessary, the owner shall be contacted and issued an order to make all necessary repairs or maintenance. The owner shall complete all maintenance or repairs within 30 days; if not, the owner shall be considered in violation of this division ~~the backflow ordinance~~ and will be subject to disconnection of the service as provided in section 28-277.

(c) No person shall install or maintain a water service connection, containing cross connections to a public water supply system or a consumer's potable water supply system unless such cross connections are abated or controlled in accordance with this rule, and as required by the laws and regulations of the state department of health.

(d) For the purposes of this division ~~backflow prevention ordinance~~, whenever the manager is to make any decision or interpretation, or whenever reference is made to the fact that the manager is to exercise his judgment, such decision, interpretation or judgment shall be in accordance with the provisions of this division ~~backflow prevention ordinance~~, other applicable provisions of this Code, and state and federal law.

(Code 1990, § 27-37)

Sec. 28-270. Surveys and investigations.

(a) It shall be the responsibility of the water consumer to conduct or cause to be conducted, periodic surveys of water use practices on his premises as necessary to determine whether there are actual or potential cross connections in the consumer's water supply system. The manager shall have the authority to conduct or cause to be conducted periodic surveys and investigations or a frequency, as determined by the manager, of water use practices within a consumer's premises to determine whether there are actual or potential cross connections to the consumer's water supply system through which contaminants or pollutants could backflow into the public water supply system. The manager may conduct these surveys to provide information in determining what level of protection will be necessary to protect the public health and safety.

(b) On request by the manager the consumer shall furnish the manager information on water use practices within the consumer's premises. If the consumer refuses to submit the proper information or to cooperate in obtaining the proper information, the manager shall treat the premises as if no appropriate cross connection survey has been completed, and in such event the consumer shall be required to install an approved backflow prevention device as required to section 28-271.

(c) The manager shall have the right to enter a premises served by the public water supply system at all reasonable times for the purpose of making surveys and investigations of water use practices within the premises. In order to inspect the premises, the manager shall give notice setting forth a proposed date and time to the consumer at least ten days in advance. If the consumer cannot make the premises available for inspection at the proposed date and time, the consumer shall contact the manager and arrange for another date and time for the inspection. If the manager and the consumer cannot agree on a date and time, then the manager shall treat the premises as if no appropriate cross connection survey has been completed, and in such event the consumer shall be required to install an approved backflow prevention device as required to section 28-271.

(d) The board of adjustment is hereby appointed as a hearing board to hear differences between the manager and the consumer on matters concerning interpretation and execution of the provisions of this division by the manager. Any consumer aggrieved by being required to pay the expense of installing, furnishing and or maintaining a backflow prevention device may, within 14 days of the act or event causing the grievance, request a hearing in writing to present those grievances to the hearing board. The hearing board shall schedule the matter for hearing within 30 days, and provide written notice of the meeting by first class mail to the consumer. The notice shall be mailed to the consumer at least seven and not more than 21 days before the hearing. At the hearing the consumer shall first state the nature of the grievance, and the manager shall be entitled to respond thereto, whereupon the hearing board shall render its decision which will be binding upon the consumer and the manager.

(Code 1990, § 27-38)

Sec. 28-271. Where protection is required.

(a) An approved backflow prevention device shall be installed between the service connection and the point of potential backflow into a consumer's water supply system when in the judgment of the manager a health, plumbing, pollution or system hazard exists.

(b) An approved backflow prevention device shall be installed when the following conditions are found by the manager to exist:

- (1) Premises on which any substance is handled in such a fashion as to create an actual or potential hazard to a public water supply system. This shall include premises having

sources or systems containing process fluids or waters originating from a public water supply system which are no longer under the sanitary control of the owner;

- (2) Premises having internal cross connections that, in the judgment of the manager, are not correctable, or there exists intricate plumbing arrangements which make it impracticable to determine whether or not cross connections exist;
- (3) Premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impractical to make a complete cross connection survey;
- (4) Premises having a repeated history of cross connections being established or reestablished;
- (5) Premises having more than one customer service connection which could constitute a potential cross connection.

(c) An approved backflow prevention device shall be installed on each service line to a customer's water supply system serving the following types of facilities unless the manager determines that no health, pollution or system hazard to the public water supply system exists:

- (1) Hospitals, mortuaries, dental clinics, nursing and convalescent homes, medical buildings;
- (2) Testings laboratories, film laboratories, film development facilities;
- (3) Sewage treatment plants, sewage pumping stations or stormwater pumping stations;
- (4) Food or beverage processing plants;
- (5) Chemical plants;
- (6) Metal degreasing, plating industries, machine tool plants, dye and metal processing or productions;
- (7) Chemical and petroleum processing or storage plants;
- (8) Carwashes, automobile servicing facilities;
- (9) Lawn irrigation systems and swimming pools;
- (10) Laundries and dry cleaners;
- (11) Packinghouses;
- (12) Power plants;
- (13) Premises having radioactive materials such as laboratories, industries, hospitals;
- (14) Rendering plants;
- (15) Premises having water recirculating systems, as used for boilers or cooling systems;
- (16) Veterinary establishments, kennels, feedyards, stables, rodeo grounds, stockyards, pet grooming salons;
- (17) Beauty salons, barbershops, message parlors, health clubs;
- (18) Fire suppression systems;
- (19) Multistoried buildings greater than three stories in height;
- (20) Schools, universities, colleges;
- (21) Other commercial or industrial facilities which may constitute potential cross connection.

(Code 1990, § 27-39)

Sec. 28-272. Type of protection required.

(a) The type of protection required under section 28-271(a) and (b) shall depend on the degree of hazard that exists as follows:

- (1) An approved air-gap separation or an approved reduced-pressure principle backflow prevention device shall be installed where a public water supply system may be contaminated with any substance that could cause a system hazard or health hazard;
- (2) An approved double-check valve assembly shall be installed where a public water supply system may be contaminated with any substance that could cause a pollution hazard;
- (3) An approved reduced-pressure principle backflow prevention device shall be installed at the service connection where there exists a plumbing hazard;
- (4) In the case of any premises where, because of security requirements or other prohibitions it is impossible or impractical to make a complete cross connection survey of the consumer's potable water system, a reduced-pressure principle backflow prevention device shall be installed at the service connection.

(b) An approved antisiphon vacuum breaker may be used as a backflow prevention device where it is not subjected to back pressures. This device shall not be used for applications where water flow is expected to be continuous for 12 or more hours. The device shall be installed ahead of the potential source of contamination on the discharge side of the last control valve. It shall be placed at least 12 inches above the highest point reached by any water passing through the potential source of contamination. Typically this type of device is used for such equipment as lawn sprinklers, water cooled compressors or other water cooled equipment.

(Code 1990, § 27-40)

Sec. 28-273. Backflow prevention devices.

(a) Any approved backflow prevention device required by section 28-271 shall be installed at a location and in a manner approved by the manager. The consumer, at his sole expense, shall obtain and install said approved backflow prevention devices within 90 days of notice and as directed by the manager.

(b) Existing backflow prevention devices approved by the manager prior to the effective date of ~~this rule~~ the ordinance from which this division is derived and which are properly maintained shall, except for inspection, testing and maintenance requirements, be excluded from the requirements of subsection (a) of this section, but only if the manager determines that the devices will satisfactorily protect the public water supply system. One hundred percent closing shutoff ball valves for testing shall be provided on existing backflow prevention devices, if deemed necessary for proper testing by the manager. If deemed necessary by the manager that an existing backflow prevention device requires replacement, it shall be replaced with an approved backflow prevention device.

(Code 1990, § 27-41)

Sec. 28-274. Booster pumps.

(a) No person shall install or maintain a water service connection to any premises where a booster pump has been installed on the service line to or within such premises, unless such booster pump is equipped with a low pressure cutoff designed to shut off the booster pump when the pressure in the service line on the suction side of the pump drops to 20 pounds per square inch gauge or less.

(b) It shall be the duty of the water customer to maintain the low pressure cutoff device in proper working order.

(Code 1990, § 27-42)

Sec. 28-275. Yard hydrants.

(a) The installation of yard hydrants, where water is available or accessible for drinking or culinary purposes and which have drip openings at belowground surfaces, is prohibited unless such hydrants are equipped with an approved device to prevent the entrance of groundwater into chambers connected with the water supply.

(b) Yard hydrants or hose bibs which would be used by the consumer to provide water to mix pesticides, fertilizer or other chemicals, for direct use or aerial application to surface areas shall be equipped with an antisiphon vacuum breaker.

(c) All underground lawn and garden sprinkler systems shall be equipped with an approved backflow prevention device.

(Code 1990, § 27-43)

Sec. 28-276. Fire suppression system.

(a) All proposed installations of fire suppression systems shall be reviewed by the manager to determine the appropriate type of backflow prevention devices required.

(b) All proposed fire suppression systems requiring an antifreeze solution shall use a pharmaceutical grade antifreeze. The consumer shall provide to the manager a certification identifying the type of pharmaceutical grade antifreeze which shall be used. A double-check valve backflow prevention device shall be installed in an approved manner.

(c) A double-check valve of an approved type shall be installed on all proposed fire suppression systems not utilizing antifreeze, but this may be done only when there are no other cross connections.

(d) All existing fire suppression systems shall meet the requirements of subsection (b) or (c) of this section, whichever applies. An inspection by a certified fire suppression specialist shall be done to determine whether pharmaceutical grade antifreezes have been utilized. This shall be done at the expense of the consumer. If it cannot be certified that only pharmaceutical grade antifreezes have been used, then a reduced-pressure principle backflow prevention device shall be installed as approved by the manager. This also shall be done at the expense of the consumer.

(e) In the event cross connections, such as those found in using auxiliary water supply systems or in providing other water additives such as foaming agents are necessary for the proper operation of the fire suppression system, then a reduced-pressure zone backflow prevention device shall be installed in an approved manner.

(Code 1990, § 27-44)

Sec. 28-277. Discontinuance at premises not in compliance with division.

(a) The manager shall deny or discontinue, after notice to the consumer thereof, the water service to any premises where:

- (1) Any backflow prevention device required by these regulations is not installed or maintained in a manner acceptable to the manager;
- (2) It is found that the backflow prevention device has been removed or bypassed;
- (3) An unprotected cross connection exists on the premises;
- (4) A low pressure cutoff required by section 28-274 is not installed and maintained in working order; or
- (5) The manager is denied entry to determine compliance with these regulations.

(b) The manager shall immediately deny or discontinue, without notice to the consumer thereof, the water service to any premises wherein a severe cross connection exists which constitutes an immediate threat to the safety of the public water system. The manager shall notify the consumer within 24 hours of said denial or discontinuation of service.

(c) Water service to such premises shall not be restored until the consumer has corrected or eliminated such conditions or defects in conformance with this division ~~these regulations~~, and to the satisfaction of the manager.

(Code 1990, § 27-45)

Sec. 28-278. Approval standards.

(a) Any backflow prevention device required herein shall be of a model and size approved by the manager. The term "approved backflow prevention device" means a device that has been manufactured in full conformance with the standards established by:

- (1) The American Water Works Associations (AWWA) entitled: AWWA C506-69 Standards for Reduced Pressure Principle and Double Check Valve Backflow Prevention Devices; and
- (2) The American Society of Sanitary Engineers (ASSE) entitled:
 - a. No. 1001, Pipe Applied Atmospheric Type Vacuum Breakers, ANSI approved 1982, revised 1988.
 - b. No. 1011, Hose Connection Vacuum Breakers, ANSI approved 1982.
 - c. No. 1012, Backflow Preventer/Intermediate Atmospheric Vent 1978.
 - d. No. 1013, Reduced Pressure Principle Backflow Preventer, revised 1988.
 - e. No. 1015, Double Check Backflow Prevention Assembly, revised 1988.
 - f. No. 1019, Wall Hydrants, Freezeless, Automatic Draining, Anti-Backflow Types, ANSI approved 1978.
 - g. No. 1020, Vacuum Breakers, Antisiphon, Pressure Type, ANSI, approved 1982.
 - h. No. 1024, Dual Check Valve Type Backflow Preventers, ANSI, approved 1984, revised 1988.
 - i. No. 1032, Dual Check Valve Type Backflow Preventer for Carbonated Beverage Dispensers 1980.
 - j. No. 1035, Laboratory Faucet Vacuum Breakers, ANSI approved 1984.
 - k. No. 1048, Double Check Detector Assembly Backflow Preventer 1989.

Said standards and specifications have been adopted by the manager. Final approval shall be evidenced by a certificate of approval issued by an approved testing laboratory certifying full compliance with said standards and specifications.

(b) The manager shall keep a current list of all certified suppliers and their appropriate list of makes and models of backflow prevention devices which the manager has deemed approved.

(c) The manager may require a strainer of approved type and size to be installed in conjunction with required backflow prevention devices. The installation of strainers shall preclude the fouling of backflow devices due to foreseen and unforeseen circumstances occurring to the water supply system such as water main repairs, water main breaks, fires, periodic cleaning and flushing of mains. These occurrences may cause debris such as scale deposits and sand to flush through the mains causing fouling of backflow devices.

(Code 1990, § 27-46)

Secs. 28-279--28-306. Reserved.

ARTICLE V. SEWERS AND SEWAGE DISPOSAL*

*State law reference—Sewer systems generally, R.R.S. 1943, §§ 12-249, 12-250, 18-501 et seq.

DIVISION 1. GENERALLY

Sec. 28-307. Definitions.¹⁴⁹

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
~~The following words and phrases shall have the meanings respectively ascribed to them:~~

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Celsius, expressed in milligrams per liter.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal.

~~*City engineer* means the engineer of the city or his authorized deputy, agent or representative.~~

Combined sewer means a sewer receiving both surface runoff and sewage.

Garbage means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

Industrial wastes means the liquid wastes from industrial manufacturing processes, trade or business, as distinct from sanitary sewage.

~~*May* is permissive.~~

Natural outlet means any outlet into a watercourse, pond ditch, lake or other body of surface water or groundwater.

~~*Person* means any individual, firm, company, association, society, corporation or group.~~

pH means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Properly shredded garbage means the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

Public sewer means a sewer in which all owners of abutting properties have equal rights and is controlled by public authority.

Sanitary sewer means a sewer which carries sewage and to which stormwater, surface water and groundwater are not intentionally admitted.

¹⁴⁹ Legal or Editorial Change: Code 1990, § 23-1 Municipal Sewer Department: Definitions.
 Deleted material covered by Code chapter 1.

Sewage means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwater, surface water and stormwater, as may be present.

Sewage treatment plant means any arrangement of devices and structures used for treating sewage.

Sewage works means all facilities for collection, pumping, treating and disposing of sewage.

Sewer means a pipe or conduit for carrying sewage.

~~*Shall* is mandatory.~~

Slug means any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation.

Storm drain or *storm sewer* means a sewer which carries stormwater, surface water and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

Suspended solids (SS) means solids that either float on the surface of, or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

(Code 1990, § 23-1; Ord. No. 1481, § 1)

Sec. 28-308. Violations; notice; corrections.

Any person found to be violating any provision of this article, except section 28-313 shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(Code 1990, § 23-9; Ord. No. 1481, § 8)

Sec. 28-309. Failure to correct violations; misdemeanors; separate offenses.

Any person who shall continue any violation beyond the time limit provided for in section 28-308 shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding \$100.00 for each violation or shall be imprisoned in jail for a period not to exceed three days, or both fine and imprisonment.

(Code 1990, § 23-9.1; Ord. No. 1481, § 9)

Sec. 28-310. Violations; liability to city.

Any person violating any of the provisions of this article shall become liable to the city for any expense, loss or damage occasioned the city by reason of such violation.

(Code 1990, § 23-9.2; Ord. No. 1481, § 10)

Sec. 28-311. Use of public sewers required.

(a) It shall be unlawful for any person to:

- (1) Place, deposit or permit to be deposited in any unsanitary manner on public or private property within the city or in any area under the jurisdiction of the city, any human or animal excrement, garbage or other objectionable waste;
- (2) Discharge to any natural outlet within the city, or in any area under the jurisdiction of the city, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article;

(3) Except as hereinafter provided, construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.

(b) The owners of all houses, buildings or properties used for human employment, recreation, or other purposes, situated within the city and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary sewer of the city, are hereby required at their expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this article within 90 days after the date of official notice to do so, provided that a public sewer is within 100 feet (30.5 meters) of the property line. Every building hereafter erected shall be connected with the sewer system at the time of its construction. In the event that any property owner shall neglect, fail or refuse to make said connection within said time, the city council shall have the power to cause the same to be done, to assess the cost thereof against the property, and to collect the assessment thus made in the manner provided for collection of other special taxes and assessments.

(Code 1990, §§ 23-31.1, 23-3.1, 23-3.2; Ord. No. 1481, § 3)

Sec. 28-312. Municipal sewer department; repairs and maintenance.

The municipal sewer department shall be responsible for maintenance of all public sewer mains. It shall be the responsibility of the customer to repair or replace and keep in good condition the private sewer lines from the main to and including the customer's property. All replacements and repairs made by the customer shall be done in a manner approved by the city engineer.

(Code 1990, § 23-11; Ord. No. 1481, § 11)

Sec. 28-313. Tampering with Sewage Works; Violations.

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the sewage works. Any person violating this provision shall be subject to immediate arrest under charge of malicious injury to property.

(Code 1990, § 23-7; Ord. No. 1481, § 7)

Secs. 28-314--28-342. Reserved.

DIVISION 2. PRIVATE SEWAGE DISPOSAL

Sec. 28-343. Procedure when public sewer not available.

Where a public sanitary sewer is not available under the provisions of section 28-311(b), the building sewer shall be connected to a private sewage disposal system complying with the provisions of this division.

(Code 1990, § 23-4; Ord. No. 1481, § 4)

Sec. 28-344. Additional requirements.

No statement contained in this division shall be construed to interfere with any additional requirements that may be imposed by the health officer.

(Code 1990, § 23-4.6; Ord. No. 1481, § 4)

Sec. 28-345. Permits.¹⁵⁰

Before commencement of construction of a private sewage system the owner shall first obtain a written permit signed by the city engineer. The application for such permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as deemed necessary by the city engineer. A permit and inspection fee of ~~\$10.00~~ in the amount established by the city shall be paid to the city at the time the application is filed.

(Code 1990, § 23-4.1; Ord. No. 1481, § 4)

Sec. 28-346. Inspections.

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the city engineer. He shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the city engineer when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 12 hours of the receipt of notice by the city engineer, excluding holidays and weekends.

(Code 1990, § 23-4.2; Ord. No. 1481, § 4)

Sec. 28-347. Specifications; requirements.

The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the state department of health. No permit shall be issued for any private sewage disposal system when there is insufficient lot area or improper soil conditions for adequate sewage disposal for the building or land use proposed. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

(Code 1990, § 23-1; Ord. No. 1481, § 4)

Sec. 28-348. Availability of public sewers; abandonment of private facility.

At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in section 28-311(b), a direct connection shall be made to the public sewer in compliance with this article, and any septic tanks cesspools, and similar private sewage disposal systems shall be abandoned and filled with suitable material.

(Code 1990, § 23-4.3; Ord. No. 1481, § 4)

Sec. 28-349. Operation and maintenance.

The owner shall operate and maintain the private sewage disposal system in a sanitary manner at all times, at no expense to the city.

(Code 1990, § 23-4.5; Ord. No. 1481, § 4)

Sec. 28-350. Connection to public sewer; time.

When a public sewer becomes available, the building sewer shall be connected to said sewer within 60 days and the private sewage disposal system shall be cleaned of sludge and filled.

(Code 1990, § 23-4.7; Ord. No. 1481, § 4)

¹⁵⁰ Legal or Editorial Change: Code 1990, § 23-4.1 Permits. Tied fee to city action.

Secs. 28-351–28-373. Reserved.

DIVISION 3. BUILDING SEWERS AND CONNECTIONS

Sec. 28-374. Unauthorized persons; permits; public sewers.

No authorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the city engineer.

(Code 1990, § 23-5; Ord. No. 1481, § 5)

Sec. 28-375. Building sewer permits; classes; fees.¹⁵¹

(a) There shall be three classes of building sewer permits:

- (1) Residential.
- (2) Commercial.
- (3) Industrial.

(b) For any class of permit the owner or his agent shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the city engineer. A permit and inspection fee of ~~\$5.00 for residential permit; \$5.00 for a commercial permit; and \$10.00 for an industrial permit~~ in the amount established by the city shall be paid to the city at the time the application is filed.

(Code 1990, § 23-5.1; Ord. No. 1481, § 5)

Sec. 28-376. Costs and expense; indemnity.

All costs and expense incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(Code 1990, § 23-5.2; Ord. No. 1481, § 5)

Sec. 28-377. Separate building sewers; exceptions.

A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, driveway or easement, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

(Code 1990, § 23-5.3; Ord. No. 1481, § 5)

Sec. 28-378. Old building sewers; use; examinations.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the city engineer to meet all requirements of this article.

(Code 1990, § 23-5.4; Ord. No. 1481, § 5)

Sec. 28-379. Building sewers; construction; materials and procedures.

The size, slope, alignment, materials of construction of a building sewer and the methods to be used in excavation, placing of the pipe, jointing, testing and backfilling the trench, shall all

¹⁵¹ Legal or Editorial Change: Code 1990, § 3-5.1 Building Sewer Permits; Classes; Fees. Tied fee to city action.

conform to the requirements of the Uniform Plumbing Code or other applicable rules and regulations of the city, in the absence of code provisions or in application thereof, the materials and procedures set forth in appropriate specifications of the WPCF Manual of Practice No. 9 shall apply.

(Code 1990, § 23-5.5; Ord. No. 1481, § 5)

Sec. 28-380. Building sewers; elevation.

Whenever possible the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(Code 1990, § 23-5.6; Ord. No. 1481, § 5)

Sec. 28-381. Surface runoff or groundwater connections; prohibited.

No person shall make connections of roof downspouts, exterior or interior foundation drains, area way drains or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(Code 1990, § 23-5.7; Ord. No. 1481; Ord. No. 1533, § 1)

Sec. 28-382. Building sewer connection; inspection.

The applicant for the building sewer permit shall notify the city engineer when the building sewer is ready for inspection and connection to the public sewer. The building sewer shall be inspected and approved before connection to the public sewer system is completed.

(Code 1990, § 23-5.8; Ord. No. 1481, § 5)

Sec. 28-383. Excavation; barricades; restorations.

All excavations for building sewer installations shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed by the construction shall be restored in a manner satisfactory to the city engineer.

(Code 1990, § 23-5.9; Ord. No. 1481, § 5)

Secs. 28-384–28-409. Reserved.

DIVISION 4. DISCHARGE LIMITATIONS

Sec. 28-410. Sanitary sewers.

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, including interior and exterior foundation drains, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer.

(Code 1990, § 23-6; Ord. No. 1481, § 6)

Sec. 28-411. Storm sewers.

Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the city engineer.

(Code 1990, § 23-6.1; Ord. No. 1481, § 6)

Sec. 28-412. Public sewers; certain waters or wastes prohibited.

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

- (1) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
- (2) Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes:
 - a. To injure or interfere with any sewage treatment process;
 - b. Constitute a hazard to humans or animals;
 - c. Create a public nuisance; or
 - d. Create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two mg/l as CN in the wastes as discharged to the public sewer.
- (3) Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.
- (4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(Code 1990, § 23-6.2; Ord. No. 1481, § 6)

Sec. 28-413. Prohibited substances.

No person shall discharge or cause to be discharged the ~~following described~~ substances described in this section, materials, waters or wastes, if it appears likely in the opinion of the city engineer that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream or can otherwise endanger life, limb, public property or constitute a nuisance. In forming his opinion as to the acceptability of these wastes the city engineer will consider all factors that contribute to the quality of waste.

- (1) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius).
- (2) Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit (0 and 65 degrees Celsius).
- (3) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the city engineer.
- (4) Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not.
- (5) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such a degree that any such material received in the composite sewage at the sewage treatment works will exceed the limits established by the city engineer for such materials.
- (6) Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentrations exceeding limits which may be established by the city engineer as necessary, after treatment of the composite sewage, to meet the requirements of state, federal or other public agencies of jurisdiction for such discharge to the receiving waters.

- (7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the city engineer in compliance with applicable state or federal regulations.
- (8) Any waters or wastes having a pH in excess of 9.5.
- (9) Materials which exert or cause:
 - a. Unusual concentrations of inert suspended solids such as, but not limited to, Fuller's earth, lime slurries and lime residues; or of dissolved solids such as, but not limited to, sodium chloride or sodium sulfate.
 - b. Excessive discoloration such as, but not limited to, dye wastes and vegetable tanning solutions.
 - c. Unusual BOD, chemical oxygen demand or chlorine requirements, in such quantities as to constitute a significant load on the sewage treatment works.
 - d. Unusual volume of flow or concentration of wastes constituting slugs as that term is defined in this article.
- (10) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- (11) Any waters or wastes having:
 - a. A five-day BOD greater than 300 parts per million by weight;
 - b. Containing more than 350 parts per million by weight of suspended solids; or
 - c. Having an average daily flow greater than two percent of the average total sewage flow of the city;

shall be subject to the review of the city engineer and are subject to section 28-414.

(Code 1990, § 23-6.3; Ord. No. 1481; Ord. No. 1533, § 2)

Sec. 28-414. Wrongful discharge; sanctions.

(a) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in section 28-413, and which in the judgment of the city engineer, may have a deleterious effect upon the sewage works, processes, equipment or receiving waters, or which otherwise create a hazard to life, to constitute a public nuisance the city engineer may:

- (1) Reject the waste;
- (2) Require pretreatment to an acceptable condition for discharge to the public sewer;
- (3) Require control over the quantities and rates of discharge; and/or
- (4) Require payment or surcharge to cover the added cost of handling and treating the wastes in excess of BOD, suspended solids and flow as enumerated in section 28-413(11).

(b) If the city engineer permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the requirements of all applicable codes, ordinances and laws.

(Code 1990, § 23-6.4; Ord. N. 1481, § 6)

Sec. 28-415. Interceptors; when required; exception.

Grease, oil and sand interceptors shall be provided when, in the opinion of the city engineer, they are necessary for the proper handling of liquid wastes, sand or other harmful ingredients. All interceptors shall be of a type and capacity approved by the city engineer and shall be located as to be readily accessible for cleaning and inspections.

(Code 1990, § 23-6.5; Ord. No. 1481, § 6)

Sec. 28-416. Preliminary treatment facilities.

Where preliminary treatment or flow equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

(Code 1990, § 23-6.6; Ord. No. 1481, § 6)

Sec. 28-417. Industrial wastes; manholes; when required.

When required by the city engineer the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances to facilitate observation, sampling, and measurement of the wastes, the manhole specifications shall be approved by the city engineer. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

(Code 1990, § 23-6.7; Ord. No. 1481, § 6)

Sec. 28-418. Measurements, tests and analyses standards and procedures.

All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this division shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb and property. (The particular analysis involved will determine whether a 24-hour composite of all outfalls of a premises is appropriate or whether grab samples should be taken. Normally, but not always, BOD and suspended solids analysis are obtained from 24-hour composites of all outfalls whereas pHs are determined from periodic grab samples.)

(Code 1990, § 23-6.8; Ord. No. 1481, § 6)

Sec. 28-419. Industrial concerns; special agreements.

No statement contained in this division shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor, by the industrial concern.

(Code 1990, § 23-6.9; Ord. No. 1481, § 6)

Secs. 28-420--28-436. Reserved.

DIVISION 5. RATES AND CHARGES*

*State law reference—Rates and charges, R.R.S. 1943, §§ 16-681, 18-508.

Sec. 28-437. Sewer tap fees.

Sewer tap fees shall be set by resolution of the city council and shall be on file in the city offices for public inspection at any reasonable time.

(Code 1990, § 23-1; Ord. No. 2138, § 9)

Sec. 28-438. Municipal sewer department--Classification.

The city council may classify for the purpose of sewer use charges the customers of the municipal sewer department; provided, that such classifications are reasonable and do not discriminate against any consumer or group of consumers (refer to R.R.S. 1943, § 17-925.02).

(Code 1990, § 23-13; Ord. No. 1481, § 12)

Sec. 28-439. Same-Sewer use charge.

The sewer use charge rate shall be set by resolution by the city council for all user classifications and shall be on file in the city offices for public inspection at any reasonable time.

(Code 1990, § 23-13; Ord. No. 1481, § 13)

Secs. 28-440--28-461. Reserved.**ARTICLE VI. SOLID WASTE***

***State law reference**—Municipal solid waste disposal generally, R.R.S. 1943, § 13-1701 et seq.; Integrated Solid Waste Management Act, R.R.S. 1943, § 13-2001 et seq.; local government solid waste responsibilities, R.R.S. 1943, § 13-2020; garbage disposal, R.R.S. 1943, § 19-2101 et seq.; littering, R.R.S. 1943, § 28-523.

Sec. 28-462. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
~~For the purposes of this article the following terms shall have the meanings given herein.~~

Garbage.

- (1) The term "garbage" means food waste, or wastes from any source that will spoil, decompose and/or become offensive in any manner.
- (2) The term "garbage" does not include yard waste.

Refuse.

- (1) The term "refuse" means any item or object thrown away or rejected as worthless or useless, including waste, trash, rubbish or garbage.
- (2) The term "refuse" does not include yard waste.

Yard waste means grass clippings or plant material removed from a yard or garden.

(Code 1990, § 22-1; Ord. No. 1647; Ord. No. 1967)

Sec. 28-463. Refuse and garbage--Mandatory collection; billing; regulations.

(a) The owners or occupants of all residential, commercial or industrial properties within the city shall be responsible for the collection and disposal of refuse and garbage by contracting with a refuse and garbage collection licensee.

(b) Each such owner or occupant shall use an enclosed container for the keeping and storage for collection of refuse and garbage, which container is required by or provided by the licensee.

(c) The charge for collection from residential properties shall be billed monthly with water, electrical and sewer use fees. Charges will be considered delinquent and collected at the same time, in the same manner and by the same officers as electrical, water and sewer charges are

collected by the city. All payments on the unified bill shall be deemed paid first on the amount due for sanitation services. For the purposes of this section, the term "residential" does not include mobile home courts or apartment housing which have a system for central trash collection, and are treated as commercial customers.

(d) The charges for commercial and industrial properties shall be billed and collected by the licensee.

(e) In order to implement the provisions of this article, the city council shall be empowered and authorized to promulgate rules and regulations concerning the refuse and garbage collection policies of the city.

(Code 1990, § 22-2; Ord. No. 1647, § 1; Ord. No. 1792, § 1, Ord. No. 1967)

Sec. 28-464. Same--License for collection service.

No person or business entity shall conduct a refuse or garbage collection service for hire within the city without first having obtained a license for that purpose issued by the city clerk. Such license shall be issued only to such persons or entities complying with standards established by the city manager. Such license shall be issued for one calendar year, and can be revoked at any time by the city manager for noncompliance with standards established.

(Code 1990, § 22-3; Ord. No. 1647, § 1; Ord. No. 1792, § 2; Ord. No. 1967)

Sec. 28-465. Same--Site for disposal.

The city may maintain and operate a sanitary landfill site, or may contract for the use of a sanitary landfill site for the disposal of refuse and garbage. For a site maintained by the city, the city council may, by resolution, determine the operating procedures for such landfill.

(Code 1990, § 22-4; Ord. No. 1647; Ord. No. 1967)

Sec. 28-466. Same--Disposal; hazardous substances; yard waste.

Any person disposing of refuse or garbage for collection shall be responsible for the contents of such refuse and garbage. The city council or other landfill operator, or the licensee for collection, shall have authority to refuse to accept the following:

- (1) Any substance deemed to be hazardous to the environment if deposited at such landfill;
- (2) Yard waste;
- (3) Recyclable materials except in separate containers;
- (4) Any other substance which by state or federal law or regulation is prohibited from being deposited in a licensed landfill.

(Code 1990, § 22-5; Ord. No. 1647; Ord. No. 1967)

Sec. 28-467. Collection charges and landfill use charges.

The city council shall establish by resolution a schedule of charges and fees for the collection of refuse and garbage. In the event a sanitary landfill is operated by the city, charges may also be established for use of such sanitary landfill.

(Code 1990, § 22-6; Ord. No. 1647, § 1; Ord. No. 1792, § 3; Ord. No. 1967)

Sec. 28-468. Accumulation of garbage; nuisance.

(a) It shall be unlawful for any person to place any refuse or garbage in any street, alley or other public place, or upon any private property whether owned by such person or not, within the city except in proper containers for collection or other suitable covered, flyproof containers.

- (b) Removal schedule.

- (1) Garbage and refuse from the business section of the city shall be removed every day during the months of May through October, and at least twice per week during the period from November 1 to May 1.
- (2) Garbage and refuse in the residential sections of the city shall be removed at least once per week.

(c) Any accumulation of refuse or garbage other than as authorized in this article is hereby declared to be a nuisance and in addition to the general penalty provided in section 1-8, shall be subject to action for abatement.

(Code 1990, § 22-7; Ord. No. 1647; Ord. No. 1967)

PROOFS

Chapter 29
RESERVED

PROOFS

Chapter 30
VEGETATION*

*State law reference—Authority relative to weeds, grass and litter, R.R.S. 1943, § 16-230.

ARTICLE I. IN GENERAL

Secs. 30-1--30-18. Reserved.

ARTICLE II. TREES*

*State law reference—Tree Expert Act, R.R.S. 1943, § 45:15C-1 et seq.

Sec. 30-19. Violation; penalty.

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this article shall be deemed guilty of a misdemeanor and punished as provided in section 1-7. If it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as part of the judgment in the case.

(Code 1990, § 26-6; Ord. No. 2002)

Sec. 30-20. Penalty for violation of article not to be waiver of city's right to collect cost of removal of tree.

Imposition of any penalty for a violation of this article shall not be construed as a waiver of the right of the city to collect the cost of removal of such trees in accordance with the provisions of this Code, in such case made and provided, where the city has removed such trees in accordance with the provisions of this article.

(Code 1990, § 26-7; Ord. No. 1160, § 1; Ord. No. 2002)

Sec. 30-21. Enforcement of article.

The city manager is charged with enforcement of this article, and to that end may enter upon private property at all reasonable hours for purposes of inspecting trees thereon, and may remove such specimens as are required for purposes of analysis. It shall be unlawful for any person to prevent the city manager from entering on private property for purposes of carrying out his duties hereunder, or to interfere with such city manager in the lawful performance of his duties under the provisions of this article.

(Code 1990, § 26-5; Ord. No. 1160, § 1; Ord. No. 2002)

Sec. 30-22. Diseased, dead or dying trees declared nuisances and prohibited; Dutch elm disease.

(a) Trees of all species and varieties of elm, zelkova and planera infected with the fungus *Ceratocystis ulmi* (Dutch elm disease), as determined by laboratory analysis, are hereby declared to be a public nuisance, and shall be removed and burned.

(b) Trees, or parts thereof, of elm, zelkova or planera in a dead or dying condition that may serve as breeding places for the European elm bark beetle (*Scolytus multistriatus*) are hereby declared to be a public nuisance, and shall be removed and burned.

(c) Trees of any species in a diseased, dead or dying condition are hereby declared to be a public nuisance and shall be removed.

(Code 1990, § 26-1; Ord. No. 1160, § 1; Ord. No. 2002)

Sec. 30-23. Removal of trees; notice of landowner responsibility.

If trees on private property or in public street right-of-way adjoining private property are found to be infected or in a dead or dying condition, the city manager shall give to the owner, agent, occupant or person in possession, charge or control of the premises where the same are situated, written notice by personal service, where owner is a resident of the city and present in the city, or otherwise, by certified mail of the existence of such disease or of the dead or dying condition of such trees or parts thereof, and require the removal of same under the direction and supervision of the city manager within 30 days from receipt of the notice. Such notice shall also notify such person that if such trees are not removed within 30 days, the city will proceed with the removal of the same, and may assess the cost thereof against the property benefited.

(Code 1990, § 26-2; Ord. No. 1160, § 1; Ord. No. 2002)

Sec. 30-24. Removal of trees.

(a) After due notice has been given the owner, agent, occupant or person in possession, charge or control of the premises, it shall thereupon become his duty to cause diseased or dead trees to be removed, under the direction and supervision of the city manager. If the owner, agent, occupant or person in possession, charge or control of such premises fails, neglects or refuses to remove such trees, the city manager may, 30 days after notice is given, enter upon such private property or street right-of-way and proceed with the removal of the same, and the cost thereof may be levied and assessed upon the lot or piece of ground so benefited in the same manner as other special taxes for assessments are levied and assessed.

(b) In lieu thereof, the person charged with such removal may enter into an agreement with the city that such work be accomplished by the city at his expense and the expense and any interest shall be and is hereby declared to be a lien upon such property whereon such tree was situated from the time the same becomes due until paid. The agreement shall be in such form as the city attorney may prescribe, to be filed in the office of the register of deeds of the county.

(Code 1990, § 26-3; Ord. No. 1160, § 1; Ord. No. 2002)

Sec. 30-25. Removal of trees on city-owned land.

Infected trees, trees or parts thereof in a dead or dying condition, on city-owned lands, other than street rights-of-way, shall be removed by the city manager upon actual notice that such condition exists, and the cost thereof shall be borne by the city.

(Code 1990, § 26-4; Ord. No. 1160, § 1; Ord. No. 2002)

Sec. 30-26. Tree topping.¹⁵²

It shall be unlawful for any person to top any tree on public road right-of-way, in city parks or any publicly owned land. Topping is defined as the severe cutting back of limbs within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or others causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempt from this subsection at the determination of the ~~tree board~~ city manager or designee.

(Code 1990, § 26-9; Ord. No. 2195)

¹⁵² Legal or Editorial Change: Code 1990, § 26-8. Tree Topping. Changed tree board to city manager or designee. Under R.R.S. 1943, § 2-38, the tree board is advisory.

Chapters 31--100

RESERVED

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PART II
LAND DEVELOPMENT ORDINANCES

Chapter 101

GENERAL AND ADMINISTRATIVE PROVISIONS

ARTICLE I. IN GENERAL

Sec. 101-1. Applicability of chapter 1.

The provisions of chapter 1 of this Code apply to this part.

Sec. 101-2. Status.

While this part is a codification of the ordinances pertaining to land development regulations, provisions in part I of this Code may also pertain to land development. The failure to include provisions in this part does not excuse failure to comply with such provisions.

Secs. 101-3–101-22. Reserved.

ARTICLE II. PLANNING COMMISSION*

*State law reference—Planning commission, R.R.S. 1943, § 19-926 et seq.

Sec. 101-23. Created.¹⁵³

~~There is hereby created a city planning commission, whose function and duties shall be to make and adopt plans for the physical development of the City, including any areas outside of its boundaries, which in the commission's judgment, bear relation to the planning of such municipality.~~

(Code 1990, § 2-21; Ord. No. 384, § 1)

State law reference—Planning commission membership, R.R.S. 1943, § 19-926 et seq.

~~Sec. 2-22 Composition; appointment, qualifications, compensation, term of office and removal of members; filling vacancies in office.¹⁵⁴~~

~~The city planning commission shall consist of nine members who shall represent, insofar as it is possible, different professions or occupations in the city, who shall be appointed by the mayor, by and with the approval of a three fourths vote of the council. All members of the planning commission shall reside within the zoning jurisdiction of the city, provided, that not more than 25 percent of the members may reside outside of the corporate limits of the city. All members of the commission shall serve as such without compensation and shall hold no other municipal office. The term of each member shall be three years, except, that three members of the first commission to be so appointed shall serve for the term of one year, three for the term of two years and three for a term of three years. All members shall hold office until their successors are appointed. All members may, after a public hearing before the council, be removed by the mayor, by and with the consent of a three fourths vote of the council, for inefficiency, neglect of duty, of malfeasance in~~

¹⁵³ Legal or Editorial Change: Code 1990, § 2-21 Created; Functions and Duties Generally. Deleted general statement of functions as covered by R.R.S. 1943, § 19-925 et seq.

¹⁵⁴ Legal or Editorial Change: Code 1990, § 2-22 Composition; Appointment, Qualifications, Compensation, Term of Office and Removal of Members; Filling Vacancies in Office. Deleted as covered by and in conflict with R.R.S. 1943, § 19-926.

~~office, or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term by the mayor.~~

~~(Code 1990, § 2-22; Ord. No. 1685, § 1)~~

~~Sec. 2-23 Officers; meetings; adoption of rules; records.~~¹⁵⁵

~~The city planning commission shall elect its chairperson from its members and create and fill such other of its offices as it may determine. The term of the chairperson shall be one year, with eligibility for reelection. The commission shall hold at least one regular meeting in each month. It shall adopt rules for transaction of business and keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record.~~

~~(Code 1990, § 2-23; Ord. No. 384, § 3)~~

~~Sec. 2-24 Funds, equipment and expenditures.~~¹⁵⁶

~~The city council may provide the funds, equipment and accommodations necessary for the planning commission's work, but the expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the council, and no expenditures nor agreements for expenditures shall be valid in excess of such amounts.~~

~~(Code 1990, § 2-24; Ord. No. 384, § 4)~~

~~Sec. 2-25 Plans for physical development of city.~~¹⁵⁷

~~It shall be the function and duty of the planning 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 such city, and including a comprehensive development plan; to prepare and adopt such implemental means as a capital improvement program, subdivision regulations, building codes and zoning ordinance in cooperation with other interested municipal departments; consult and advise with public officials and agencies, public utilities, civic organizations, educational institutions, and citizens with relation to the promulgation and implementation of the comprehensive development plan and its implemental programs; have the power to delegate authority to any such group to conduct studies and make surveys for the commission; make preliminary reports on its findings; and hold public hearings before submitting its final reports. The city council shall not hold its public meetings or take action on matters relating to the comprehensive development plan, capital improvements, building codes, subdivision development or zoning until it has received the recommendation of the planning commission, provided, that the city council may set a reasonable time within which the recommendation is to be received.~~

~~(Code 1990, § 2-25; Ord. No. 284, § 5)~~

¹⁵⁵ Legal or Editorial Change: Code 1990, § 2-23 Officers; Meetings; Adoption of Rules; Records. Deleted as covered by R.R.S. 1943, § 19-927.

¹⁵⁶ Legal or Editorial Change: Code 1990, § 2-24 Funds, Equipment and Expenditures. Deleted as covered by R.R.S. 1943, § 19-928.

¹⁵⁷ Legal or Editorial Change: Code 1990, § 2-25 Plans for Physical Development of City. Deleted as covered by and not completely consistent with R.R.S. 1943, § 19-929.

Chapter 102
RESERVED

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Chapter 103
BUILDINGS AND BUILDING REGULATIONS

ARTICLE I. IN GENERAL

Secs. 103-1--103-18. Reserved.

ARTICLE II. BUILDING CODES*

***State law reference**—Building Construction Act, R.R.S. 1943, § 71-6401 et seq.; building regulations authorized, R.R.S. 1943, §§ 16-233, 16-234.

Sec. 103-19. Building, mechanical and housing codes adopted by reference.¹⁵⁸

~~That certain document, a copy of which is on file in the office of the city clerk of the city, being marked and designated as International Building Code, 2003 edition, together with International Residential Code, 2003 edition, Uniform Housing Code, 1991 edition, and Uniform Code for the Abatement of Dangerous Buildings, 1991 edition, are hereby adopted in their entirety as the building codes of the city, except as herein provided, for the purpose of regulating the erection, construction, enlargement, alteration, repair, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all buildings and structures in the city; providing for the issuance of permits; providing penalties for violation of such code; declaring and establishing fire zones; and each and all of the regulations, provisions, penalties, conditions and terms of such building codes, including amendments thereto, as kept on file in the office of the city clerk, are hereby referred to, adopted and made a part hereof as if fully set out in this section, except as provided below. The state building code promulgated pursuant to R.R.S. 1943, ch. 71, art. 64 (R.R.S. 1943, § 74-6401 et seq.) is adopted by reference. Enforcement of a new edition of the state building code shall commence upon adoption of a resolution so stating.~~

(Code 1990, § 6-1; Ord. No. 1943, § 2; Ord. No. 2058, § 1)

State law reference—Authority to adopt technical code by reference, R.R.S. 1943, §§ 18-132, 19-922.

~~Sec. 6-1.1 Building permit fee.~~

~~Any and all references to building permit fees in the "Uniform Building Code," 1991 edition, are hereby deleted and all building permit fees will be assessed as provided for in section 6-2.~~

(Code 1990, § 6-1.1; Ord. No. 1943, § 2)

~~Sec. 6-1.2 Certificate of occupancy.~~

~~Section 308(a) of the Uniform Building Code, 1991 edition, is hereby amended to read as follows:~~

~~Section 308(a) Use or Occupancy.~~

~~No building or structure of Groups A, E, I, H, B or R, Division 1 Occupancy, or R-3, Division 3 Occupancy, shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefor as provided herein.~~

¹⁵⁸ Legal or Editorial Change: Code 1990, § 6-1 Building, Mechanical and Housing Codes Adopted. Revised to adopt the state building code (which is the 2009 International Building Code, 2009 International Residential Code and 2009 International Existing Building Code). See R.R.S. 1943, § 71-6403. In light of this Code 1990, §§ 6-1.1--6-1.3 are deleted.

~~(Code 1990, § 6-1.2; Ord. No. 1943, § 3)~~

~~Sec. 6-1.3 Subsequent editions.~~

~~Subsequent editions to the International Building Code, International Residential Code, Uniform Housing Code, and Uniform Code for the Abatement of Dangerous Buildings, adopted by the provisions of this Ordinance shall be considered adopted and in full force and effect within the city and the jurisdictional area of the city upon the approval thereof by the resolution of the council and the filing of at least one copy thereof in the office of the city clerk.~~

~~(Code 1990, § 6-1.3; Ord. No. 1943, Ord. No. 2174)~~

Sec. 103-20. Building department permit fees.

A fee for each permit issued by the city building department, including permits for construction of buildings, plumbing, electrical, signs, fences or change of occupancy shall be paid to the building inspector. The permit fees shall be set by resolution of the city council and shall be on file in the city building department for public inspection at any reasonable time; provided, that for nonresidential construction which shall be subject to continuous supervision of qualified architects or engineers, the city manager shall be authorized to negotiate the permit fee based upon actual inspection functions to be performed by the city.

(Code 1990, § 6-2; Ord. No. 1300, § 1; Ord. No. 1310, § 1; Ord. No. 1750, § 1; Ord. No. 1845, § 1; Ord. No. 2058, § 2)

~~Sec. 6-4 Uniform Plumbing Code.~~

~~Sec. 6-4.1 Adopted.¹⁵⁹~~

~~The 2003 edition of the International Plumbing Code as adopted by the International Association of Plumbing and Mechanical Officials, is hereby adopted as the minimum standard for the installation of all plumbing installations within the city and zoning area under the city's jurisdiction, except as otherwise specifically provided in this chapter, and the same is hereby made a part of this chapter as fully and to the same extent as if copied herein in full. At least one copy of such Code shall be kept on file in the office of the city clerk for inspection by the public. Fees for plumbing inspection permits shall be assessed as provided in section 6-2.~~

~~(Code 1990, § 6-4.1; Ord. No. 1943, § 6; Ord. No. 2058, Ord. No. 2174)~~

~~Sec. 6-4.2 Subsequent editions.¹⁶⁰~~

~~Subsequent editions of revisions of the International Plumbing Code adopted by the provisions of this ordinance shall be considered adopted and in full force and effect within the city and jurisdictional area of the city upon the approval thereof by resolution by the council and the filing of at least one copy thereof in the office of the city clerk.~~

~~(Code 1990, § 6-4.2; Ord. No. 1943, Ord. No. 2174)~~

~~Sec. 6-4.3 Extraterritorial application.¹⁶¹~~

~~The provisions of the code adopted by the provisions of this article shall apply and be enforced to the unincorporated area two miles beyond and adjacent to the corporate boundaries of this city~~

¹⁵⁹ Legal or Editorial Change: Code 1990, § 6-4.1 Adopted. Deleted as covered by the state building code.

¹⁶⁰ Legal or Editorial Change: Code 1990, § 6-4.2 Subsequent Editions. Deleted as inconsistent with R.R.S. 1943, §§ 18-132, 19-922.

¹⁶¹ Legal or Editorial Change: Code 1990, § 6-4.3 Extraterritorial Application. Deleted as covered by R.R.S. 1943, § 19-922.

~~with the same force and effect as if such outlying area were within the corporate boundaries of this city.~~

~~(Code 1990, § 6-4.3; Ord. No. 1481, § 2)~~

~~Sec. 6-4.4 Building regulations prohibition of lead pipes, solder, and flux.~~¹⁶²

~~Any pipe, solders or flux used in the installation or repair of any residential or non-residential facility which is connected to the public water supply system shall be lead free.~~

~~For purposes of this section, lead free shall mean:~~

- ~~(1) Solders and flux—not more than 0.2 percent lead; and~~
- ~~(2) Pipe and pipe fittings—not more than eight percent lead.~~

~~(Code 1990, § 6-4.4; Ord. No. 1842, § 1)~~

ARTICLE II. SIGNS

~~Sec. 6-11 Prohibited.~~¹⁶³

~~All persons are hereby prohibited from erecting, placing or maintaining any sign or device for advertising extending over and into any street, avenue or alley in the city from an adjacent building, structure or support, or on a pole, or on the street itself, on the surface of or above the surface of such street, avenue or alley, except as permitted in the following sections.~~

~~(Code 1970, § 12-201; Code 1990, § 6-11)~~

~~Sec. 6-12 Erection permit required.~~

~~It shall be unlawful for any person to construct or erect or attach to any building in the city any sign or like structure over the sidewalks thereof, without having first obtained permission, in writing, from the city manager to do so.~~

~~(Code 1970, § 12-202; Code 1990, § 6-12)~~

~~Sec. 6-13 Construction and maintenance.~~

~~No sign or like structure shall be constructed, erected or maintained over the sidewalks of the city other than in a suitable and safe manner; and all such signs or like structures shall be constructed and erected and maintained in a manner that will not endanger or be detrimental to the public welfare.~~

~~(Code 1970, § 12-203; Code 1990, § 6-13)~~

~~Sec. 6-14 Erection in business, industrial and commercial districts.~~

~~Under the provisions of this article, signs may be erected in the districts where permitted by chapter 28, as follows:~~

- ~~(1) Signs and advertising devices extending over and into any street, avenue or alley not more than six inches may be placed and maintained at any height above six feet.~~
- ~~(2) Those extending over and into any street, avenue or alley in the city more than six inches and not more than 18 inches may be erected, placed and maintained with the lowest part~~

¹⁶² Legal or Editorial Change: Code 1990, § 6-4.4 Building Regulations Prohibition of Lead Pipes, Solder, and Flux. Deleted as superseded by the plumbing code.

¹⁶³ Legal or Editorial Change: Code 1990, §§ 6-11--6-14. Signs. Deleted as superseded by Zoning Ord. § 28.

~~thereof not less than eight feet above the average grade of the street, avenue or alley beneath.~~

~~(3) Those extending over and into any street, avenue or alley more than 18 inches and not more than eight feet may be erected, placed and maintained with the lowest part thereof not less than 12 feet above the average grade of the street, avenue or alley beneath.~~

~~(4) Signs extending over and into any street, avenue or alley more than eight feet may be placed with the lowest point thereof not less than 12 feet above the average grade of the street, avenue or alley beneath only after first obtaining consent of the city manager and council.~~

(Code 1970, § 12-204; Code 1990, § 6-14; Ord. No. 1216, § 3)

Secs. 103-21–103-43. Reserved.

ARTICLE III. ELECTRICAL CODE*

*State law reference—State Electrical Act, R.R.S. 1943, § 81-2101 et seq.

Sec. 103-44. Definitions.

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them:

Electric apparatus means all wires, wiring, materials, machinery, appliances, equipment, fixtures and apparatus used or designed to be used in the utilization of electricity when connected with a source of electromotive force for the purpose of producing light, heat or power.

Electrician means the person licensed under the provisions of this chapter to install electric apparatus.

Install, installed or installation means the construction and placing in position for service and use of any new electric apparatus, and the alteration, modification or repair of existing apparatus.

(Code 1990, § 6-21; Ord. No. 1414, § 1)

Sec. 103-45. Adopted by reference.¹⁶⁴

~~The 1996 edition of the National Electrical Code (NFPA No. 70-1975), standard of the National Board of Fire Underwriters, as recommended by the National Fire Protection Association, and approved by the American Standards Association, is hereby adopted as the minimum standard for the installation of all electrical apparatus, wiring, devices and equipment within the city, except as otherwise specifically provided in this article, and the same is hereby made a part of this article as fully and to the same extent as if copied herein in full. At least one copy of such Code shall be kept on file for public inspection in the office of the city clerk. The edition of the National Electrical Code promulgated by the state pursuant to R.R.S. 1943, § 81-2104 is hereby adopted. Enforcement of a new edition of the National Electrical Code promulgated by the state shall commence upon adoption of a resolution so stating.~~

(Code 1990, § 6-22; Ord. No. 1943, § 8; Ord. No. 2058, § 4)

State law reference—Authority to adopt technical code by reference, R.R.S. 1943, §§ 18-132, 19-922.

¹⁶⁴ Legal or Editorial Change: Code 1990, § 6-22 Electric Code--Adoption. Revised to adopt the state edition.

Sec. 6-23 Same--Subsequent editions.¹⁶⁵

~~Subsequent editions or revisions of the electrical code adopted by the provisions of this article shall be considered adopted and of full force and effect within the city upon the approval thereof by resolution of the council and the filing of a copy thereof in the office of the city clerk.~~

~~(Code 1990, § 6-23; Ord. No. 1943, § 9)~~

Sec. 103-46. Standards for installation.

All electric heat, light and power wires, fixtures, appliances, conductors, apparatus and their supports placed or installed in or upon any building or other structure in the city shall be in strict conformity with approved standards of construction for safety to life and property and in accordance with the provisions of this article; provided, that materials for wiring, appliances and equipment shall conform to the standards of the Underwriters Laboratories, Inc., and shall be prima facie evidence that the same comply with the provisions of this article.

(Code 1990, § 6-24; Ord. No. 1414, § 2)

Sec. 6-25 Same--Extraterritorial application.¹⁶⁶

~~The provisions of the Electrical Code adopted by the provisions of this article shall apply and be enforced in the unincorporated area two miles beyond and adjacent to the corporate boundaries of this city with the same force and effect as if such outlying area were within the corporate boundaries of this city; except such provisions shall apply only to buildings on locations served by the city electrical system; and provided no such provisions shall be extended or applied so as to prohibit, prevent or interfere with the conduct of existing farming, livestock operations, business or industry.~~

~~(Code 1990, § 6-25; Ord. No. 1414, § 2)~~

Sec. 103-47. Variations.

Whenever in the opinion of the electrical inspector, a variation from the electrical code adopted by this article is consistent with public safety, a special permit in writing may be issued by him, permitting such variation, and prescribing specifically the method of installation that shall be followed.

(Code 1990, § 6-26; Ord. No. 1414, § 2)

Sec. 103-48. City building official to enforce article.

It is hereby made the duty and responsibility of the city building official to enforce or direct and supervise the enforcement of this article and keep accurate records thereof.

(Code 1990, § 6-27; Ord. No. 1414, § 3)

Sec. 103-49. Permits--Required.

No person shall install any electrical apparatus within the city without first obtaining a permit therefor from the electrical inspector except for minor repair work, such as repairing flash and snap switches, replacing fuses, changing lamp sockets and receptacles, taping bare joints and

¹⁶⁵ Legal or Editorial Change: Code 1990, § 6-23 Same--Subsequent Editions. Deleted as inconsistent with R.R.S. 1943, §§ 18-132, 19-922 and not needed in light of revisions to Code § 6-22.

¹⁶⁶ Legal or Editorial Change: Code 1990, § 6-25 Same--Extraterritorial Application. Deleted as covered by R.R.S. 1943, § 19-922.

repairing drop cords. Fees for electrical inspection permits shall be assessed as provided in section 103-20.

(Code 1990, § 6-28; Ord. No. 1414, § 3; Ord. No. 2058, § 5)

Sec. 103-50. Same--Applications.

All applications for permits required by this article shall be made on forms supplied by the city. An initial plan of the work shall be filed with the permit. If the initial plan of electrical work to be done under a permit complies in all respects with the provisions of this article, the electrical inspector shall issue a permit for the installation thereof.

(Code 1990, § 6-29; Ord. No. 1414, § 3)

Sec. 103-51. Electrician's license--When required.

No permit required by this article shall be issued unless the person intending to do the installation shall possess the proper class of electrician license issued by the state under the authority of the State Electrical Act (R.R.S. 1943, § 81-2101 et seq.) for the class of electrical work planned to be done, except as noted in section 103-52.

(Code 1990, § 6-30; Ord. No. 1414, § 3)

Sec. 103-52. Same--Exceptions.

The following acts, work and conduct shall be expressly permitted without being performed by a licensed electrician:

- (1) Electrical work done by persons engaged by any public service company in the construction and maintenance of their public utility system.
- (2) Electrical work done by any factory maintaining a competent electrical department making electrical installations upon their own premises.
- (3) A permit is required, but a license is not for any owner of residential property who performs work upon premises that he owns and in which he resides.

(Code 1990, § 6-31; Ord. No. 1414, § 3)

Sec. 103-53. Inspections required when installation requires permit.

No electric apparatus for the installation of which a permit is required by the provisions of this article shall be used until the same has been inspected and approved by the electrical inspector.

(Code 1990, § 6-32; Ord. No. 1414, § 3)

Sec. 103-54. Responsibility of electrician to timely inform inspector prior to concealing work.

It shall be the duty of the electrician installing any electrical apparatus under the provisions of this article to notify the electrical inspector of all electrical apparatus to be concealed in sufficient time for inspection of the same; and no electrical apparatus shall be concealed until inspected and approved by the inspector.

(Code 1990, § 6-34; Ord. No. 1414, § 3)

Secs. 103-55--103-81. Reserved.

ARTICLE IV. PROPERTY MAINTENANCE CODE

Sec. 103-82. Adopted by reference.¹⁶⁷

A certain document, a copy of which is on file in the office of the city clerk, being marked and designated as International Property Maintenance Code, ~~2003-2009~~ edition, is hereby adopted in its entirety as a code to provide certain minimum standards, provisions and requirements for safe and stable design, construction, uses of materials, and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said property maintenance code on file in the office of the city clerk are hereby referred to, adopted, and made a part hereof, as if fully set out in this article, with the additions, insertions, deletions and changes, if any, prescribed in section 103-83.

(Code 1990, § 6-3)

State law reference—Authority to adopt technical code by reference, R.R.S. 1943, §§ 18-132, 19-922.

Sec. 103-83. Revisions.

The following sections are hereby revised:

Section 101.1. "Name of Jurisdiction" is within the corporate limits of the City of Lexington, Nebraska.

Section 103.5. The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as follows:

- A. No fee shall be charged for an initial inspection.
- B. If a building or other structure is not repaired within the period of time as specified in the initial notice of violation, an inspection fee of \$300.00 shall be charged for the second inspection, which charge shall be either assessed against the property as a special assessment, or collected from the owner of the property.
- C. If a building or other structure is not repaired within the time as required in a second or subsequent notice of violation, an inspection fee of \$300.00 shall be charged for the third or each subsequent inspection, which charge shall be either assessed against the property as a special assessment, or collected from the owner of the property.
- D. This schedule of fees may be amended from time to time by resolution of the Lexington City Council.

Section 111.1. The "board of appeals" shall refer to the Board of Adjustment.

Section 111.2 through 111.2.5. Are hereby deleted.

Section 304.14. The effective dates shall be May 1 to October 1.

Section 602.3. The effective dates shall be October 1 to May 1.

¹⁶⁷ Legal or Editorial Change: Code 1990, § 6-3. International Property Maintenance Code. So as to be consistent with the state building code (see R.R.S. 1943, § 71-6403), altered to adopt the 2009 International Property Maintenance Code.

Section 602.4. The effective dates shall be October 1 to May 1.

(Code 1990, § 6-3.1)

Sec. 103-84. When inspections for compliance with code required.

To ensure compliance with the International Property Maintenance Code, an inspection for compliance shall be upon the occurrence of any of the following:

- (1) Upon complaint and request for inspection by one or more of the legal occupants of said unit, law enforcement, health and human services representative, or a representative of the city housing authority;
- (2) Whenever the code official has reasonable cause to believe that a violation of the International Property Code exists.

(Code 1990, § 6-3.2)

~~Sec. 6-3.3. Subsequent editions of the International Property Maintenance Code.~~¹⁶⁸

~~Subsequent Editions or revisions of the International Property Maintenance Code 2003 shall be considered adopted and in full force and effect within the city upon the approval thereof by resolution of the council and the filing of at least one copy thereof in the office of the city clerk.~~

~~(Code 1990, § 6-3.3)~~

~~Sec. 6-3.4 Extraterritorial application; property maintenance code.~~¹⁶⁹

~~The provisions of the International Property Maintenance Code shall apply and be enforced to such part of the unincorporated area two miles beyond and adjacent to the corporate boundaries of this city as has been the subject of a subdivision or special use permit approved pursuant to chapters 24A and 25, with the same force and effect as if such outlying area were within the corporate boundaries of this city.~~

~~(Code 1990, § 6-3.4)~~

¹⁶⁸ Legal or Editorial Change: Code 1990, § 6-3.3. Subsequent Editions of the International Property Maintenance Code. Deleted as inconsistent with R.R.S. 1943, §§ 18-132, 19-922.

¹⁶⁹ Legal or Editorial Change: Code 1990, § 6-3.4 Extraterritorial Application; International Property Maintenance Code. Deleted as covered by R.R.S. 1943, § 19-922.

Chapter 104
RESERVED

PROOFS

Chapter 105

FLOODPLAIN ZONING*

*State law reference—Floodplain management, R.R.S. 1943, § 31-1001 et seq.

ARTICLE I. IN GENERAL**Sec. 105-1. Definitions.**

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application:

Appeal means a request for a review of the chief building inspector's interpretation of any provision of this chapter or a request for a variance.

Area of shallow flooding means a designated AO or AH zone on a community's flood insurance rate map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base flood means the flood having one percent chance of being equaled or exceeded in any given year.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Development means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Existing construction, for the purposes of determining rates, means structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRM's effective before that date. Existing construction may also be referred to as existing structures.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The usual and rapid accumulation of runoff or surface waters from any source.

Flood fringe means that area of the floodplain, outside of the floodway, that on the average is likely to be flooded once every 100 years (i.e., that has a one percent chance of flood occurrence in any one year).

Flood insurance rate map (FIRM) means an official map of a community, on which the flood insurance study has delineated the flood hazard boundaries and the zones establishing insurance rates applicable to the community.

Flood insurance study is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the flood boundary floodway map and the water surface elevation of the base flood.

Floodplain means any land area susceptible to being inundated by water from any source. See *Flood* or *flooding*.

Floodway or *regulatory floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings and the hydrological effect of urbanization of the watershed.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

Manufactured home.

- (1) The term "manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities.
- (2) The term "manufactured home" does not include a recreational vehicle.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New construction, for floodplain management purposes, means structures for which the start of construction commenced on or after the effective date of the floodplain management regulation adopted by the city and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the city.

Overlay district is a district in which additional requirements act in conjunction with the underlying zoning districts. The original zoning district designation does not change.

Principally above ground means that at least 51 percent of the actual cash value of the structure is above ground.

Recreational vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use.

Special flood hazard area means the land in the floodplain within a community subject to one percent or greater chance of flooding in any given year.

Start of construction, for other than new construction or substantial improvements under the coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The term "actual start" means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. The term "permanent construction" does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the term "actual start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

Structure means a walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement.

- (1) The term "substantial improvement" means any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before start of construction of the improvement. This includes structures which have incurred substantial damage, regardless of the actual repair work performed.

(2) The term "substantial improvement" does not include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or
- b. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance means a grant of relief to a person from the requirements of this chapter which permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

Violation means a failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

(Ord. No. 2294, § 1(28A-1.1), 4-12-2011)

State law reference—Similar provisions, R.R.S. 1943, §§ 31-1002--31-1016.

Sec. 105-2. Penalty.¹⁷⁰

Violation of the provisions of this chapter or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with grants of variances or special exceptions, shall constitute a misdemeanor. ~~Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.~~

~~Nothing herein contained shall prevent the city or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.~~

(Ord. No. 2294, § 1(28A-10.1), 4-12-2011)

Sec. 105-3. Authorization.

The legislature of the state has delegated the responsibility to local governmental units to adopt zoning regulations designed to protect the public health, safety and general welfare. The legislature, in R.R.S. 1943, ch. 31, art. 10 (R.R.S. 1943, § 31-1001 et seq.) has further assigned the responsibility to adopt, administer and enforce floodplain management regulations to the county, city or village with zoning jurisdiction over the floodprone area. Therefore, the city council ordains the provisions of as provided in this chapter.

(Ord. No. 2294, § 1(28A-1.2), 4-12-2011)

Sec. 105-4. Flood losses resulting from periodic inundation.

The flood hazard areas of the city, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare.

(Ord. No. 2294, § 1(28A-1.3), 4-12-2011)

Sec. 105-5. General causes of flood losses.

These flood losses are caused by:

¹⁷⁰ Legal or Editorial Change: Ord. No. 2294, § 1(28A-10.1). Penalty. Deleted all but first sentence as covered by Code chapter 1.

- (1) The cumulative effect of obstructions in floodplains causing increases in flood heights and velocities;
- (2) The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, which are inadequately elevated or otherwise unprotected from flood damage.

(Ord. No. 2294, § 1(28A-1.4), 4-12-2011)

Sec. 105-6. Methods used to analyze flood hazards.

This chapter uses a reasonable method of analyzing flood hazards which consists of a series of interrelated steps.

- (1) Selection of a regulatory flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood is selected for this chapter. It is representative of large floods which are reasonably characteristic of what can be expected to occur on the particular streams subject to this chapter. It is in the general order of a flood which could be expected to have a one percent chance of occurrence in any one year, as delineated on the Federal Insurance Administration's flood insurance study, and illustrative materials dated May 3, 2011, as amended.
- (2) Calculation of water surface profiles based on a hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the base flood.
- (3) Computation of the floodway required to convey this flood without increasing flood heights more than one-foot at any point.
- (4) Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any water surface increase along the floodway profile.
- (5) Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but which is still subject to inundation by the base flood.

(Ord. No. 2294, § 1(28A-1.5), 4-12-2011)

Sec. 105-7. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize those losses described in section 105-4 by applying the provisions of this chapter to:

- (1) Restrict or prohibit uses which are dangerous to health, safety or property in times of flooding or cause undue increases in flood heights or velocities.
- (2) Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.
- (3) Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.
- (4) Ensure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

(Ord. No. 2294, § 1(28A-1.6), 4-12-2011)

Sec. 105-8. Lands to which chapter applies.

This chapter shall apply to all lands within the zoning jurisdiction of the city identified on the flood insurance rate map (FIRM) dated May 3, 2011, as numbered and unnumbered A zones (including AE, AO and AH zones) and within the FW and FF districts established in section 105-68. In all areas covered by this chapter no development shall be permitted except upon the issuance of a floodplain permit to develop, granted by the city manager or his duly designated

representative under such safeguards and restrictions as the city manager or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in article III of this chapter sections 5.0, 6.0 and 7.0.

(Ord. No. 2294, § 1(28A-2.1), 4-12-2011)

Sec. 105-9. Compliance.

Within identified special flood hazard areas of this community, no development shall be located, extended, converted or structurally altered without full compliance with the terms of this chapter and other applicable regulations.

(Ord. No. 2294, § 1(28A-2.4), 4-12-2011)

Sec. 105-10. Abrogation and greater restrictions.

It is not intended by this chapter to repeal, abrogate or impair any existent easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provision of this chapter shall prevail. All other ordinances inconsistent with this chapter are hereby repealed to the extent of the inconsistency only.

(Ord. No. 2294, § 1(28A-2.5), 4-12-2011)

Sec. 105-11. Interpretation.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the city council and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

(Ord. No. 2294, § 1(28A-2.6), 4-12-2011)

Sec. 105-12. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply that areas outside floodway and flood fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damage. This chapter shall not create liability on the part of the city or any officer or employee thereof for any flood damages that may result from reliance on this chapter or any administrative decision lawfully made thereunder.

(Ord. No. 2294, § 1(28A-2.7), 4-12-2011)

~~Sec. 28A-2.8 Severability.~~¹⁷¹

~~If any section, clause, provision or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.~~

~~(Ord. No. 2294, § 1(28A-2.8), 4-12-2011)~~

¹⁷¹ Legal or Editorial Change: Ord. No. 2294, § 1(28A-2.8). Severability. Deleted as covered by Code chapter 1.

Secs. 105-13--105-42. Reserved.**ARTICLE II. ADMINISTRATION AND ENFORCEMENT****Sec. 105-43. City manager to administer; duties.**

The city manager is hereby appointed to administer and implement the provisions of this chapter. Duties of the city manager shall include, but not be limited to:

- (1) Review all development permit applications to ensure that sites are reasonably safe from flooding and that the permit requirements of this chapter have been satisfied.
- (2) Review applications for proposed development to ensure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
- (3) Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding.
- (4) Notify adjacent communities and the state department of natural resources prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (5) Ensure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- (6) Verify, record and maintain record of the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures in special flood hazard areas.
- (7) Verify, record and maintain record of the actual elevation (in relation to mean sea level) to which new or substantially improved structures have been floodproofed.
- (8) When floodproofing is utilized for a particular structure the city manager shall be presented certification from a registered professional engineer or architect.

(Ord. No. 2294, § 1(28A-2.2, 28A-3.2), 4-12-2011)

Sec. 105-44. Amendments.

The regulations, restrictions and boundaries set forth in this chapter may from time to time be amended, supplemented, changed or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973; provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the city. At least 30 days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the Federal Emergency Management Agency. The regulations of this chapter are in compliance with the National Flood Insurance Program regulations as published in title 44 of the Code of Federal Regulations and R.R.S. 1943, ch. 31, art. 10 (R.R.S. 1943, § 31-1001 et seq.).

(Ord. No. 2294, § 1(28A-11.1), 4-12-2011)

Sec. 105-45. Appeals and variances.

(a) *Request procedure.* Where a request for a permit to develop or a variance is denied by the enforcement officer the applicant may apply for such permit or variance directly to the board of adjustment.

(b) *Board of adjustment.*

- (1) The board of adjustment shall hear and decide appeals and requests for variances from the requirements of this chapter.
- (2) The board of adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made by the city manager in the enforcement or administration of this chapter.
- (3) Any person aggrieved by the decision of the board of adjustment or any taxpayer may appeal such decision to the district court as provided in R.R.S. 1943, § 19-912.
- (4) In passing upon such applications, the board of adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of this chapter, and the following:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles:
 1. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 2. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(c) *Conditions for variances.*

- (1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in subsections (c)(2) through (c)(6) of this section ~~sections 8.52-8.56~~ have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (2) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (3) Variances shall not be issued within any designated floodway if any increase in flood levels along the floodway profile during the base flood discharge would result.
- (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- (5) Variances shall only be issued upon:
- a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (6) The applicant shall be given a written notice over the signature of a community official that:
- a. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and
 - b. Such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions as required by this chapter.

(Ord. No. 2294, § 1(28A-2.9, 28A-8.1, 28A-8.2), 4-12-2011)

Sec. 105-46. Permit.

(a) *Required.* No person, firm or corporation shall initiate any floodplain development or substantial improvement or cause the same to be done without first obtaining a separate permit for development.

(b) *Application.* To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every such application shall:

- (1) Identify and describe the development to be covered by the floodplain development permit.
- (2) Describe the land on which the proposed development is to be done by lot, block, tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or development.
- (3) Indicate the use or occupancy for which the proposed development is intended.
- (4) Be accompanied by plans and specifications for proposed construction.
- (5) Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.
- (6) Give such other information as reasonably may be required by the city manager.

(Ord. No. 2294, § 1(28A-3.1, 28A-3.3), 4-12-2011)

Sec. 105-47. Nonconforming uses.

(a) A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance from which this chapter is derived, but which is not in conformity with the provisions of this chapter may be continued subject to the following conditions:

- (1) If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this chapter. The utility department shall notify the city manager in writing of instances of nonconforming uses where utility services have been discontinued for a period of 12 months.

- (2) Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.

(b) If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred, except that if it is reconstructed in conformity with the provisions of this chapter. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building or safety codes, or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places, provided that the alteration shall not preclude its continued designation.

(Ord. No. 2294, § 1(28A-9.1), 4-12-2011)

Secs. 105-48–105-67. Reserved.

ARTICLE III. ZONING DISTRICTS ESTABLISHED

Sec. 105-68. Floodplain districts enumerated.

Along watercourses where a floodway has been established, the mapped floodplain areas are hereby divided into the two following districts: the FW Floodway Overlay District and the FF Flood Fringe Overlay District as identified in the flood insurance study and accompanying maps. Within these districts all uses not meeting the standards of this chapter and those standards of the underlying zoning district shall be prohibited.

(Ord. No. 2294, § 1(28A-4.1), 4-12-2011)

Sec. 105-69. Rules for interpretation of district boundaries.

The boundaries of the Floodway Overlay District and the Flood Fringe Overlay District shall be determined by scaling distances on the official zoning map or on the flood insurance rate map or floodway map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the enforcement officer shall make the necessary interpretation. In such cases where the interpretation is contested, the board of adjustment will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the board of adjustment and to submit his own technical evidence, if he so desires.

(Ord. No. 2294, § 1(28A-2.3), 4-12-2011)

Secs. 105-70–105-96. Reserved.

ARTICLE IV. STANDARDS FOR FLOODPLAIN DEVELOPMENT

DIVISION 1. GENERALLY

Sec. 105-97. Permits granted; conditions.

(a) No permit for development shall be granted for new construction, substantial improvements and other developments including the placement of manufactured homes within all numbered and unnumbered A zones (including AE, AO, and AH zones) unless the conditions of this section are satisfied.

(b) All areas identified as unnumbered A zones on the FIRM are subject to inundation of the base flood; however, the water surface elevation was not provided. The unnumbered A zones shall be subject to all development provisions of division 2 of this article ~~VI of this chapter~~. If flood

insurance study data is not available, the community shall utilize any base flood elevation or floodway data currently available from federal, state or other sources.

(c) Until a floodway has been designated, no development or substantial improvement may be permitted within special flood hazard areas unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the base flood more than one foot at any location as shown on the flood insurance study.

(d) New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:

- (1) Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (2) New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters, and on-site waste disposal systems be located so as to avoid impairment or contamination.
- (3) Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (4) All utility and sanitary facilities be elevated or floodproofed up to the regulatory flood protection elevation.

(e) Storage of material and equipment. The storage or processing of materials that are in time of flooding buoyant, flammable, explosive or could be injurious to human, animal or plant life is prohibited. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

(f) Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, are required to ensure that:

- (1) All such proposals are consistent with the need to minimize flood damage;
- (2) All public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage;
- (3) Adequate drainage is provided so as to reduce exposure to flood hazards; and
- (4) Proposals for development (including proposals for manufactured home parks and subdivision) of five acres or 50 lots, whichever is the lesser, include within such proposals the base flood elevation.

(Ord. No. 2294, § 1(28A-5.1), 4-12-2011)

Secs. 105-98–105-122. Reserved.

DIVISION 2. FLOOD FRINGE OVERLAY DISTRICT

Sec. 105-123. Permitted uses.

Any use permitted in this article ~~VII~~ shall be permitted in the Flood Fringe Overlay District. No use shall be permitted in the district unless the standards of section 105-97 are met.

(Ord. No. 2294, § 1(28A-6.1), 4-12-2011)

Sec. 105-124. Standards for district.

In the Flood Fringe Overlay District, the following are required:

- (1) New construction or substantial improvements of residential structures shall have the lowest floor, including basement, elevated to or above one foot above the base flood elevation or, together with attendant utility and sanitary facilities, shall be floodproofed so that below that level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. The floodproofed design level shall be an elevation one foot above the level of the base flood where the difference between the base flood and the 500-year flood is three feet or less and two feet above the level of the base flood where the difference is greater than three feet. The top of the floor of any basement area shall be no lower than five feet below the elevation of the base flood. The area surrounding the structure on all sides shall be filled to or above the elevation of the base flood, compacted with slopes protected by vegetative cover. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the city manager as set forth in section 105-43(7).
- (2) New construction or substantial improvements of nonresidential structures shall have the lowest floor, including basement, elevated to or above one foot above the base flood elevation or, together with attendant utility and sanitary facilities, shall be floodproofed so that below that level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the city manager as set forth in section 105-43(7).
- (3) All new construction and substantial improvements that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b. The bottom of all openings shall be not higher than one foot above grade.
 - c. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- (4) Within AH zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.
- (5) All manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Manufactured homes must be anchored in accordance with local building codes or FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements or their equivalent, shall be met:
 - a. Over-the-top ties shall be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side;

- b. Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side;
 - c. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds; and
 - d. Any additions to the manufactured home shall be similarly anchored.
- (6) All manufactured homes shall be placed or substantially improved within special flood hazard areas on the community's FIRM on sites:
- a. Outside of a manufactured home park or subdivision;
 - b. In a new manufactured home park or subdivision;
 - c. In an expansion to an existing manufactured home park or subdivision; or
 - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above one foot above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection (5)a of this section.
- (7) Manufactured homes shall be placed or substantially improved on sites in an existing manufactured home park or subdivision within special flood hazard areas on the community's FIRM that are not subject to the provisions of subsection (5)b of this section 6.25(b) and shall be elevated so that either:
- a. The lowest floor of the manufactured home is at or above one foot above the base flood elevation; or
 - b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection (5)a of this section-6.25(a).
- (8) Recreational vehicles placed on sites within the special flood hazard areas on the community's official map shall either:
- a. Be on the site for fewer than 180 consecutive days;
 - b. Be fully licensed and ready for highway use; or
 - c. Meet the permit requirements and the elevation and anchoring requirements for manufactured homes of this chapter.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

(Ord. No. 2294, § 1(28A-6.2), 4-12-2011)

Secs. 105-125--105-146. Reserved.

DIVISION 3. FLOODWAY OVERLAY DISTRICT

Sec. 105-147. Permitted uses.

Only uses having a low flood damage potential and not obstructing flood flows shall be permitted within the Floodway Overlay District to the extent that they are not prohibited by any other ordinance. The following are recommended uses for the Floodway Overlay District:

- (1) Agricultural uses such as general farming, pasture, nurseries, forestry.
- (2) Residential uses such as lawns, gardens, parking and play areas.
- (3) Nonresidential areas such as loading areas, parking and airport landing strips.
- (4) Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

(Ord. No. 2294, § 1(28A-7.1), 4-12-2011)

Sec. 105-148. Standards for the district.

New structures for human habitation are prohibited. All encroachments, including fill, new construction, substantial improvements and other development must be prohibited unless certification by a registered professional engineer or architect is provided demonstrating that the development shall not result in any increase in water surface elevations along the floodway profile during occurrence of the base flood discharge. These uses are subject to the standards of this article V and VI of this chapter. In zone A unnumbered, obtain, review and reasonably utilize any flood elevation and floodway data available through federal, state or other sources or section 105-97(f)(4), in meeting the standards of this section.

(Ord. No. 2294, § 1(28A-7.2), 4-12-2011)

PROOFS

Chapter 106
RESERVED

PROOFS

Chapter 107

MISCELLANEOUS PROVISIONS

ARTICLE I. IN GENERAL

Secs. 107-1--107-18. Reserved.

ARTICLE II. MOVING OF BUILDINGS*

***State law reference**—Authority to regulate and prevent the moving of buildings through or upon city streets, R.R.S. 1943, § 16-210.

DIVISION 1. GENERALLY

Sec. 107-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building.

- (1) The term "building" means a structure designed, built or occupied as a shelter or roofed enclosure for persons, animals or property and used for residential, business, mercantile, storage, commercial, industrial, institutional, assembly, educational or recreational purposes.
- (2) The term "building" does not mean a structure which, when loaded, does not violate any width, height, length or weight restrictions for movement upon the public highways of the state ~~shall not fall within this definition.~~

(Code 1990, § 6-15; Code 1990, § 6-15; Ord. No. 1736, § 1)

Sec. 107-20. Enforcement.

(a) *Enforcing officers.* The building inspector, police department and city manager shall enforce and carry out the requirements of this article.

(b) *Permittee liable for expense above deposit.* The permittee shall be liable for any expense, damages or costs in excess of deposited amounts or securities, and the city attorney shall prosecute an action against the permittee in a court of competent jurisdiction for the recovery of such excessive amounts.

(c) *Premises left unsafe.* The city shall proceed to do the work necessary to leave the original premises in a safe and sanitary condition, where the permittee does not comply with the requirements of this article, and the cost thereof shall be charged against the general deposit.

(Code 1990, § 6-18.4; Ord. No. 1736, § 8)

Sec. 107-21. Duties of building inspector.

(a) *Inspection.* The building inspector shall inspect the building and the applicant's equipment to determine whether the standards for issuance of a moving permit are met.

(b) *Standards for issuance.* No moving permit shall be issued unless the building inspector shall make the following affirmative findings that:

- (1) Any required fee or deposit requirement has been paid;
- (2) The building is of a size to move without endangering persons or property within the city;

- (3) If the intended destination of the building is within the city, the building and new foundation are structurally sound and in compliance with building code, electrical, plumbing and mechanical codes for new construction, and the property maintenance code;
- (4) The applicant's equipment is unsafe and that persons or property would not be endangered by its use;
- (5) If the intended destination of the building is within the city, that the building complies with all zoning or other ordinances;
- (6) For any other reason, persons or property in the city would not be endangered by the moving of the building.

(c) *Estimate of expense to city.* The building inspector shall procure from the city street department and city utilities department an estimate of the expense that will be incurred in removing and replacing any electric wires, streetlamps or pole lines belonging to the city or any other property of the city, the removal and replacement of which will be required by reason of the moving of the building through the city, together with the cost of materials necessary to be used in making such removals and replacements. Prior to issuance of the permit the building inspector shall require of the applicant a deposit of a sum of money equal to the amount of the estimated expense or \$500.00, whichever is greater.

(d) *Notice to businesses and persons affected.* When the building inspector shall determine that the moving of a building shall interfere with any gas mains, telephone or telegraph poles or wires, cable TV wires or equipment, or other public or private facilities, said building inspector shall give notice to the person, business or franchise owning such facilities of the provisions of any proposed moving permit.

(e) *Designate streets for removal.* The building inspector shall procure from the public streets and utilities departments a list of designated streets over which the building may be moved. The building inspector shall have the list approved by the chief of police and shall reproduce the list upon the permit in writing. In making their determinations the street department and utilities department and chief of police shall act to ensure maximum safety to persons and property in the city and to minimize congestion and traffic hazards on public streets.

(Code 1990, § 6-18; Ord. No. 1736, § 4)

Sec. 107-22. Duties of permit holder.

Every permittee under this article shall:

- (1) *Use designated streets.* Move a building only over streets designated for such use in the written permit.
- (2) *Notification of revised moving time.* Notify the building inspector in writing of a desired change in moving date and hours as proposed in the application.
- (3) *Notification of damage.* Notify the building inspector in writing of any and all damage done to property belonging to the city within 24 hours after the damage or injury has occurred.
- (4) *Display lights.* Cause red lights to be displayed during the nighttime on every side of the building, while standing on a street, in such manner as to warn the public of the obstruction, and shall at all times erect and maintain barricades across the streets in such manner as to protect the public from damage or injury by reason of the removal of the building.

- (5) *Comply with governing law.* Comply with the building code, the fire code, the zoning ordinances and all other applicable ordinances and laws upon relocating the building in the city.
- (6) *Pay expense of officer.* Pay the expense of a traffic officer ordered by the city to accompany the movement of the building to protect the public from injury.
- (7) *Clear old premises.* Remove all rubbish and materials and fill all excavations to existing grade at the original building site so that the premises are left in a safe and sanitary condition.
- (8) *Remove service connections.* See that the sewer line is properly plugged, the water shut off, electricity disconnected and all meters returned to the city office. Permittee shall notify the gas and cable TV companies to remove their services.

(Code 1990, § 6-18.3; Ord. No. 1736, § 7)

Sec. 107-23. General license or permit not to be issued.

There shall be no license issued or general permit given to anyone to move buildings at will or generally within the city.

(Code 1970, § 10-603; Code 1990, § 6-19)

Secs. 107-24--107-49. Reserved.

DIVISION 2. PERMIT

Sec. 107-50. Required.

No person shall move any building over, along or across any highway, street or alley within the corporate limits of the city without first obtaining:

- (1) A moving permit from the city building department for moving of the building;
- (2) A building permit from the city building department for the move-related construction; and
- (3) A special use permit for location of the building within the city.

(Code 1990, § 6-16; Ord. No. 1736, § 2)

Sec. 107-51. Application.

A person seeking issuance of a moving permit hereunder shall file an application for such permit with the city building inspector as follows:

- (1) *Form.* The application shall be made in writing, upon forms provided by the building inspector or otherwise, and shall be filed in the office of the building inspector.
- (2) *Contents.* The application shall set forth:
 - a. A description of the building proposed to be moved, giving street number, construction materials, dimensions, number of rooms and condition of exterior and interior;
 - b. A legal description of the lot from which the building is to be moved, giving the lot, block and tract number, if located in the city;
 - c. A legal description of the lot to which it is proposed such building is to be moved, giving lot, block and tract number, if located in the city;
 - d. The portion of the lot to be occupied by the building when moved;

- e. The highways, streets and alleys over, along or across which the building is proposed to be moved;
- f. Proposed moving date and hours;
- g. Any additional information which the building inspector shall find necessary to a fair determination of whether a permit should issue.

(3) *Accompanying papers.*

- a. *Tax certificate.* The owner of the building to be moved shall file with the application sufficient evidence that the building and lot from which it is to be removed are free of liens and that all taxes and any city assessments or utility charges against the same are paid in full.
- b. *Certificate of ownership or entitlement.* The applicant shall file with the application a written statement or bill of sale signed by the owner, or other sufficient evidence, that he is entitled to move the building.
- c. *Proof of liability insurance.* Proof of liability insurance is to be provided by the moving contractor, in the amount of at least \$1,000,000.00.

(4) *Fee.* The application shall be accompanied by a permit fee in the amount set by resolution of the city council.

(Code 1990, § 6-17; Ord. No. 2149)

Sec. 107-52. Damage deposits.

An application hereunder shall be accompanied by a cash deposit in the sum of \$5,000.00 as an indemnity for any damage which the city may sustain by reason of damage or injury to any highway, street or alley, sidewalk, fire hydrant or other property of the city, which may be caused by or be incidental to the removal of any building over, along or across any street in the city and to indemnify the city against any claim of damages to persons or private property, and to satisfy any claims by private individuals arising out of, caused by or incidental to the moving of any building over, along or across any street in the city. This damage deposit shall be in addition to the permit fee and deposit for expense to city.

- (1) *Bond in lieu of deposit.* Any person filing an application hereunder may, in lieu of the general cash deposit required ~~above~~ in this section, file with the building inspector a bond, approved as to form by the city attorney, executed by a bonding or surety company authorized to do business in the state, in the amount of \$5,000.00, conditioned upon the assurance that this and other applicable ordinances and laws will be complied with. Such bond shall run to the city for the use and benefit of any persons intended to be protected thereby and shall be conditioned on the payment of any damage to public or private property and the payment of any damages or losses resulting from any malfeasance, misfeasance or nonfeasance, or negligence in connection with any of the activities or conditions upon which the permit applied for is granted.
- (2) *Insurance policy in lieu of deposit.* Any person filing an application hereunder may, in lieu of the general cash deposit required in this section, file with the building inspector a liability insurance policy, issued by an insurance company authorized to do business in the state, and approved as to form by the city attorney, in the same amount and providing the same protection as would be required for bond hereunder.

(Code 1990, § 6-18.1; Ord. No. 1736, § 5)

Sec. 107-53. Fees and deposits.

(a) *Deposit.* The building inspector shall deposit all fees and deposits, and all bonds or insurance policies with the city clerk.

(b) *Return upon nonissuance.* Upon his refusal to issue a permit the building inspector shall return to the applicant all deposits, bonds and insurance policies. Permit fees filed with the application shall not be returned.

(c) *Return upon allowance for expense.* After the building has been removed the building inspector shall furnish the city manager with a written statement of all expenses incurred in removing and replacing all property belonging to the city, and of all material used in the making or the removal and replacement together with a statement of all damage caused to or inflicted upon property belonging to the city. The city manager shall authorize the building inspector to return to the applicant all deposits after the city clerk deducts the sum sufficient to pay for all of the costs and expenses and for all damage done to the property of the city by reason of the removal of the building. Permit fees deposited with the application shall not be returned.

(Code 1990, § 6-18.2; Ord. 1736, § 6)

Sec. 107-54. Special use permit.

Buildings, other than modular buildings occupied for less than one year and other buildings of new construction occupied for less than one year, which are otherwise permitted to be moved shall not be moved to a destination within the zoning jurisdiction of the city unless a special use permit is granted by the city council, after notice and public hearings before the planning commission and city council in compliance with sections 115-187 through 115-189.

(Code 1990, § 6-20; Ord. No. 1219, § 2; Ord. No. 1516, § 1)

Secs. 107-55--107-81. Reserved.**ARTICLE III. FENCES****Sec. 107-82. Definitions.**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Fence means any vertical structure, other than a building or plant material, which is for the purpose of obstructing visual observation or for the purpose of obstructing pedestrian, automotive or animal movement or for the purpose of beautification, and which is attached to the ground or to a building, but excluding retaining walls.

Open fence means a fence having more than 60 percent of its area perforated, so as to not to obstruct visual observation.

Privacy fence means a fence having less than 60 percent of its area perforated, so as to obstruct visual observation.

(Ord. No. 2293, § 1(6-37), 3-22-2011)

Sec. 107-83. Appeals to board of adjustment.

Appeals from any requirement of this chapter may be made by any person to the board of adjustment of the city and the board shall have the authority to waive any such requirement in the case of unnecessary or undue hardship.

(Ord. No. 2293, § 1(6-39), 3-22-2011)

Sec. 107-84. Building permits.

No fence shall be erected, constructed or moved until a building permit shall have been procured from the building inspector. Application for a fence building permit shall include a sketch of the lot, the location of any buildings on the lot, the proposed fence and sufficient dimensions to locate these features accurately. Property owners are responsible to locate property pins prior to any permit being issued. A fee shall be paid by the applicant in an amount set by resolution of the city council.

(Ord. No. 1943, Ord. No. 2149; Ord. No. 2293, § 1(6-35), 3-22-2011)

Sec. 107-85. Requirements.

(a) All fences shall comply with the vision requirements of section 24-2.

(b) All fences shall be constructed of materials which are structurally sound, including concrete, galvanized chainlink, masonry, vinyl, wrought iron or wood not exceeding six inches in width.

(c) In areas where the primary use is residential, fences shall comply with the following requirements:

(1) In any yard which faces a public street, and from the public street right-of-way to the front line of the main structure, only open fences shall be allowed, and not exceeding four feet in height.

(2) In any other yard, a privacy or open fence shall be allowed, and not exceeding six feet in height.

(d) In areas where the primary use is commercial, fences shall comply with the following requirements:

(1) In any yard which faces a public street, and from the public street right-of-way to the front line of the main structure, only open fences shall be allowed, and not exceeding six feet in height.

(2) In any other yard, a privacy or open fence shall be allowed, and not exceeding six feet in height.

(e) In areas where the primary use is industrial no fence shall be erected, constructed or moved except for the following types:

(1) In any yard which faces a public street, and from the public street right-of-way to the front line of the main structure, only open fences shall be allowed, and not exceeding six feet in height.

(2) In any other yard, a privacy or open fence shall be allowed, and not exceeding six feet in height.

(Ord. No. 2293, § 1(6-38), 3-22-2011)

Sec. 107-86. Encroachment into right-of-way.

No person shall construct, place, or maintain a fence, wall or hedge which encroaches into the public street right-of-way without first obtaining a permit in the form of an easement issued by the city manager. An application for such easement shall be filed with the city building official, on a building permit application, providing a site plan for the location of any proposed encroachment into the public street right-of-way as follows:

(1) The building official shall collect in advance a permit fee plus the anticipated cost of recording of the easement to be issued.

(2) An easement shall be granted if the city manager shall determine as follows:

- a. The encroachment shall not be hazardous to or interfere with vehicle or pedestrian traffic on the street, alley, or sidewalk.
- b. The encroachment shall comply with the vision requirements of section 24-2.
- c. The encroachment will not interfere with the operation and maintenance of the public utilities located within the public street right-of-way.
- d. The encroachment will be subject to the express condition that said encroachment shall be removed upon 30 days' written notice that the area of the encroachment is necessary for public improvements or maintenance or repairs of such improvements, and that the property owner will indemnify, protect and hold the city harmless from and against any claims and demands for damages arising from the construction or maintenance of the encroachment.
- e. In the event that the city manager refuses to grant the easement, the application may be presented to the city council for final determination.

(Ord. No. 2000; Ord. No. 2293, § 1(6-36), 3-22-2011)

Secs. 107-87–107-115. Reserved.

ARTICLE IV. NUMBERING OF BUILDINGS*

*State law reference—Authority to require and regulate the numbering of houses, R.R.S. 1943, § 16-614.

Sec. 107-116. Procedures.

(a) The business houses, private dwellings or other buildings in the city shall be numbered from the following base lines: The base line running north and south shall be North Washington Street and South Washington Street, and all buildings east of such line on streets running east and west shall be known and numbered as east, and all buildings west of such line of streets running east and west shall be known and numbered as west; the base line running east and west shall be the Union Pacific Railroad right-of-way, and all buildings facing on streets running north from the railroad right-of-way shall be known and numbered as north, and all buildings facing on streets running south from the railroad right-of-way shall be known and numbered as south.

(b) Each 25 feet of frontage on each street shall be entitled to a separate number. There shall be 100 numbers applicable to each block, even numbers on the east side of all streets running north and south and odd numbers on the west side of such streets; and with even numbers on the south side of all streets running east and west from the base line and with odd numbers on the north side of all streets running east and west. The block between Pacific Avenue and Second Street shall be the 100 block; the blocks between Second Street and Third Street shall be the 200 block and shall continue consecutively in such order. South of the Union Pacific Railroad right-of-way, the blocks between Ivan Street and Vine Street, on streets running north and south, shall be the 100 block. The blocks between Vine Street and Elm Street, on all streets running north and south, shall be the 200 block, and so on in the blocks south of Elm Street, numbered consecutively by 100s. The first blocks west of Washington Street shall be the 100 block, and from thereon to the west corporate limits the blocks shall be numbered consecutively by 100s on streets running east and west. The first block east of Washington Street shall be the 100 block, and from thereon to the east corporate limits the blocks shall be numbered consecutively by 100s on streets running east and west.

(Code 1970, § 10-201; Code 1990, § 24-20)

Sec. 107-117. Designation of stairways.

The affixing of a one-half-designation shall be attached to the last preceding number designating stairways.

(Code 1970, § 10-202; Code 1990, § 24-21)

~~Sec. 24-22 Size of numbers.~~¹⁷²

~~Each property owner of the city shall procure and securely fix upon his building in a conspicuous place, the number designated for the premises by this article. Such numbers shall be in figures no less than three inches in height, of rust proof material.~~

~~(Code 1970 § , 10-203; Code 1990, § 24-22)~~

Sec. 107-118. Duty of owner.

It shall be the duty of the owner of any business house, private dwellings or other buildings in the city to have the same property numbered in accordance with this article. If the property owner is in doubt as to the correct number of his premises he shall apply to the city manager, who shall ascertain and designate the property number for the premises.

(Code 1970, § 10-204; Code 1990, § 24-23)

Sec. 107-119. Numbering by city upon property owner's failure to do so.

If the owner of any building in the city required to be numbered, shall fail or neglect or refuse to properly number the same as provided in this article, the city manager shall then direct the same to be properly numbered, and the cost thereof shall be assessed and levied against the property so numbered.

(Code 1970, § 10-205; Code 1990, § 24-24)

Sec. 107-120. Mutilating or destroying numbers prohibited.

It shall be unlawful for any person to destroy, deface, mutilate, remove or in any way interfere with any numbers placed on buildings as provided in this article.

(Code 1970, § 10-206; Code 1990, § 24-25)

¹⁷² Legal or Editorial Change: Code 1990, § 24-22 Size of Numbers. Deleted as superseded by § 304.3 of the International Property Maintenance Code.

Chapter 108
RESERVED

PROOFS

Chapter 109

SIGNS**Sec. 109-1. Applicability of definitions in chapter 113.**

The definitions in chapter 113 apply to chapter.

Sec. 109-2. Administration, appeals, variances, etc.

The provisions of chapter 113, articles II--IV apply to this chapter.

Sec. 109-3. General rules for the application of display surface area.

The supports of uprights and covering thereon on which a sign is supported shall not be included in the display surface area of a sign. When two signs of the same shape and dimensions are mounted or displayed back to back and parallel, only one such face shall be included in computing the total display surface area of the sign. Signs along the national system of Interstate and Defense Highways and all federal aid primary roads shall meet all the requirements adopted by the state department of roads.

(Code 1990, § 28-30.1; Ord. No. 1912, 9-26-1990)

Sec. 109-4. Exemptions.

The following shall not be subject to the provisions of this chapter:

- (1) Signs provided or required by a duly constituted governmental body, including traffic or similar regulatory devices, legal notices or warnings at railroad crossings.
- (2) Flags or emblems of a political, philanthropic, educational or religious organization.
- (3) Temporary signs for a period not to exceed three months announcing a campaign, drive or event of the organizations listed in subsection (2) of this section.
- (4) Memorial plaques or tablets.
- (5) Small signs each not to exceed one square foot of display surface area displayed for the direction or convenience of the public, including signs which identify restrooms, freight entrance or the like with a maximum total display surface area on all such signs not exceeding two square feet.

(Code 1990, § 28-30.2; Ord. No. 1912, 9-26-1990)

Sec. 109-5. R-1 Single-Family Residential District.

In the R-1 district, the following signs are permitted:

- (1) One nonilluminated wall sign per building, not more than one square foot in area, mounted on the building, indicating a permitted home occupation.
- (2) One illuminated nonflashing, or nonilluminated detached sign per church, not more than 32 square feet in area on church premises, indicating activities and services therein provided.
- (3) One nonilluminated detached sign per building, not more than 20 square feet in area, showing names of future tenants, architects, engineers, builders, contractors or financing agencies on the premises of a building being constructed, provided, that such sign shall be removed upon completion of the building.

(Code 1990, § 28-30.3; Ord. No. 1912, 9-26-1990)

Sec. 109-6. R-2 Single- and Two-Family Residential District.

In the R-2 district, signs shall be permitted as provided under R-1 district in section 109-5.
(Code 1990, § 28-30.4; Ord. No. 1912, 9-26-1990)

Sec. 109-7. R-3 Multiple Residential District.

In the R-3 district, the following signs are permitted:

- (1) Signs shall be permitted as provided under R-1 district in section 109-5.
- (2) For any one ownership containing a multi-family use, there shall be permitted only one nonilluminated detached sign identifying the use, not more than 20 square feet high overall, and such sign shall be located not more than one foot outside of a front or side building setback line. Such signs shall bear no advertising.

(Code 1990, § 28-30.6; Ord. No. 1912, 9-26-1990)

Sec. 109-8. R-4 Mobile Home Dwelling District.

In the R-4 district, signs shall be permitted as provided under the R-1 district in section 109-5.

(Code 1990, § 28-30.5; Ord. No. 1912, 9-26-1990)

~~Sec. 109-9. C-1 Limited Commercial District.~~¹⁷³

~~In the C-1 district, each business or commercial establishment shall be permitted not more than three attached signs, provided, that the area of each sign shall not exceed five percent of the total area of the facade upon which it is placed.~~

~~(Code 1990, § 28-30.7; Ord. No. 1912, 9-26-1990)~~

Sec. 109-9. C-O Office Commercial District.

In the C-O district, each business or commercial establishment shall be permitted one nonilluminated sign, either attached or detached, and not more than 32 square feet in area. A detached sign shall be not less than 25 feet from the curblin and off of the public right-of-way.

(Code 1990, § 28-30.7.1; Ord. No. 1912, 9-26-1990; Ord. No. 2049, § 2)

Sec. 109-10. C-2 Core Commercial District.

In the C-2 district, each business or commercial establishment shall be permitted not more than three signs.

(Code 1990, § 28-30.8; Ord. No. 1912, 9-26-1990)

Sec. 109-11. C-3 Commercial Highway Service District.

(a) In the C-3 district:

- (1) *Generally.* Signs of all types and degrees of illumination shall be permitted, provided, that no sign shall be located closer than ten feet to a property line.
- (2) *Billboards.* General advertising off-premises signs are allowed only in the C-3 district, which abuts Highway 30, 21, or 283. Off-premises advertising signs shall be located so that a minimum distance of 600 feet exists between signs on the same side of a street.

¹⁷³ Legal or Editorial Change: Code 1990, § 28-30.7. C-1 Limited Commercial District. Deleted as obsolete. This district no longer exists.

All signs shall be subject to the yard and setback standards of the district in which they are located. The supportive structure for the sign shall be erected a minimum of five feet behind the setback requirements. The maximum display area shall be 672 square feet (14 feet by 48 feet typically) for each face. Signs may not be stacked one on top of the other or side by side. The height shall not exceed that established for buildings in the C-3 district. No sign shall be erected or maintained on any sign or sign structure other than the principal sign for which the structure was designed or such additional single sign as may be compatible to the original design of the structure.

(b) The requirements of this section shall be in addition to any applicable local, state and federal rules and regulations.

(Code 1990, § 28-30.9; Ord. No. 1912, 9-26-1990; Ord. 2131, 8-8-2000)

Sec. 109-12. M-1 and M-2 Light and Heavy Industrial Districts.

Signs of all types shall be permitted in the M-1 and M-2 districts.

(Code 1990, § 28-30.10; Ord. No. 1912, 9-26-1990)

Sec. 109-13. Additional regulations.

(a) All signs shall be of sound structural quality, be maintained in good repair, have a clean and neat appearance and land adjacent shall be kept free from debris, weeds and trash.

(b) All signs as permitted above shall meet minimum building and safety code requirements.

(c) No signs shall be located in public rights-of-way except by consent of the city council.

(d) No sign shall obstruct the sight distance triangle on and adjacent to corner lots.

(e) No sign, except a marquee or canopy providing shelter, shall overhang more than one-third of the sidewalk width or to within three feet of the curb.

(f) Signs shall be subject to height restrictions for accessory structures in each district.

(Code 1990, § 28-30.11; Ord. No. 1912, 9-26-1990)

Chapter 110
RESERVED

PROOFS

Chapter 112
RESERVED

PROOFS

Chapter 113

TRAILERS, MOBILE HOMES AND MOBILE HOME PARKS*

***State law reference**—Nebraska Uniform Standards for Modular Housing Units Act, R.R.S. 1943, § 71-1555 et seq.; local regulation of modular housing units, R.R.S. 1943, § 71-1562; Uniform Standard Code for Manufactured Homes and Recreational Vehicles, R.R.S. 1943, § 71-4601 et seq.; local regulation of manufactured homes, R.R.S. 1943, § 19-902; Uniform Standard Code for Mobile Home Parks, R.R.S. 1943, § 71-4621 et seq.; local regulation of mobile home parks, R.R.S. 1943, § 71-4630.

ARTICLE I. IN GENERAL**Sec. 113-1. Definitions.**¹⁸³

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

~~*City manager* means the duly authorized agent of the city council and of the city planning department to ensure compliance of this chapter. This authority may be delegated by the city manager to other city officials and employees.~~

~~*City planning department* shall consist of the city manager and such employees and legal or engineering consultants who are designated by the city manager to assist the city planning commission and perform planning functions.~~

Dependent mobile home means a mobile home which does not have a flush toilet and bath or shower.

Drive means a right-of-way which affords the principal means of vehicular access to or through a mobile home or trailer park, and which is owned and maintained by the owner or operator of the park.

Independent mobile home means a mobile home which has flush toilet and bath or shower.

Manufactured home means the following:

- (1) A factory-built structure which:
 - a. Is to be used as a place for human habitation;
 - b. Is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site;
 - c. Does not have permanently attached to its body or frame any wheels or axles; and
 - d. Bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 CFR 3280 et seq., promulgated by the United States Department of Housing and Urban Development; or
- (2) A modular housing unit as defined in R.R.S. 1943, § 71-1557, and bearing ~~the seal of the State of Nebraska Department of Health~~ a seal in accordance with the Nebraska Uniform Standards for Modular Housing Units Act (R.R.S. 1943, § 71-1555 et seq.).

¹⁸³ Legal or Editorial Change: Code 1990, § 25-1. Definitions. Deleted definitions of city manager and city planning department as not needed. Conformed definition of manufactured home to R.R.S. 1943, § 19-902. Deleted definition of person as covered by Code chapter 1.

Mobile home means a residential structure, assembled in total or in not more than three sections at a factory, and transported over the road by truck or temporary wheel carriage to its destination.

Mobile home, double-wide, means a mobile home, as defined ~~in this section above~~, and having been built in two sections at the factory, which two sections are transported over the road separately, with assembly into one structure of a width of not less than 20 feet occurring at the destination.

Mobile home park means a tract of land containing suitable drives, utilities and other supporting elements, and devoted to the sole purpose of accommodating mobile homes on a permanent or semipermanent basis.

Mobile home, single-wide, means a mobile home, as defined ~~in this section above~~, and being of a width that is not more than 14 feet, measured between the permanent sidewalls thereof.

Mobile home space means the area of land within a mobile home park set aside for use as a site for one mobile home, including the open spaces around such mobile home, as are required in this chapter.

Mobile home subdivision means an area of land containing not less than 30 lots, and the public streets necessary to serve such lots, the purpose of which is to convey in fee the individual lots for the location of mobile homes in a permanent fashion.

Operating permit means a written permit issued by the city planning department permitting the mobile home park to operate under this chapter and regulations promulgated thereunder.

~~*Person* means any individual, firm, partnership, corporation, company or association.~~

Service building means a building housing toilet and bathing facilities for men and women with laundry facilities and such other facilities as may be required by this chapter.

Special use permit means the application for amendment, revision or change in a zoning district map or for special use permit, which is made through the planning commission and through the city council as described in ~~article VI of chapter 115 section 28-8~~.

Street means a right-of-way which affords principal means of vehicular access to or through a mobile home park or trailer park, and which is held in fee by the public or governmental unit thereof.

Trailer means a vehicle equipped with wheels, and normally towed over the road behind an automobile or light truck.

Trailer, advertising, means a trailer, as defined ~~in this section above~~, but carrying, or having attached thereto, a sign, billboard or other media for advertising purposes, such advertising being the prime purpose and use of the trailer.

Trailer, camping, means a trailer, as defined ~~in this section above~~, and equipped with an enclosure for sleeping while on vacation or other trips of short duration. Such camping trailers may also contain cooking, bath and sanitary equipment. Size and furnishings of such camping trailers may vary widely, but in no case shall they be considered structures for residential use of a temporary or permanent nature, for the purpose of this chapter.

Trailer, hauling, means a trailer, as defined ~~in this section above~~, designed and normally used for over the road transportation of belongings, equipment, merchandise, livestock and other objects, but not equipped for human habitation.

Trailer park means a tract of land containing sites for the overnight or short-term parking of camping trailers and other camping vehicles.

Zoning jurisdiction means the area within the corporate area of the city plus that area within two miles thereof.

(Code 1990, § 25-1; Ord. No. 1224, § 1; Ord. No. 2016, § 1)

~~Sec. 25-9 Penalty for violation of chapter.~~¹⁸⁴

~~Any person who violates any provision of this chapter, or any provision of any regulation adopted by the city council pursuant to authority granted by this chapter, shall upon conviction be punished by a fine of not more than 30 days, and each day's failure of compliance with any such provision shall constitute a separate violation.~~

~~(Code 1990, § 25-9; Ord. No. 1224, § 14)~~

Sec. 113-2. Regulations for enforcement of chapter.

The city council is hereby authorized to make and, after public hearing, to adopt such written regulations as may be necessary for the proper enforcement of the provisions of this chapter. Such regulations shall have the same force and effect as the provisions of this chapter, and the penalty for violation of the provisions of this chapter as hereinafter provided.

(Code 1990, § 25-7; Ord. No. 1224, § 13)

Sec. 113-3. Notices, hearings and orders.¹⁸⁵

(a) Whenever the city planning department determines that there are reasonable grounds to believe that there has been a violation of any provision of this chapter, or of any regulation adopted pursuant thereto, it shall give notice of such alleged violation to the person to whom the permit was issued, as hereinafter provided. Such notice shall:

- (1) Be in writing;
- (2) Include a statement of the reasons for its issuance;
- (3) Allow 60 days for the performance of any act it requires;
- (4) Be served upon the owner or his agent as the case may require, provided, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to his last known address, or when he has been served with such notice by any other method authorized or required by the laws of the state; and
- (5) Contain an outline of remedial action, which, if taken, will effect compliance with the provisions of this chapter and with regulations adopted pursuant thereto.

(b) Any person affected by any notice which has been issued in connection with the enforcement of any provision of this chapter, or of any regulation adopted pursuant thereto, may request and shall be granted a hearing on the matter before the city council, provided, that such person shall file in the office of the city clerk a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten days after the day the notice was served. The filing of the request for a hearing shall operate as a stay of the notice and of the suspension except in the case of an order issued under subsection (e) of this section. Upon receipt of such petition, the city council shall set a time and place for such hearing, and shall give the petitioner written notice thereof, a copy of such notice to be given to the city planning department.

¹⁸⁴ Legal or Editorial Change: Code 1990, § 25-9. Penalty. Deleted this garbled section so as to tie penalty to Code chapter 1.

¹⁸⁵ Legal or Editorial Change: Code 1990, § 25-8 Notices, Hearings and Orders. Changed city clerk-treasurer to city clerk.

At such hearing, the petitioner shall be given an opportunity to be heard, and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than the next regular meeting of the city council after the petition was filed, provided, that upon application of the petitioner, the city council may postpone the date of the hearing for a reasonable time beyond such regular meeting when in their judgment the petitioner has submitted good and sufficient reasons for such postponement.

(c) After such hearing, the city council shall make findings as to compliance with the provisions of this chapter and regulations issued thereunder and shall issue an order in writing sustaining, modifying or withdrawing the notice which shall be served as provided in subsection (a) of this section. Upon failure to comply with any order sustaining or modifying notice, the permit for the mobile home park affected by the order shall be revoked.

(d) The proceedings at such hearing, including the findings and decision of the city council and together with a copy of every notice and order related thereto shall be entered as a matter of public record in the office of the city clerk-treasurer, but the transcript of the proceedings need not be transcribed unless judicial review of the decision is sought as provided by this section. Any person aggrieved by the decision of the city council may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of the state.

(e) Whenever the city planning department or the city manager finds that an emergency exists which requires immediate action to protect the public health, either may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action is taken that may be deemed necessary to meet the emergency including the suspension of the permit. Notwithstanding any other provisions of this chapter, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but upon petition to the city council, shall be afforded a hearing as soon as possible. The provisions of subsections (c) and (d) of this section shall be applicable to such hearing and the order issued thereafter.

(Code 1990, § 25-8; Ord. No. 1224, § 11)

Sec. 113-4. Effect of conflicting regulations.

In any case where a provision of this chapter is found to be in conflict with a provision of any zoning, building, fire safety or health ordinance or code of the city existing on the effective date of the ordinance from which this chapter is derived, the provision which, in the judgment of the city manager with the city planning department, establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail. In any case where a provision of this chapter is found to be in conflict with a provision of any other ordinance or code of the city existing on the effective date of the ordinance from which this chapter is derived shall be deemed to prevail, and such other ordinances or codes are hereby declared to be repealed to the extent that they may be found in conflict with this chapter.

(Code 1990, § 25-10; Ord. No. 1224, § 16)

Sec. 113-5. Where mobile homes and manufactured homes permitted; special use permit.¹⁸⁶

(a) Mobile homes shall be permitted only in an approved mobile home park with the following exceptions:

- (1) A mobile home may be permitted by the city council after public hearing, for purposes of temporary relief from local disaster such as fire, wind or flood damage; provided, that such mobile home shall be removed from the premises within one year of its original placement.
- (2) A mobile home shall be permitted to be placed on a platted lot in an R-4 Mobile Home Dwelling District as provided by section 115-152(b) and (d).
- (3) A mobile home meeting the structural requirements of section 115-152(d) may be placed on an individual lot in the A-1, A-2, C-1, C-2, C-3, M-1 and M-2 districts, all subject to the issuance of a special use permit as provided in chapter 115.
- (4) A mobile home meeting the structural requirements of zoning section 115-152(d) may replace a mobile home which presently exists as a nonconforming use as a result of the application of this section.
- (5) An independent mobile home complying with section 113-8 may be moved into or moved within a mobile home park; provided, that said mobile home shall be at least 400 square feet in area.

(b) Manufactured homes shall be permitted in an approved mobile home park ~~or on a lot in any district for a permitted use~~; provided, such manufactured home shall meet the following standards:

- (1) The home shall have no less than 900 square feet of floor area;
- (2) The home shall have no less than an 18-foot exterior width;
- (3) The roof shall be pitched with a minimum vertical rise of 2 1/2 inches for each 12 inches of horizontal run;
- (4) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family houses;
- (5) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile or rock;
- (6) The home shall have wheels, axles, transporting lights and removable towing apparatus removed;
- (7) The home shall be located and installed according to the same standards for foundation system, permanent utility connections, setback and minimum square footage which would apply to site-built, single-family dwelling on the same lot.

(Code 1990, § 25-2; Ord. No. 1224, § 2; Ord. No. 1304, § 1; Ord. No. 1713, § 1; Ord. No. 1932, § 1; Ord. No. 2016, §§ 1, 2)

¹⁸⁶ Legal or Editorial Change: Code 1990, § 25-2 Where Mobile Homes and Manufactured Homes Permitted; Special Use Permit. In subsection (b) deleted reference to manufactured homes outside of a mobile home park as covered by Code § 28-31.4. (It would seem that preexisting use problems dictate that the provisions be located outside the zoning ordinance.)

Sec. 113-6. Where camping and advertising trailers permitted.

(a) Camping trailers may be parked in a campground or trailer park, provided, that such camp area is in conformance with the zoning ordinances of the city. No such camping trailer shall be used for permanent or semipermanent residential purposes. Nothing in this chapter shall prohibit the use of tents, pick-up campers and other such equipment from also utilizing an approved campground or camper park.

(b) Camping trailers may also be stored, on the basis of one per family, in private garages, or in the side or rear yard of private homes, business or industrial area; provided, that no such trailer shall be used for residential purposes.

(c) Advertising trailers may be permitted only on property zoned C-2 to M-2 districts, inclusive, and such trailers shall be off the public street, and conform to the setback, height and area regulations for other signs in that district.

(Code 1990, § 25-3; Ord. No. 1224, § 3)

Sec. 113-7. Use of mobile home or trailer as nonresidential structure.

One or more mobile homes or trailers may be used as a temporary office or other nonresidential structure on the site of a construction project, provided that such structure is removed upon completion of the project. Mobile structures may be used, also as temporary classroom facilities in connection with public schools, or private schools with equivalent curriculum.

(Code 1990, § 25-4; Ord. No. 1224, § 4)

Sec. 113-8. Building permit and compliance with certain standards required of mobile homes.¹⁸⁷

(a) No mobile home shall be permitted to be moved into the zoning jurisdiction of the city, except for purposes of sale by a licensed dealer, until a building permit has been issued for its location in a specified mobile home park, mobile home subdivision or other approved location, in compliance with this chapter and other ordinances of the city. In addition to compliance with ordinances of the city, the mobile home shall comply with the minimum standards of the Standards of Mobile Homes published by the American National Standards Institute, publication No. A-119-1, including any revisions and supplemental reports relative to the same. Compliance with these standards shall be shown by an approval report prepared by Underwriters Laboratories or other inspection agency, referring to the particular type and model of mobile home for which a permit is requested.

(b) In the event that a code compliance report is unavailable, the building inspector may, at his discretion, inspect the structure prior to its transportation into the zoning jurisdiction, and determine whether it complies with such standards. In the event that all standards, codes and ordinances are complied with, the applicant shall be issued a building permit, and the mobile home shall be established in accordance therewith within six months, or the permit shall become invalid.

(Code 1990, § 25-5; Ord. No. 1224, § 7)

Sec. 113-9. Requirements for trailer parks.

The requirements for trailer parks is as follows:

¹⁸⁷ Legal or Editorial Change: Code 1990, § 25-5 Building Permit and Compliance With Certain Standards Required of Mobile Homes. So as to avoid adoption by reference problems, please advise of the specific edition of ANSI A-119-1 being used.

- (1) Every trailer camp shall have facilities for five or more trailers.
- (2) Spaces for camping trailers shall be at least 50 feet by 20 feet, spaces for tent campers may be smaller.
- (3) The campground shall provide a source of potable water and a disposal station for sewerage.
- (4) The campground shall maintain a register showing the name, address, vehicle license number, and date of arrival and departure from the campground for each user, and such register shall be retained at least 180 days and shall be available 24 hours for inspection by the police or building department.
- (5) The trailer camp shall not allow occupancy in excess of 30 days.
- (6) Camping trailers need not be tied down or skirted.
- (7) All streets may be either gravel or paved. Streets shall be well-drained and constructed in a manner approved by the city engineer.
- (8) Walks and the illumination of the street system are not required.
- (9) The playground space required for the mobile home parks is not required for trailer parks.
- (10) Water need not be piped to each trailer space.
- (11) The planning commission need not notify the appropriate board of education concerning its hearing of a special use permit for the construction of a trailer park.
- (12) Trailer parks do not have to comply with the 20 percent requirement indicated in section 113-38(f).
- (13) Section 113-40 is not applicable to camping trailers and other camping vehicles.

(Code 1990, § 25-6; Ord. No. 1224, § 12; Ord. No. 2076, § 1)

Secs. 113-10--113-36. Reserved.

ARTICLE II. MOBILE HOME PARKS*

***State law reference**—Uniform Standard Code for Mobile Home Parks, R.R.S. 1943, § 71-4621 et seq.; local regulation of mobile home parks, R.R.S. 1943, § 71-4630.

Sec. 113-37. Minimum standards.¹⁸⁸

(a) *Requirements.* The following are minimum standards requirements for mobile home parks:

- (1) Condition of soil, groundwater level, drainage and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable smoke, noise, odors or other adverse influences, and no portion subject to unpredictable or sudden flooding, subsidence or erosion shall be used for any purpose which would expose persons or property to hazards.
- (2) It shall be unlawful to allow the following:

¹⁸⁸ Legal or Editorial Change: Code 1990, § 25-11 Minimum Standards. Corrected state law reference in subsection (d). It is assumed that this section is at least as stringent as R.R.S. 1943, § 71-4621 et seq. See R.R.S. 1943, § 71-4630.

- a. Any mobile home to be occupied in a mobile home park unless situated on a mobile home space; or
 - b. An independent mobile home to be located on a dependent mobile home space.
- (3) No obstruction to the view shall exist which is higher than two feet six inches above the centerline grade of the adjacent roadways, on any property within that triangular bounded by the curbs of the intersecting roadways and a diagonal line between two points located on said curbs of the two intersecting roadways and 60 feet from the point of intersection of said extended curb lines.
 - (4) Direct access to an individual mobile home space from a public street is prohibited.
 - (5) All mobile home spaces shall abut a private roadway.
 - (6) Access to mobile home courts from public streets shall be designed as curb cuts unless the roadway is an extension of an existing public street that has been temporarily dead-ended at the limits of the mobile home court.
 - (7) All mobile home spaces shall be consecutively numbered beginning with the number "1" with no omission or duplication through a block, and blocks shall be likewise numbered through the mobile home court. These numbers shall be at least four inches in height, reflectorized and in contrasting color to the background, and displayed on the front of each mobile home so as to be visible from the street.
 - (8) An illustrated directory shall be provided at the entrance showing the location of all mobile homes by number. This directory shall be lighted at nighttime and be maintained in a good condition that is to the satisfaction of the city.

(b) *Park size.* No mobile home park shall have a site smaller than will accommodate 30 mobile homes, or comprising less than five acres.

(c) *Space size.* Each mobile home space shall have dimensions of at least 50 feet in width and 100 feet in depth or an area of 5,000 square feet.

(d) *Mobile home stands.* The area of the mobile home stand will be improved to provide adequate support for the placement and tie-down of the mobile home, thereby securing the superstructure against uplift, sliding, rotation and overturning by using one of the following methods:

- (1) The mobile home stand shall not heave, shift or settle unevenly under the weight of the mobile home due to frost action, inadequate drainage, vibration or other forces acting on the structure.
- (2) Every mobile home or house trailer controlled by this regulation shall be anchored to the ground as required by the Mobile Home and Recreational Vehicle Code—Uniform Standard Code for Manufactured Homes and Recreational Vehicles (R.R.S. 1943, § 71-4601 et seq.).
- (3) Over-the-top tie-down straps shall be required on all mobile homes, based on mobile home length, as follows:

Length (in feet)	Number of Anchors and Straps Per Side
36--50	3
50--70	4
70--80	5

The provisions of this section shall be applicable to all mobile homes and modular homes, located in the city or in the zoning jurisdiction. Unless permanently attached, all such vehicles will be tied down using such mobile home stands within 48 hours after arrival in the zoning jurisdiction of the city.

(e) *Mobile home skirts.* Skirting of mobile homes with materials approved by the building department and harmonious to mobile home structure is required within 30 days after placement of mobile home.

(f) *Roadway specifications.*

- (1) Roadways shall be at least 30 feet in width.
- (2) Each roadway shall include a marked pedestrian walkway, four feet in width, along one side. Such walkway shall be unobstructed and no parking shall be allowed along such walkway.
- (3) Within 24 months of opening a mobile home park, roadways shall be surfaced by either method as follows:
 - a. Concrete, six inches thick;
 - b. Full-depth asphalt, six inches thick.
- (4) The horizontal alignment shall be as follows:
 - a. The minimum angle that a roadway intersects another roadway or street shall be 80 degrees.
 - b. The centerline of a roadway entering on opposite sides of a roadway or a street shall either be directly across from the centerline of the opposite roadway or street or offset by at least 125 feet or at a point one-half the distance between said opposite centerlines if they are existing streets or roadways and if the two opposite centerlines are less than 300 feet apart.
 - c. Whenever a roadway approaches a roadway that provides primary service in the area or a street, there shall be a tangent length of not less than 150 feet measured from the nearest centerline of the intersected roadway or street to any point or curvature in said approach roadway.
 - d. The centerline radius for any curve in a roadway that provides primary service in the area shall be at least 150 feet. All other roadways shall have at least a 125-foot center radii.
 - e. Roadways intersecting other roadways on the inside of a curve should be avoided.
 - f. There shall be a minimum 100 feet tangent length between all reverse curves. The tangent length, however, shall be in relation to the radii of the curves so as to provide for a smooth flow of traffic.
- (5) The vertical alignment shall be as follows:
 - a. The maximum grade shall be six percent and the minimum grade shall be 0.4 percent subject to drainage approval.
 - b. All changes in roadway grades shall be connected by parabolic vertical curves of such length as to provide for the minimum sight distances required. The minimum sight distances shall be designed using 25 mph design speed.
 - c. The maximum grade for a roadway approaching a roadway, that provides primary service in the area, or a street shall be a plus or minus two percent within 80 feet of a centerline of the intersected roadway or street.

(g) *Roadway system.* The roadway system shall provide convenient and reasonable access to each mobile home space and community building from a public street and to adjacent property. Where an existing temporary dead-end public street or roadway on adjoining property abuts a mobile home court, provisions shall be made to vacate the street or roadway or a satisfactory terminus shall be provided with a turnaround or a roadway shall connect to the street or roadway to provide access into the court. The method of resolving the abutting dead-end street or roadway shall meet with the approval of the city. No block shall be longer than 1,320 feet between cross roadways. Cul-de-sacs should not be longer than 1,000 feet as measured from the termination of the cul-de-sac to the intersection with a cross roadway. All dead-end roadways shall be terminated with a vehicular turnaround in accordance with city standards. Where a roadway is temporarily dead-ended at the limits of the mobile home court and is intended to be extended into the adjoining property which is not subdivided or developed and the dead-end roadway is more than 200 feet in length from the nearest intersection with another roadway, a temporary turn around shall be constructed to city standards and at such time as said dead-end roadway is extended the owner of the mobile home court at his own cost and expense shall remove said turnaround.

(h) *Roadway names.* Proposed roadway names shall conform to the accepted naming system of the city. Roadways obviously in alignment with existing streets or roadways shall bear the name of the existing street or roadway. All proposed roadway names shall be checked by the planning staff for duplication of existing street or roadway names. Proposed names that are in conflict with existing street or roadway names shall not be approved.

(i) *Parking space.* Two off-street parking spaces shall be provided for each mobile home space, and each parking space shall be located within 60 feet of the mobile home space which it shall serve. All parking spaces shall be paved, including the driveway between the roadway and the parking space, adequately marked and located at least five feet from roadways and 20 feet in length, nine feet in width, exclusive of any walkway which abuts the parking spaces. Adequate parking spaces shall be provided for accessory buildings and other court facilities.

(j) *Required recreation areas.*

- (1) Park and playground space shall be provided and maintained for occupants of the mobile home park on the basis of 300 square feet for each space in the park. Playground space shall be separate and aside from the open space provided for each mobile home space.
- (2) Recreation areas shall be located so as to be free of traffic hazards.

(k) *Landscape screen, lawn and ground covers.* The landscape screen in the exterior buffer area shall comply with the design standards for screening and landscaping. A lawn or a ground cover shall be planted or developed and maintained on all areas except those to be covered by structures, paved or surfaced areas, and except undisturbed areas such as woods, meadows and gardens which are to be preserved in their natural state.

(l) *Easements.*

- (1) The developer shall provide a blanket easement for the installation of utilities throughout the court or delineate and describe and provide by separate documents such easements as required. Easement documents which delineate and describe specific easements must be provided for all public utilities located in the court.
- (2) The developer may be required to dedicate easements for street right-of-way.

(m) *Parks, school sites and open space.* In developing property, consideration shall be given to suitable sites for schools, parks, playgrounds and other common open areas for public use so as to conform to the recommendations of the comprehensive regional plan. Any plan provision for schools, parks and playgrounds shall be indicated on the plot plan in order that it may be

determined when and in what manner such areas will be provided or acquired by the appropriate tax agency.

(n) *Accessory building and other community service facilities.* All such buildings shall meet all applicable municipal codes. This shall apply to, but not be limited to the following:

- (1) Management office, repair shop and storage facilities;
- (2) Sanitary facilities;
- (3) Laundry facilities;
- (4) Indoor recreation areas;
- (5) Swimming pools;
- (6) Tenant storage facility.

(o) *Water supply.* Each mobile home court shall be provided a private water system with connections to each mobile home space. The source of water supply for the private water supply system shall be the city water supply, if reasonably available. Each accessory building, which requires water service shall also be connected to the same private water system serving the mobile home spaces. This private water system shall be installed in compliance with the Uniform Plumbing Code and the standards for water main construction of the city. Where it is determined to be necessary for the city, public water lines shall be extended to adjoining property by either a water main district or written agreement. All proposed drawings, specifications and plans shall be approved by the state department of health prior to beginning construction.

(p) *Sanitary sewer system.* Each mobile home court shall provide sanitary sewer system with connections to each mobile home space. This private sanitary sewer system shall be connected to the city sanitary system for transmittal of the sewage from the mobile home court to the city's treatment facilities, if connection to the city sanitary sewer system is reasonably available. Each accessory building, which discharges sanitary sewage shall also be connected to the same private sanitary sewer system serving the mobile home spaces. This private sanitary sewer system shall be installed in compliance with the Uniform Plumbing Code and the standards for construction of sanitary sewer mains in the city, except as otherwise provided. Where it shall be determined to be necessary by the city, public sanitary sewers shall be extended to adjoining property by either a sanitary sewer district or written agreement. Each lot shall be provided with a drain inlet not less than four inches in diameter. All proposed drawings, specifications and plans shall be approved by the state department of environmental control prior to beginning construction.

(q) *Storm sewers.* The storm sewers shall be designed in conformance with the requirements of storm sewer design criteria which is on file in the city office. The storm sewer system shall be constructed in conformance with the requirements and standards of the city. Storm sewer system shall be enclosed unless the developer provides adequate open space for the open channel and constructs and maintains the channel and its banks to prevent erosion. The design of the channel shall be approved by the city.

(r) *Natural gas, telephone, CATV and electric systems.*

- (1) Natural gas piping, telephone and power systems and all other utility services in all courts shall be installed under ground and maintained in conformity with accepted engineering practices and the rules and regulations of the utility.
- (2) Every court shall contain an electrical wiring system, consisting of wiring, fixtures, equipment and appurtenances which shall be installed and maintained in accordance with the city electrical code as set forth in chapter 103, article III.
- (3) Illumination of roadways and walkways shall be equivalent to that required along public streets in residential areas by the city.

(s) *Fuel.* All piping from outside, fuel storage tanks or cylinders to mobile homes shall be copper or other acceptable metallic tubing and shall be permanently installed and securely fastened in place. All fuel storage tanks or cylinders shall be securely fastened in place and shall not be located inside or beneath the mobile homes or less than five feet from any mobile home exit. State and local regulations applicable to the installation of equipment and the handling of liquefied petroleum gas and fuel oil shall be followed.

(t) *Fire protection.*

- (1) Mobile home courts shall be subject to the fire prevention code and the regulations and rules of the city.
- (2) Standard fire hydrants connected to at least six-inch diameter water mains shall be located within 400 feet, along roadways of each mobile home or accessory building.
- (3) The volume of water to each fire hydrant shall be sufficient to serve the need even if this requires the installation of larger sized water mains.
- (4) Portable fire extinguishers of a type approved by the fire chief shall be kept in service buildings and at all other locations designated by the fire chief and shall be maintained in good operating conditions.

(u) *Refuse disposal.*

- (1) The storage, collection and disposal of refuse in the mobile home park shall be so managed as to create no health hazard, rodent harboring, insect breeding areas, accident or fire hazards or air pollution.
- (2) All refuse shall be stored in flytight, watertight, rodentproof containers, which shall be located not more than 150 feet from any mobile home space. Containers shall be provided in sufficient number and capacity to properly store all refuse.
- (3) Racks or holders shall be provided for all refuse containers, such container racks or holders shall be so designed as to prevent containers from being tipped, to minimize spilling and container deterioration, and to facilitate cleaning around them.
- (4) All refuse shall be collected in accordance with existing ordinances. All refuse shall be collected and transported in covered vehicles or covered containers.
- (5) Garbage and trash shall not be burned on the premises.

(v) *Alterations and additions.*

- (1) All plumbing and electrical alterations or repairs in the mobile home park shall be made in accordance with applicable local regulations. Licenses issued under the terms of this article shall convey no right to erect any building, to do any plumbing work or to do any electrical work, except upon a permit issued in conformity with building, electrical and plumbing codes of the city.
- (2) No permanent additions shall be built onto or become a part of any mobile home unless they are in accordance with requirements established by the building department.

(w) *Registration of occupants.* Every mobile home park owner or operator shall maintain a register containing a record of all mobile homes and occupants using the mobile home park. Such register shall be available to any authorized person inspecting the park, and shall be preserved for the period required by the building department. Such register shall contain:

- (1) The names and addresses of all mobile home occupants stopping in the park;
- (2) The make, model and license number of the motor vehicle and mobile home;
- (3) The state, territory or county issuing the mobile home license;

- (4) The dates of arrival and departure of each mobile home; and
- (5) Whether or not each mobile home is a dependent or independent mobile home.

(x) *Supervision.* The person to whom a permit for a mobile home park is issued shall at all times operate the park in compliance with this chapter and regulations issued thereunder, and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition at all times.

(Code 1990, § 25-11)

Sec. 113-38. Special use permit required; procedure for obtaining; etc.

(a) No mobile home park shall be constructed within the zoning jurisdiction of the city until a special use permit has been granted by the city council, in compliance with chapter 115. No such permit shall be granted until a development plan and development agreement for the proposed mobile home park have been prepared and submitted by the developer to the planning commission, and approved by the planning commission.

(b) Such plans submitted to the planning commission shall be accurately drawn to scale and shall also be submitted to the city planning department and shall show the following:

- (1) Proposed street and drive pattern;
- (2) Proposed mobile home spaces and their approximate dimensions;
- (3) Any existing streets in or abutting the property;
- (4) Location and size of parking spaces;
- (5) Location and size of park and playground area;
- (6) Screening and landscaping;
- (7) Legal description of the tract;
- (8) Name of the developer and the firm preparing the plan;
- (9) North point, scale and date;
- (10) Location of water and sewer lines in riser pipes;
- (11) Plans and specifications of the water supply, refuse and sewage disposal facilities;
- (12) Plans and specifications of all buildings to be constructed within the mobile home park;
- (13) Location details of lighting and electrical systems;
- (14) Place of endorsement by the appropriate approving agencies.

(c) The commission shall notify the board of education of each school district, in which the real estate or some part thereof to be affected by such a proposal lies, of the next regular meeting of the planning commission at which such a proposal is to be considered and shall submit a copy in writing of the proposal of the board of education at least ten days prior to such a meeting. Any action of the board of education concerning is advisory only. If the mobile homes court is outside of city limits, the same notice shall be given to the county highway superintendent.

(d) The planning commission shall, upon submission of three copies of the plan and an application for a special use permit, publish notice and hold a hearing on the proposal, in conformance with chapter 115. The decision of the commission to recommend approval or denial of the proposed mobile home park shall be based upon the following criteria:

- (1) Compliance with standards of section 113-9 or 113-37;
- (2) The proposed project will be in harmony with the comprehensive plan of the city;

(3) Safe and efficient ingress and egress of vehicular and pedestrian traffic and an adequate level of utility and other services is assured;

(4) A safe and healthful living environment will exist for the occupants of the park.

(e) Upon hearing and consideration of the project, the commission shall, within reasonable time, submit its recommendations and an endorsed copy of the plans to the city council for final action.

(f) The special use permit may provide a time for completion of paved roadways and other improvements. If improvements are not completed and the park is 20 percent occupied within such time, the special use permit may be canceled and further development and additional development of the park shall be prohibited. All mobile homes shall be removed within six months of the date of expiration of a special use permit. The owner or his agent may apply for a new special use permit in the case of expiration or cancellation under procedures set out in chapter 115.

(g) As a part of the development agreement, the licensee and any contractors may be required to file a bond in an amount sufficient to guarantee compliance with the provisions of this chapter.

(Code 1990, § 25-12)

Sec. 113-39. Exceptions.

(a) *Generally.* Where the planning commission finds that extraordinary hardships or practical difficulties may result from strict compliance with these regulations and/or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve exceptions to the standards in section 113-37, so that substantial justice may be done and the public interest secured, provided that such exception shall not have the effect of nullifying the intent and purpose of these regulations; and further provided the planning commission shall not approve exceptions unless it shall make findings based upon the evidence presented to it in each specific case that:

- (1) The granting of the exception will not be detrimental to the public safety, health or welfare, or injurious to other property;
- (2) The conditions upon which the request for an exception is based are unique to the property for which the exception is sought and are not applicable generally to other property;
- (3) Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of those regulations are carried out;
- (4) The exceptions will not in any manner vary from the provisions of the zoning ordinance as set forth in chapter 115, comprehensive plan or official zoning map.

(b) *Conditions.* In approving exceptions, the planning commission may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of these regulations.

(c) *Procedures.* A petition for any such exception shall be submitted in writing by the developer at the time when the development plan and development agreement are presented for the consideration of the planning commission. The petition shall state fully the grounds for the application and all of the facts relied upon by the petitioner.

(Code 1990, § 25-12.1; Ord. No. 2022)

Sec. 113-40. Manner of operation; appearance; etc.

Each mobile home park or subdivision, shall be operated in a sanitary, orderly and efficient manner, and shall maintain a neat appearance at all times. No damaged or deteriorated mobile homes shall be permitted to remain, and the park permit holder shall maintain suitable and effective rules for regulating the outside storage of equipment, the removal of wheels and installation of skirtings and anchors, the collection of trash and garbage, and the attachment of appurtenances to the mobile homes. All drives, playground area and equipment, lawn and trees, and any recreation or accessory buildings shall be maintained at a level at least equal to the average residential neighborhood in the city. All portions of the mobile home park shall be open and accessible to fire, police and other emergency and protective vehicles and personnel, including city, county and state inspectors. Violation of this section will be grounds for revocation of an operating permit.

(Code 1990, § 25-13; Ord. No. 1224, § 8)

Sec. 113-41. Operating permit required; procedure for obtaining; etc.

It shall be unlawful for any person to maintain or operate any mobile home park within the limits of the city and in the zoning jurisdiction of the city unless he holds and displays (at this park) a valid, operating permit issued annually by the city clerk, with the approval of the city planning department in the name of such person for the specific mobile home park. All applications for permits shall be made to the city planning department, which shall issue a permit on compliance by the applicant with provisions of this chapter and of any regulations adopted pursuant thereto, and of any other applicable legal requirements. No permit shall be transferable. Every person holding such a permit shall give notice in writing to the city clerk within 24 hours after having sold, transferred, given away or otherwise disposed of interest in, or control of, any mobile home park. Such notice shall include the name and address of the person succeeding to the ownership or control of such mobile home park.

- (1) Application for permits for mobile home parks existing within the zoning jurisdiction of the city at the time of implementation of this chapter shall be submitted to the city planning department and contain the same date as indicated in section 113-38. New mobile home parks, established after the implementation of this chapter, will be required to obtain an operating permit under the provisions of this section.
- (2) Unless otherwise provided herein, all mobile home parks will conform under this chapter. Permits will be withdrawn if mobile home parks are operated in violation of this chapter.
- (3) Applications for renewals of permit shall:
 - a. Be made in writing by the holders of the permits;
 - b. Be accompanied by the deposit of a fee of \$25.00; and
 - c. Contain any change in the information submitted since the original license was issued or the latest renewal granted.
- (4) All permits shall be for the calendar year; shall not be prorated, and shall expire on December 31. No permit fees shall be subject to refund.
- (5) Any person whose application for a permit under this article has been denied may request and shall be granted a hearing on the matter before the city council under the procedure provided by section 113-3.
- (6) Whenever, upon inspection of any mobile home park, the city planning department or the city manager finds that conditions or practices exist which are in violation of any provision of this chapter or of any regulations adopted pursuant thereto, the city manager or the city planning department shall give notice in writing in accordance with

section 113-3 to the person to whom the permit was issued that unless such conditions or practices are corrected within 60 days, the permit will be suspended. At the end of such period, the city planning department or its authorized representative shall reinspect such mobile home park and, if such conditions or practices have not been corrected, shall suspend the permit and give notice in writing of such suspension to whom the permit is issued. Upon receipt of notice of suspension, such person shall cease operation of such mobile home park except as provided in section 113-3.

- (7) Any person whose permit has been suspended, or who has received notice from the city manager or the city planning department that his permit will be suspended unless certain conditions or practices at the mobile home park are corrected, may request and shall be granted a hearing on the matter before the city council, under the procedure provided by section 113-3, provided, that when no petition for such hearing shall have been filed within ten days following the day on which notice of suspension was served, such permit shall be deemed to have been automatically revoked at the expiration of such ten-day period

(Code 1990, § 25-14; Ord. No. 1224, § 9)

Sec. 113-42. Authority to make inspections; owner to be given access to premises for purpose of making repairs, etc.

(a) The city planning department and the city manager are hereby authorized and directed to make inspections to determine the condition of mobile home parks located within the city and in the two-mile zone, in order that they may perform the duty of safeguarding the health and safety of occupants of mobile home parks and of the general public.

(b) The city planning department and the city manager shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this chapter or of regulations promulgated thereunder.

(c) The city planning department or the city manager shall have the power to inspect the register containing a record of all mobile homes and occupants using the mobile home park.

(d) It shall be the duty of the owners or occupants of mobile home parks, and mobile homes contained therein, or of the person in charge thereof, to give the city manager or the city planning department free access to such premises at reasonable times for the purpose of inspection.

(e) It shall be the duty of every occupant of a mobile home park to give the owner thereof or his agent or employee access to any part of such mobile home park or its premises at reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with this chapter, or with any lawful regulations adopted thereunder, or with any lawful order issued pursuant to the provisions of this chapter.

(Code 1990, § 25-15; Ord. No. 1224, § 9)

Sec. 113-43. Existing mobile home parks authorized.

All mobile home parks within the zoning jurisdiction of the city, which were in existence and operation on May 6, 1971, shall be authorized to be nonconforming to section 113-37(a)-(c) and (f)-(n) so long as they do not present health or safety hazards as prohibited by these regulations and so long as they are not operated in a manner to expand or make worse any of the nonconforming provisions.

(Code 1990, § 25-16; Ord. No. 1932, § 2)

Chapter 114
RESERVED

PROOFS