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Officials of the Municipality

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Chapter 1

ADMINISTRATIVE

Article 1. Elected Officials

§1-101 CITY MAYOR; SELECTION AND DUTIES. The Mayor of the Municipality shall have the general and immediate control over all property and officials, whether elected or appointed, of the Municipality. He shall preside at all meetings of the City Council, and may vote when his vote shall be decisive and the Council is equally divided on any pending matter, legislation, or transaction and the Mayor shall, for the purpose of such vote, be deemed to be a member of the Council. His signature must appear on the Municipal Clerk's minutes of all meetings, and he must sign all resolutions which have been passed and warrants for the payment of money when ordered by the City Council; provided, any ordinance vetoed by the Mayor may be passed over his veto by a two-thirds (2/3) vote by the members of the City Council, but if the Mayor neglects or refuses to sign any ordinance, and returns it to the Council with his objections in writing at the next regular Council meeting, the same shall become a law without his signature. He shall, from time to time, communicate to the Council such information and recommendations as, in his opinion, may improve the Municipality. He may require, at reasonable intervals, any Municipal official to exhibit his accounts and make reports to the Council on any subject pertaining to his office. He shall have the power to remit fines or pardon any offense arising under the ordinances of the Municipality. He may remove at any time an appointed police officer of the Municipality. His territorial authority shall extend over all places within five (5) miles of the corporate limits of the Municipality for the enforcement of any health ordinance, and one half (1/2) mile in all matters vested in him except taxation. He shall also have such other duties as the City Council may by resolution confer upon him, or in any other matters which the laws of the State of Nebraska repose in him. He shall be elected at the Municipal Election, and shall serve a four (4) year term of office. Any candidate for Mayor must have resided within the Municipality for forty (40) days prior to filing for said office and must, in addition, be a qualified taxpayer. (*Ref. 17-110 thru 17-117 RS Neb.*)

§1-102 CITY COUNCIL; ACTING PRESIDENT. The City Council shall elect one (1) of its own body each year who shall be styled the President of the Council, and who shall preside at all meetings of the City Council in the absence of the Mayor. In the absence of the Mayor, and the President of the Council, the City Council shall elect one (1) of its own body to occupy his place temporarily, who shall be styled Acting President of the Council. Both the President of the Council and the Acting President of the Council, when occupying the position of the Mayor, shall have the same privileges as the other members of the City Council, and all acts of the President of the Council, or Acting President of the Council, while so acting, shall be as binding upon the City Council, and upon the Municipality as if done by the elected Mayor. (*Ref. 17-148 RS Neb.*)

§1-103 CITY COUNCIL; SELECTION AND DUTIES. The members of the City Council shall be elected and serve for a four (4) year term. The City Council shall be the legislative division of the Municipal Government, and shall perform such duties, and have such powers as may be authorized by law. The City Council shall maintain the peace, regulate business, protect the public health and safety, and assess such taxes and fees as are necessary and appropriate in the exercise of these functions. (*Ref. 17-103, 17-104 RS Neb.*)

§1-104 CITY COUNCIL; ORGANIZATION. City Council members of this Municipality shall take office, and commence their duties on the first regular meeting in December following their election. The newly elected Council members who have qualified as prescribed by law, together with the members of the City Council holding over, shall assemble in a regular meeting at the hour and place hereinafter prescribed and perfect the reorganization of the City Council as herein provided, and all appointive offices in which the terms of incumbents are expired shall be filled by appointment. After the said meeting has been called to order, the Municipal Clerk shall report to the City Council the names of all City Council members-elect who have qualified for their respective offices, and this report shall be spread upon the minutes of the meeting preceding the roll call. Each ward of the Municipality shall be represented by at least two (2) Council members. No person shall be eligible who is not at the time of his election an actual resident of the ward for which he is qualified and should any City Council member move from the ward from which he was elected, his office shall thereby become vacant. (*Ref. 17-104, RS Neb.*) (*Amended by Ord. No. 372, 11/7/78*)

§1-105 ELECTED OFFICIALS; VACANCY.

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

B. In the case of any vacancy in the office of mayor, or in case of his or her disability or absence, the President of the Council shall exercise the office of Mayor for the unexpired term until such vacancy is filled or such disability is removed, or in case of temporary absence, until the Mayor returns. If the President of the Council assumes the office of Mayor for the unexpired term, there shall be a vacancy on the Council. (*Neb. RS 32-568(4)*)

C. 1. Except as otherwise provided in subsection (B)(D), or (E) of this section, vacancies in city elected officials shall be filled by the Mayor and City Council for the balance of the unexpired term. Notice of a vacancy, except a vacancy resulting from the death of the incumbent, shall be in writing and presented to the Council at a regular or special meeting and shall appear as a part of the minutes of such meeting. The Council shall at once give public notice of the vacancy by causing to be published in a newspaper of general circulation within the city or by posting in three public places in the city the office vacated and the length of the unexpired term.

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

D. The Mayor and Council may, in lieu of filling a vacancy in a city elected office as provided in subsection C of this section, call a special city election to fill such vacancy.

E. If vacancies exist in the offices of a majority of the members of the City Council, the Secretary of State shall conduct a special city election to fill such vacancies. (*Neb. RS 32-569*) (*Amended by Ord. Nos. 467, 2/5/91; 638, 11/4/2003*)

§1-106 ELECTED OFFICIALS; MAYOR; VACANCY. Whenever a vacancy occurs in the office of Mayor, or in case of his disability or absence, the President of the Council shall exercise the office of Mayor until such vacancy is filled or such disability is removed, or in case of temporary absence, until the Mayor returns.

When the successful candidate for Mayor shall be prevented from assuming office, the incumbent Mayor shall not be entitled to hold over the term, but such office shall automatically become vacant and the President of the Council shall exercise the office of Mayor until such vacancy is filled.

If the President of the Council shall for any cause assume the office of Mayor for the remainder of the unexpired term, there shall be a vacancy on the Council which shall be filled as provided in Section 1-105. (*Ref. 17-107, 17-115 RS Neb.*)

§1-107 ELECTED OFFICIALS; OUALIFICATIONS; HOLDING OTHER ELECTIVE OFFICE. Elected officials shall be residents and registered voters of the City. No person shall be precluded from being elected or appointed to or holding an elective office for the reason that he or she has been elected or appointed to or holds another elective office, unless that person is presently serving as a member of the Legislature or in an elective office described in Article IV, section 1, of the Constitution of Nebraska. A Legislator or an Article IV elected office holder may simultaneously serve in another elective office which is filled at an election held in conjunction with the annual meeting

of a public body. Whenever an incumbent of the Legislature or an Article IV elected office assumes another elective office, except an elective office filled at an election held in conjunction with the annual meeting of a public body, the office first held by the incumbent shall be deemed vacant.

Members of the council shall hold no other employment with the City. Any Council member who ceases to possess any of the qualifications required by this section or who has been convicted of a crime while in office shall forthwith forfeit such office. The Council shall be the judge of the election and qualifications of its members, subject to review by the courts. (*Ref 17-108.02, 19-613, 32-563 RS Neb.*) (*Ord. No.468, 2/5/91*)

§1-108 CONFLICT OF INTEREST INVOLVING CONTRACTS.

(A) (1) **BUSINESS ASSOCIATION** means a business:

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

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

An individual who occupies a confidential professional relationship protected by law shall be exempt from this definition. This definition shall not apply to publicly traded stock under a trading account if the filer reports the name and address of the stockbroker. (*Neb RS 49-1408*)

(2) **IMMEDIATE FAMILY** means a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes. (*Neb. RS 49-1425*)

(3) **OFFICER** means:

(a) A member of any board or commission of the Municipality which spends and administers its own funds, who is dealing with a contract made by such board or commission; or

(b) Any elected municipal official.

Officer does not mean volunteer firefighters or ambulance drivers with respect to their duties as firefighters or ambulance drivers.

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

person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the governing body has benefited thereby.

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

(a) Has a business association with the business involved in the contract; or

(b) Will receive a direct pecuniary fee or commission as a result of the contract.

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

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

(2) Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matters; and

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

(D) An officer who (1) has no business association with the business involved in the contract or (2) will not receive a direct pecuniary fee or commission as a result of the contract shall not be deemed to have an interest within the meaning of this section.

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

(F) If an officer's parent, spouse, or child is an employee of the officer's governing body, the officer may vote on all issues of the contract which are generally applicable to (1) all employees or (2) all employees within a classification and do not single out his or her parent, spouse, or child for special action.

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

(H) (1) The person charged with keeping records for the governing body shall maintain separately from other records a ledger containing information listed in subdivisions (a) through (e) of this division (H) (1) about every contract entered into by the governing body in which an officer of the body has an interest and for which disclosure is made pursuant to division (C) of this section.

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

- (a) Names of the contracting parties;
- (b) Nature of the interest of the officer in question;
- (c) Date that the contract was approved by the governing body;
- (d) Amount of the contract; and
- (e) Basic terms of the contract.

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

(I) An open account established for the benefit of any governing body with a business in which an officer has an interest shall be deemed a contract subject to this section. The statement required to be filed by division (H) of this section shall be filed within ten days after such account is opened. Thereafter, the person charged with keeping records for the governing body shall maintain a running account of amounts purchased on the open account. Purchases made from petty cash or a petty cash fund shall not be subject to this section. (*Neb. RS 49-14, 103.03*)

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

(K) The governing body may exempt from divisions (A) through (I) of this section, contracts involving \$100 or less in which an officer of such body may have an interest. (*Neb. RS 49-14, 103.06*)

Article 2. Appointed Officials

§1-201 APPOINTED OFFICIALS; APPOINTMENT; REMOVAL. 1. The Mayor, with the consent of the City Council, may appoint such officers as shall be required by ordinance or otherwise required by law. The Mayor, by and with the consent of the City Council, shall appoint such a number of regular police officers as may be necessary. The City Council may establish and provide for the appointment of members of a law enforcement reserve force as provided by law.

2. All police officers and other appointed officials may be removed at any time by the Mayor, except that if the Municipality has a Municipal Water Commissioner, he or she may at any time, for sufficient cause, be removed from office by a two-thirds (2/3) vote of the City Council. (*Ref. 17-107, 17-541, 81-1438 RS Neb.*) (*Amended by Ord. No.567, 1/5/99*)

§1-202 APPOINTED OFFICIALS; MERGER OF OFFICES. The Governing Body may, at its discretion by ordinance, combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except Mayor and Council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time. The city manager/administrator in a city under the city manager/administrator plan of government as provided by law may, in his or her discretion, combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and council member, with any other elective or appointive office or employment so that one or more of such offices or employments may be held by the same officer or employee at the same time. The offices or employments so merged and combined shall always be construed to be separate and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged or combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment or employments so merged and combined. For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers. (*Ref 17-108.02 RS Neb.*)(*Amended by Ord. No.466. 2/5/91*)

§1-203 APOINTED OFFICIALS; CLERK-TREASURER POSITION CREATED. The appointive offices of City Clerk and City Treasurer are hereby combined and merged in accordance with the authority granted to the City Council by section 1-202.

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

The salary of the officer holding the merged offices shall not be in excess of the maximum amount provided by law for the salary of the offices so combined.

§1-204 APPOINTED OFFICIALS; MUNICIPAL CLERK. The Municipal Clerk shall attend the meetings of the Governing Body, and keep a correct journal of the proceedings of that body. He or she shall keep a record of all outstanding bonds against the Municipality and when any bonds are sold, purchased, paid, or canceled, said record shall show the fact. He or she shall make, at the end of the fiscal year, a report of the business of the Municipality transacted through his or her office for the year, and the terms of the sale with each and every item and expense thereof. He or she shall file all official bonds after the same shall have been properly executed and approved. He or she shall make the proper certificate of passage which shall be attached to original copies of all bond ordinances hereafter enacted by the Governing Body.

The Municipal Clerk shall issue and sign all licenses, permits, and occupation tax receipts authorized by law and required by the Municipal ordinances. He or she shall collect all occupation taxes and license money except where some other Municipal officer is specifically charged with that duty. He or she shall keep a register of all licenses granted in the Municipality and the purpose for which they have been issued. The Municipal Clerk shall permit no records, public papers, or other documents of the Municipality kept and preserved in his or her office to be taken therefrom, except by such officers of the Municipality as may be entitled to the use of the same, but only upon their leaving a receipt therefore. He or she shall keep all the records of his or her office, including a record of all licenses issued by him or her, in a blank book with a proper index. He or she shall include as part of his or her records all petitions under which the Governing Body shall order public work to be done at the expense of the property fronting thereon, together with references to all resolutions and ordinances relating to the same. He or she shall endorse the date and hour of filing upon every paper or document so filed in his or her office. All such filings made by him or her shall be properly docketed. Included in his or her records shall be all standard codes, amendments thereto, and other documents incorporated by reference and arranged in triplicate in a manner convenient for reference. He or she shall keep an accurate and complete account of the appropriation of the several funds and draw, sign, and attest all warrants ordered for the payment of money on the particular fund from which the same is payable. At the end of each month, he or she shall then make a report of the amounts appropriated to the various funds and the amount of the warrants drawn thereon. Nothing herein shall be construed to prevent any citizen, official or other person from examining any public records at all reasonable times.

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

Within thirty (30) days after any meeting of the Governing Body, the Municipal Clerk shall prepare and publish the official proceedings of the Governing Body in a legal newspaper of general circulation in the Municipality which was duly designated as such by the Governing Body. Said publication shall set forth a statement of the proceedings thereof and shall also include the amount of each claim allowed, the purpose of the claim and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one (1) item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position. The charge for such publication shall not exceed the rates provided by the statutes of the State of Nebraska. Said publication shall be charged against the General Fund. He or she shall then keep in a book with a proper index, copies of all notices required to be published or posted by the Municipal Clerk by order of the Governing Body or under the ordinances of the Municipality. To each of the file copies of said notices shall be attached the printer's affidavit of publication, if the said notices are required to be published, or the Municipal Clerk's certificate under seal where the same are required to be posted only.

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

The Municipal Clerk may charge a reasonable fee for certified copies of any record in his or her office as set by resolution of the Governing Body. He or she shall destroy Municipal records under the direction of the State Records Board pursuant to sections 84-1201 through 84-1220; provided, the Governing Body shall not have the authority to destroy the minutes of the Municipal Clerk, the permanent ordinances and resolution books, or any other records classified as permanent by the State Records Board. (*Ref 17-605, 19-1102, 19-1104, 84-1201 through 84-1220, 84-712 RS Neb.*) (*Amended by Ord. No.493. 9/7/93*)

§1-205 APPOINTED OFFICIALS; CITY TREASURER.

(A) The City Treasurer shall be the custodian of all money belonging to the City. He or she shall keep a separate account of each fund or appropriation and debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefore, specifying the date of payment and on what account paid. He or she shall also file copies of such receipts with his or her monthly reports. The City Treasurer shall, at the end of every month, and as often as may be required, render an account to the City Council, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury. He or she shall also accompany such accounts with a statement of all receipts and disbursements, together

with all warrants redeemed and paid by him or her, which warrants, with any and all vouchers held by him or her, shall be filed with his or her account in the City Clerk's office. If the City Treasurer neglects or fails, for the space of ten days from the end of each month, to render his or her account, the office shall be declared vacant, and the City Council shall fill the vacancy by appointment until the next election for municipal officers. (*Neb. RS 77-2201*)

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

(2) The City Treasurer shall keep a warrant register in the form required by *Neb. RS 77-2202*.

(3) The City Treasurer shall make duplicate receipts for all sums which shall be paid into his or her office, which receipts shall show the source from which such funds are derived, and shall, by distinct lines and columns, show the amount received to the credit of each separate fund, and whether the same was paid in cash, in warrants, or otherwise. The Treasurer shall deliver one of the duplicates to the person making the payment and retain the other in his or her office. (*Neb. RS 77-2209*)

(4) The City Treasurer shall daily, as money is received, foot the several columns of the cash book and of the register, and carry the amounts forward, and at the close of each year, in case the amount of money received by the Treasurer is insufficient to pay the warrants registered, he or she shall close the account for that year in the register and shall carry forward the excess. (*Neb. RS 77-2210*)

(C) (1) The City Treasurer shall prepare and publish annually within 60 days following the close of the municipal fiscal year a statement of the receipts and expenditures by funds of the City for the preceding fiscal year. (*Neb. RS 19-1101*)

(2) Publication shall be made in one legal newspaper of general circulation in the City. If no legal newspaper is published in the City, then such publication shall be made in one legal newspaper published or of general circulation within the county in which the City is located. (*Neb. RS 19-1103*)

(D) The City Treasurer shall keep all money belonging to the City separate and distinct from his or her own money. He or she shall invest and collect all money owned by or owed to the City as directed by the City Council. He or she shall maintain depository evidence that all municipal money is, in the name of the City, in a solvent and going financial institution of a type authorized by state law for deposit of municipal funds. He or she shall cancel all bonds, coupons, warrants, and other evidences of debt against the City, whenever paid by him or her, by writing or stamping on the face thereof, "Paid by the City Treasurer," with the date of payment written or stamped thereon. He or she shall collect all special taxes, allocate special assessments to the several owners, and obtain from the County Treasurer a monthly report as to the collection of delinquent taxes.

§1-206 APPOINTED OFFICIALS; TREASURER'S MONTHLY REPORT. The Municipal Treasurer shall, at the end of each and every month and such other times as the Governing Body may deem necessary, render an account to the Governing Body under oath showing the financial state of the Municipality at that date, the amount of money remaining in each fund and the amount paid therefore, and the balance of money remaining in the treasury. He shall accompany the said account with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him. He shall also produce depository evidence that all Municipal money is in a solvent and going bank in the name of the Municipality. If the Municipal Treasurer shall neglect or fail for the space of ten (10) days from the end of each and every month to render his accounts as aforesaid, the Governing Body shall, by resolution, declare the office vacant and appoint some person to fill the vacancy. The Municipal Treasurer shall be present at each regular meeting of the Governing Body, at which time he shall read and file his monthly report. *(Ref 17-606 RS Neb.)*

§1-207 APPOINTED OFFICIALS; TREASURER'S ANNUAL REPORT. The Municipal Treasurer shall publish in a legal newspaper having general circulation within the Municipality, within sixty (60) days following the first (1st) day of August of each year, a report of the activities of his office which said report shall show in detail. Said report shall include all receipts, disbursements, warrants outstanding, and the debit or credit balance of the Municipality. *(Ref. 19-1101 RS Neb.)*

§1-208 APPOINTED OFFICIALS; MUNICIPAL ATTORNEY. The Municipal Attorney is the Municipality's legal advisor and as such, he shall commence, prosecute, and defend all suits on behalf of the Municipality. When requested by the Governing Body, he shall attend meetings of the Governing Body, and shall advise any Municipal official in all matters of law in which the interests of the Municipality may be involved. He shall draft such ordinances, bonds, contracts, and other writings as may be required in the administration of the affairs of the Municipality. He shall examine all bonds, contracts, and documents on which the Governing Body will be required to act and attach thereto a brief statement in writing to all such instruments and documents as to whether or not the document is in legal and proper form. He shall prepare complaints, attend, and prosecute violations of the Municipal ordinances when directed to do so by the Governing Body. Without direction, he shall appear and prosecute all cases for violation of the Municipal ordinances that have been appealed to and are pending in any higher court. He shall also examine, when requested to do so by the Governing Body, the ordinance records and advise and assist the Municipal Clerk as much as may be necessary, to the end that each procedural step will be taken in the passage of each ordinance to insure that they will be valid and subsisting local laws in so far as their passage and approval are concerned. The Governing Body shall have the right to compensate the Municipal Attorney for legal services on such terms as the Governing Body and the Municipal Attorney may agree, and to employ any additional legal

assistance as may be necessary out of the funds of the Municipality. (*Ref. 17-610 RS Neb.*)

§1-209 APPOINTED OFFICIALS; MUNICIPAL PHYSICIAN. The Municipal Physician shall be a member of the Board of Health of the Municipality and perform the duties devolving upon him as the medical advisor of the said board. In all injuries where a liability may be asserted against the Municipality, the Municipal Physician shall immediately investigate the said injuries, the extent thereof, and the circumstances. He shall then report the results of his investigation with the name of the party injured and all other persons who may have personal knowledge of the matter. He shall make all physical examinations and necessary laboratory tests incident thereto and issue such health certificates as are required by ordinance. For the purpose of making examinations of the sanitary conditions of the property and the state of health of the inhabitants therein, he shall have the right, at all reasonable hours, to go upon and enter all premises, buildings, or other structures in the Municipality. He shall perform such other duties as may be required of him by the laws of the State of Nebraska and the ordinances of the Municipality. When ordered to do so by the Governing Body, he shall disinfect or fumigate the premises or persons in or about the premises when the premises are quarantined, and to call upon indigent sick persons and perform other professional services at the direction of the Governing Body. The Municipal Physician shall receive, as compensation for his services, such sum as the Governing Body may from time to time set. He shall receive no compensation for his services as a member of the Municipal Board of Health. (*Ref 17-121 RS Neb.*)

§1-210 APPOINTED OFFICIALS; MUNICIPAL POLICE CHIEF. The Municipal Police Chief shall direct the police work of the Municipality and shall be responsible for the maintenance of law and order. He shall act as Health Inspector and Building Inspector, except in the event the Municipality appoints another person. He shall file the necessary complaints in cases arising out of violations of Municipal ordinances, and shall make all necessary reports required by the Municipal ordinances or the laws of the State of Nebraska. (*Ref. 17-107, 17-121 RS Neb.*)

§1-211 APPOINTED OFFICIALS; MUNICIPAL POLICEMEN. The Municipal Police, whether regular or special, shall have the power to arrest all offenders against the laws of the State of Nebraska or the Municipality by day or by night and keep the said offenders in the Municipal jail or some other place to prevent their escape until trial can be held before the proper official of the State of Nebraska or the Municipality. They shall have full power and authority to call on any person whenever necessary to assist them in performing public duties, and failure, neglect or refusal to render such assistance shall be deemed a misdemeanor punishable upon conviction by a fine. Every Municipal Policeman shall be expected to be conversant and knowledgeable with the Municipal and State laws, and no law enforcement official shall have any interest in any

establishment having a liquor license. Municipal Policemen shall have the duty to file such complaints and reports as may be required by the Municipal ordinances and the laws of the State of Nebraska. Any Municipal Policeman who shall willfully fail, neglect or refuse to make an arrest or who purposely and willfully fails to make a complaint after an arrest is made, shall be deemed guilty of a misdemeanor and upon conviction shall be fined. It shall be unlawful for the Governing Body to retain any Municipal Policeman in that position after he shall have been duly convicted of the willful violation of any law of the United States of America, the State of Nebraska, or any ordinance of the Municipality except minor traffic violations. It shall be the duty of every Municipal Policeman making a lawful arrest to search all persons in the presence of some other person whenever possible, and shall carefully keep and produce to the proper judicial official upon the trial everything found upon the person of such prisoners. All personal effects so taken from prisoners aforesaid shall be restored to them upon their release. The Governing Body may, from time to time, provide the Municipal Police with such uniforms, equipment, and transportation as may be essential in the performance of their official duties. (Ref. 17-118. 17-124 RS Neb.)

§1-212 CITY UTILITIES SUPERINTENDENT. (A) A Utilities Superintendent shall be appointed in the event that there is more than 1 municipal utility and the City Council determines that it is in the best interest of the city to appoint 1 official to have the immediate control over all the municipal utilities. Any vacancy occurring in that office by death, resignation, or removal may be filled in the manner hereinbefore provided for the appointment of all city officials.

(B) The Utilities Superintendent's duties over the following departments shall be as stated herein.

(1) *Water Department.* He or she shall have general supervision and control over the city water system and shall be primarily responsible for its economic operation and prudent management. Included in the water system shall be the water plant, the pump house, all machinery, and appliances used in connection with producing and distributing water to inhabitants of the city. All actions, decisions, and procedures of the Utilities Superintendent shall be subject to the general directives and control of the City Council. The Utilities Superintendent shall be subject to the general directives and authority over all employees of the water system which the City Council may from time to time hire to operate and maintain the system. Unless some other official is specifically designated, he or she shall collect all money received by the city on account of the system of waterworks and shall faithfully account for and pay over to the City Treasurer all such money collected in the name of the city and receive a receipt from the City Treasurer for the depository evidence of the faithful discharge of this duty. This receipt shall then be filed with the City Clerk, and the second copy shall be kept by the Superintendent. He or she shall make a detailed report to the City Council at least once every 6

months of the condition of the water system, of all mains, pipes, hydrants, reservoirs, and machinery, and such improvements, repairs, and extensions thereof as he or she may think proper. The report shall show the amount of receipts and expenditures on account thereof for the preceding 6 months. No money shall be expended for improvements, repairs, or extensions of the waterworks system except upon the recommendation of the Superintendent. The Utilities Superintendent shall provide a bond conditioned upon the faithful discharge of duties which shall amount to not less than the amount set by resolution of the City Council and on file in the office of the City Clerk. He or she shall perform those additional duties as may be prescribed by the City Council.

(2) *Sewer Department.* The Utilities Superintendent shall have the immediate control and supervision over all the employees and property that make up the city sewer system, subject to the general control and directives of the City Council. He or she shall at least every 6 months make a detailed report to the City Council on the condition of the sewer system and shall direct their attention to such improvements, repairs, extensions, additions, and additional employees as he or she may believe are needed along with an estimate of the cost thereof. He or she shall have those other duties as the City Council may delegate. He or she shall issue permits for all connections to the city sewer system and inspect and supervise all repairs made to the system.

(3) *Street Department.* The Utilities Superintendent shall, subject to the orders and directives of the City Council, have general charge, directions, and control of all work on the streets, sidewalks, culverts, and bridges of the city and shall perform those other duties as the City Council may require. It shall be his or her responsibility to see that gutters and drains therein function properly and that the same are kept in good repair. He or she shall, at the request of the City Council, make a detailed report to the City Council on the conditions of the streets, sidewalks, culverts, alleys, and bridges of the city and shall direct its attention to those improvements, repairs, extensions, additions, and additional employees as he or she may believe are needed to maintain a satisfactory street system in the city, along with an estimate of the cost thereof. He or she shall issue permits and assume those other duties as the City Council may direct. (*Neb. RS 39-2512, Neb. RS 17-541*)

§1-213 APPOINTED OFFICIALS; ZONING INSPECTOR. The Mayor may appoint a Zoning Inspector. In the absence of a specific appointment by the Mayor, the Utilities Superintendent is hereby designated as Zoning Inspector.

§1-214 APPOINTED OFFICIALS; CIVIL DEFENSE DIRECTOR. The Mayor may appoint a civil defense director who shall have direct responsibility for the organization, administration and operation of the local organization for civil defense, subject to the direction and control of the Mayor and City Council and in accordance with the state civil defense plan and program. In the absence of a specific appointment by the Mayor, the Municipal Fire Chief is hereby designated as Civil Defense Director. (*Ord. No.455. 7/2/90*)

Article 3. Bonds and Oath

§1-301 BONDS; FORM. Official bonds of the Municipality shall be in form, joint and several, and shall be made payable to the Municipality in such penalty as the Governing Body may set by resolution; provided the penalty amount on any bond shall not fall below the legal minimum when one has been set by the State of Nebraska for each particular official. All official bonds of the Municipal officials shall be executed by the principal named in such bonds and by at least two (2) sufficient sureties who shall be freeholders of the county, or by the official as principal, and by a guaranty, surety, fidelity or bonding company; provided no Municipal official, while still in his official term of office, shall be accepted as surety on any other official's bond, contractor's bond, license bond, or appeal bond under any circumstances. Only companies that are legally authorized to transact business in the State of Nebraska shall be eligible for suretyship on the bond of an official of the Municipality. All said bonds shall obligate the principal and sureties for the faithful discharge of all duties required by law of such principal, and shall inure to the benefit of the Municipality and any persons who may be injured by a breach of the conditions of such bonds. No bond shall be deemed to be given or complete until the approval of the Governing Body, and all sureties are endorsed in writing on the said instrument by the Mayor and Municipal Clerk, pursuant to the said approval of the Governing Body. The premium on any official bond required to be given may be paid out of the General Fund or other proper Municipal fund upon a resolution to that effect by the Governing Body at the beginning of any Municipal year. All official bonds meeting the conditions herein shall be filed with the Municipal Clerk for his official records, and it shall be the duty of the Municipal Clerk to furnish a certified copy of any bond so filed upon the payment of a fee which shall be set by resolution of the Governing Body. In the event that the sureties on the official bond of any officer of the Municipality, in the opinion of the Governing Body, become insufficient, the Governing Body may, by resolution, fix a reasonable time within which the said officer may give a new bond or additional sureties as directed. In the event that the officer should fail, refuse, or neglect to give a new bond or additional sureties to the satisfaction and approval of the Governing Body, then the office shall, by such failure, refusal, or neglect, become vacant; and it shall be the duty of the Governing Body to appoint a competent and qualified person to fill the said office. Any official who is re-elected to office shall be required to file a new bond after each election. (*Ref 11-103 through 11-118. 17-604 RS Neb.*)

§1-302 OATH OF OFFICE; MUNICIPAL OFFICIALS. All officials of the Municipality, whether elected or appointed, except when a different oath is specifically provided herein, shall, before entering upon their respective duties, take and subscribe the following oath which shall be endorsed upon their respective bonds:

"1 _____ do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Nebraska against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same;

that I take this obligation freely, and without mental reservation, or for the purpose of evasion; and that I will faithfully and impartially perform the duties of the office of _____, according to law and to the best of my ability. And I do further swear that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this State by force or violence; and that during such time as I am in this position I will not advocate, nor become a member of any political party or organization that advocates, the overthrow of the government of the United States or of this State by force or violence. So help me God." (*Ref. 11-101 RS Neb.*)

Article 4. Corporate Seal

§1-401 SEAL; OFFICIAL CORPORATE. The official Corporate Seal of the Municipality shall be kept in the office of the Municipal Clerk and shall bear the following inscription "City Seal, Lyons, Burt County, Nebraska." The Municipal Clerk shall affix an impression of the said official seal to all warrants, licenses, permits, ordinances, and all other official papers issued by order of the Governing Body and countersigned by the Municipal Clerk. (*Ref 17-502 RS Neb.*)

Article 5. Meetings

§1-501 MEETINGS; DEFINED. Meetings, as used in this Article shall mean all regular, special, or called meetings, formal or informal, of a public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action. *(Ref 84-1409(2) RS Neb.)*

§1-502 MEETINGS; PUBLIC BODY DEFINED. Body as used in this Article shall mean:

- A. The Governing Body of the Municipality,
- B. All independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies now or hereafter created by Constitution, statute, ordinance, or otherwise pursuant to law, and
- C. Advisory committees of the bodies listed above.

This Article shall not apply to subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting, or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body. *(Ref 84-1409(1) RS Neb.) (Amended by Ord. No.489. 8/24/93)*

§1-503 MEETINGS; PUBLIC. All public meetings, as defined by law, shall be held in a Municipal public building which shall be open to attendance by the public. All meetings shall be held in the public building in which the Governing Body usually holds such meetings, unless the publicized notice hereinafter required shall designate some other public building or other specified place. The advance publicized notice of all public convened meetings shall be simultaneously transmitted to all members of the Governing Body and to the public by a method designated by the Governing Body or by the Mayor, if the Governing Body has not designated a method. Such notice shall contain the time and specific place for each meeting and either an enumeration of the agenda subjects known at the time of the notice or a statement that such an agenda kept continually current shall be readily available for public inspection at the office of the Municipal Clerk. Except for items of an emergency nature, the agenda shall not be enlarged later than (a) twenty- four (24) hours before the scheduled commencement of the meeting, or (b) forty-eight (48) hours before the scheduled commencement of a meeting of the Governing Body scheduled outside the corporate limits of the Municipality. The Governing Body shall have the right to modify the agenda to include items of an emergency nature only at such public meetings. The minutes of the Municipal Clerk shall include the record of the manner and advance time by which the advance publicized notice was given, a statement of how the availability of an agenda of the then known subjects was communicated, the time and specific place of the meetings, and the names of each member of the Governing Body present or absent at each convened meeting. The minutes of the Governing Body shall be a public record, open to inspection by the public upon request at any reasonable time at the office of the Municipal Clerk. Any official action on any question or motion duly moved and

seconded shall be taken only by roll call vote of the Governing Body in open session. The record of the Municipal Clerk shall show how each member voted, or that the member was absent and did not vote. (Ref 84-1408. 84-1409. 84-1411. 84-1413 RS Neb.) (Amended by Ord. No.435. 9/15/87)

§1-504 MEETINGS; CLOSED SESSIONS.

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

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

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

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

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

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

(B) The vote to hold a closed session shall be taken in open session. The vote of each member on the question of holding a closed session, the reason for the closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. The public body holding such a closed session shall restrict its consideration to matters during the closed portions to only those purposes set forth in the minutes as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action means a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under division (A)(1)(a) of this section.

(C) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (1) the protection of the public interest or (2) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(D) Nothing in this section shall be construed to require that any meeting be closed to the public. (*Ref. 84-410 RS Neb.*)

§1-505 MEETINGS; PROHIBITED ACTS; EXEMPT EVENTS.

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

(B) This article does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power. (*Neb. RS 84-1410*)

§1-506 MEETINGS; EMERGENCY MEETINGS. When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes, and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of section 1-506 of this Article shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day. (*Ref. 84-1411 RS Neb.*)

§1-507 MEETINGS; NOTICE TO NEWS MEDIA. The Municipal Clerk, Secretary, or other designee of each public body shall maintain a list of the news media requesting notification of meetings, and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting. (*Ref. 84-1411 RS Neb.*)

§1-508 MEETINGS; PUBLIC PARTICIPATION.

(A) Subject to the provisions of this subchapter, the public shall have the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 1-504 (Closed Sessions), may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(B) It shall not be a violation of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its

meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(C) No public body shall require members of the public to identify themselves as a condition for admission to the meeting. The body may require any member of the public desiring to address the body to identify himself or herself.

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

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

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

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

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

§1-509 MEETINGS; GOVERNING BODY. (*Repealed by Ord. No.407, 11/5/85*)

§1-510 MEETINGS; ORDER BUSINESS. All meetings of the Governing Body shall be open to the public. Promptly at the hour set by law on the day of each regular meeting, the members of the Governing Body, the Municipal Clerk, the Mayor, and such other Municipal officials that may be required shall take their regular stations in the meeting place, and the business of the Municipality shall be taken up for consideration, and disposition in the manner prescribed by the official agenda on file at the office of the Municipal Clerk.

§1-511 MEETINGS; ORDER OF BUSINESS. All meetings of the Governing Body shall be open to the public. Promptly at the hour set by law on the day of each regular meeting, the members of the Governing Body, the Municipal Clerk, the Mayor, and such other Municipal officials that may be required shall take their regular stations in the meeting place, and the business of the Municipality shall be taken up for consideration, and disposition in the following order:

Roll Call

Reading and Approval of the Minutes of the Previous Meeting

Consideration of Petitions and other Communications

Reports of Officers, Boards, and Committees

Unfinished Business of the Preceding Meeting

Introduction of Ordinances and Resolutions

Final Passage of Ordinances

Miscellaneous Business
New Business

§1-512 MEETINGS; PARLIAMENTARY PROCEDURE. The Mayor shall preserve order during meetings of the Governing Body and shall decide all questions of order, subject to an appeal to the Governing Body. When any person is called to order, he shall be seated until the point is decided. When the Mayor is putting the question, no person shall leave the meeting room. Every person present, previous to speaking, shall rise from his seat and address himself to the presiding officer and while speaking shall confine himself to the question. When two (2) or more persons rise at once, the Mayor shall recognize the one who spoke first. All resolutions or motions shall be reduced to writing before being acted upon if requested by the Municipal Clerk or any member of the Governing Body. Every member of the Governing Body who is present when a question is voted upon, shall cast his vote unless excused by a majority of the Governing Body present. No motion shall be put or debated unless seconded. When seconded, it shall be stated by the Mayor before being debatable. In all cases where a motion or resolution is entered on the minutes, the name of the member of the Governing Body making the motion or resolution shall be entered also. After each vote, the "Yeas" and "Nays" shall be taken, and entered in the minutes upon the request of any member of the Governing Body. Before the vote is actually taken, any resolution, motion, or proposed ordinance may be withdrawn from consideration by the sponsor thereof, with the consent of the member of the Governing Body seconding the said resolution, motion, or ordinance. When, in the consideration of an ordinance, different times or amounts are proposed, the question shall be put on the largest sum or the longest time. A question to reconsider shall be in order when made by a member voting with the majority, but such motion to reconsider must be made before the expiration of the third (3rd) regular meeting after the initial consideration of the question. When any question is under debate, no motion shall be made, entertained, or seconded except the previous question, a motion to table, and to adjourn. Each of the said motions shall be decided without debate. Any of the rules of the Governing Body for meetings may be suspended by a two-thirds (2/3) vote of the members present. In all cases in which provisions are not made by these rules, Robert's Rules of Order is the authority by which the Governing Body shall decide all procedural disputes that may arise.

§1-513 MEETINGS; CHANGE IN OFFICE; SUBSEQUENT MEETINGS. At the first regular meeting in December following the general election in every even-numbered year, the Council shall meet in the usual place for holding meetings and the newly elected Council Members shall assume the duties of their office. Thereafter the Council shall meet at such time and place as it may prescribe by ordinance. (*Neb. RS 19-615*)

§1-514 MEETINGS; ORGANIZATIONAL. The newly elected Council shall convene at the regular place of meeting in the City on the first (1st) regular meeting in December of each year in which a Municipal election is held, immediately after the prior Council

adjourns, and proceed to organize themselves for the ensuing year. The Mayor elected for the new municipal year shall call the meeting to order. The Council shall then proceed to examine the credentials of its members and other elective officers of the City to see that each has been duly and properly elected, and to see that such oaths and bonds have been given as are required. After ascertaining that all members are duly qualified, the Council shall then elect one of its own Body who shall be styled as "President of the Council." The Mayor shall then nominate his candidates for appointive offices. He shall then proceed with the regular order of business. It is hereby made the duty of each and every member of the Council, or his successor in office, and of each officer elected to any office, to qualify prior to the first (1st) regular meeting in December following his election. All appointive officers shall qualify within two (2) weeks following their appointments. Qualification for each officer who is not required to give bond shall consist in his subscribing and taking an oath to support the Constitution of the United States, the Constitution of the State of Nebraska, the laws of the Municipality, and to perform faithfully and impartially the duties of his office, said oath to be filed in the office of the Municipal Clerk. Each officer who is required to give a bond shall file the required bond in the office of the Municipal Clerk with sufficient sureties, conditioned on the faithful discharge of the duties of his office, with the oath endorsed thereon. *(Amended by Ord. No. 372, 11/7/78)*

§1-515 MEETINGS; REGULAR MEETING. 1. The meetings of the Governing Body shall be held in the meeting place of the Municipality. Regular meetings shall be held on the first Tuesday of each month at the hour of five thirty (5:30) o'clock p.m.

2. A majority of all members elected to the City Council shall constitute a quorum for the transaction of any business, but a fewer number may adjourn from time to time and compel the attendance of absent members. Unless a greater vote is required by law, an affirmative vote of at least one-half of the elected members shall be required for the transaction of any business. *(Ref. 17 -105 RS Neb.) (Ord. No.407, 11/5/85) (Amended by Ord. Nos. 547, 5/6/97; 554, 11/4/97and Ord. No. 614, 2/6/01)*

§1-516 MEETINGS; SPECIAL MEETINGS. Special meetings may be called by the Mayor, or by three members of the City Council, the object of which shall be submitted to the Council in writing. The call and object, as well as the disposition thereof, shall be entered upon the journal by the Municipal Clerk. On filing the call for a special meeting, the Municipal Clerk shall notify the Council members of the special meeting, stating the time and its purpose. Notice of a special meeting need not be given to a Council member known to be out of the state or physically unable to be present. A majority of the members of the City Council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day and compel the attendance of the absent members. Whether a quorum is present or not, all absent members shall be sent for and compelled to attend.

At the hour appointed for the meeting, the Municipal Clerk shall proceed to call the roll of members and announce whether a quorum is present. If a quorum is present,

the Council shall be called to order by the Mayor, if present, or if absent, by the President of the Council. In the absence of both the Mayor and the President of the Council, the City Council members shall elect a President pro tempore. All Ordinances passed at any special meeting shall comply with procedures set forth in Chapter 1, Article 6 herein. (*Ref 17-106 RS Neb.*) (*Ord. No.407, 11/5/85*)

§1-517 MEETINGS; VIDEOCONFERENCING. (A) A meeting of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by means of videoconferencing if:

- (1) Reasonable advance publicized notice is given;
- (2) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if video-conferencing was not used;
- (3) At least one copy of all documents being considered is available to the public at each site of the videoconference;
- (4) At least one member of the governing body or advisory committee is present at each site of the videoconference; and
- (5) No more than one-half of the governing body's or advisory committee's meetings in a calendar year are held by videoconference.

(B) Videoconferencing or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(C) For the purpose of this section, the following definition applies:

VIDEOCONFERENCING. Conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations. (*Neb. RS 84-1409*)

§1-518 MEETINGS; TELECONFERENCING. (A) A meeting of the governing body of an entity formed under the Interlocal Cooperation Act or the Joint Public Agency Act or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by telephone conference call if:

- (1) The territory represented by the member public agencies of the entity or pool covers more than one county;
- (2) Reasonable advance publicized notice is given which identifies each telephone conference location at which a member of the entity's or pool's governing body will be present;

(3) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the entity or pool or at a place which will accommodate the anticipated audience;

(4) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(5) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(6) At least one member of the governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(7) The telephone conference call lasts no more than one hour; and

(8) No more than one-half of the entity's or pool's meetings in a calendar year are held by telephone conference call.

(B) Nothing in this section shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act. (*Neb. RS 84-1411*)

Article 6. Ordinances

§1-601 ORDINANCES, RULES, AND RESOLUTIONS; GRANT OF POWER. The Governing body may make all ordinances, bylaws, rules, regulations, and resolutions not inconsistent with the laws of the State of Nebraska, as may be expedient for maintaining the peace, good government, and welfare of the Municipality and its trade, commerce, and manufactories. *((Ref. 17-505 RS Neb.) (Amended by Ord. No. 568, 1/5/99))*

§1-602 ORDINANCES; INTRODUCTION. Ordinances shall be introduced by members of the Governing Body in either of the following ways:

1. With the recognition of the Mayor, a Council member may, in the presence and hearing of a majority of the members elected to the Council, read aloud the substance of his proposed ordinance and file a copy of the same with the Municipal Clerk for future consideration;
2. Or with the recognition of the Mayor, a Council member may present his proposed ordinance to the Clerk, who, in the presence and hearing of a majority of the members elected to the Council, shall read aloud the substance of the same and shall file the same for future consideration.

§1-603 ORDINANCES; RESOLUTIONS AND MOTIONS. Resolutions and motions shall be introduced in one of the methods prescribed for the introduction of ordinances. After their introduction, they shall be fully and distinctly read one (1) time in the presence and hearing of a majority of the members elected to the Council. The issue raised by said resolutions or motions shall be disposed of in accordance with the usage of parliamentary law adopted for the guidance of the Council. A majority vote shall be required to pass any resolution or motion. The vote on any resolution or motion shall be by roll call vote.

§1-604 ORDINANCES; STYLE. The style of all Municipal ordinances shall be: "Be it ordained by the Mayor and Council of the City of Lyons, Nebraska:" *(Ref 17-613 RS Neb.)*

§1-605 ORDINANCES; TITLE. No ordinance shall contain a subject not clearly expressed in its title. *(Ref 17-614 RS Neb.)*

§1-606 ORDINANCES, RESOLUTIONS, ORDERS, BYLAWS; READING; PASSAGE.

Ordinances of a general or permanent nature shall be read by title on three (3) different days unless three-fourths (3/4) of the Governing Body vote to suspend this requirement, except that such requirement shall not be suspended for any ordinance for the annexation of territory. In case such requirement is suspended, the ordinance shall be read by title and then moved for final passage. Three-fourths (3/4) of the Governing Body may require a reading of any ordinance in full before enactment under either procedure set out in this section. All ordinances and resolutions or orders for the

appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the Governing Body. On the passage or adoption of every bylaw or ordinance, and every resolution or order to enter into a contract by the Governing Body, the yeas and nays shall be called and recorded. To pass or adopt any bylaw, ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the Governing Body shall be required. All appointments of the officers by the Governing Body shall be made *viva voce*; and the concurrence of a like majority shall be required, and the names of those, and for whom they voted, on the vote resulting in an appointment, shall be recorded. The requirements of a roll call or *viva voce* vote shall be satisfied by a Municipality which utilizes an electronic voting device which allows the yeas and nays of each member of the Governing Body to be readily seen by the public. (Ref 17-614, 17-616 RS Neb.) (Amended by Ord. Nos. 531, 1/3/96; 569, 1/5/99)

§1-607 ORDINANCES; PUBLICATION OR POSTING. All ordinances of a general nature shall be published one (1) time within fifteen (15) days after they are passed in (a) some newspaper published in the Municipality, or if no paper is published in the Municipality, then by posting a written or printed copy thereof in each of three (3) public places in the Municipality, or (b) in book or pamphlet form. (Ref. 17-613 RS Neb.) (Amended by Ord. No.422, 10/7/86)

§1-608 ORDINANCES; CERTIFICATE OR PUBLICATION OR POSTING. The passage, approval, and publication or posting of all ordinances shall be sufficiently proven by a certificate under the Seal of the Municipality from the Municipal Clerk, showing that the said ordinance was passed and approved, and when, and in what paper the same was published, or when, and by whom, and where the same was posted. (Ref 17-61 3 RS Neb.)

§1-609 ORDINANCES; EFFECTIVE DATE; EMERGENCY ORDINANCES.

1. Except as provided in subsection (2) of this section, an ordinance for the government of the Municipality which has been adopted by the Governing Body, without submission to the voters of the Municipality, shall not go into effect until fifteen (15) days after the passage of the ordinance.

2. In the case of riot, infectious or contagious diseases, or other impending danger, failure of a public utility, or any other emergency requiring its immediate operation, an ordinance shall take effect upon the proclamation of the Mayor and the posting thereof in at least three (3) of the most public places in the Municipality. Such emergency ordinance shall recite the emergency, be passed by a three-fourths (3/4) vote of the Governing Body, and be entered of record on the Municipal Clerk's minutes. (Ref 17-613, 19-3701 RS Neb.) (Amended by Ord. No.570, 1/5/99)

§1-610 ORDINANCES; AMENDMENTS AND REVISIONS. No ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire

ordinance or section as revised or amended, and the ordinance or section so amended is repealed; except that an ordinance revising all the ordinances of the Municipality and modifications to zoning or building districts may be adopted as otherwise provided by law. (*Ref 17-614 RS Neb.*) (*Amended by Ord. No.571, 1/5/99*)

Article 7. Elections

§1-701 ELECTIONS; GENERALLY. All municipal issues and offices shall be combined on the statewide primary and general election ballots whenever possible. The issuance of separate ballots shall be avoided in a statewide election if municipal offices or issues can reasonably be combined with the nonpartisan ballot and state law does not require otherwise. All municipal elections involving the election of officers shall be held in accordance with the Election Act and in conjunction with the statewide primary or general election. (*Neb. RS 32-556*)

§1-702 ELECTIONS; TERM OF OFFICE. All elected officers of the Municipality shall serve a term of four (4) years and until their successors are elected and have qualified. (*Ref 17-107.02 (2) RS Neb.*)

§1- 703 ELECTIONS; PRIMARY ELECTION, NUMBER OF CANDIDATES FILING. If the number of candidates properly filed for nomination at the primary election does not exceed two (2) for each vacancy to be filled, all candidates properly filed shall be considered nominated, and no primary election for their nomination shall be required. (*Ref 17-107.02(4) RS Neb.*)

§1- 704 ELECTIONS; AND VOTES. In the case of a tie vote of any of the candidates in either the primary or general election, the County Clerk shall notify such candidates to appear at his office on a given day and hour to determine the same by lot before the canvassing board, and the certificate of nomination or election shall be given accordingly. Notice to appear shall be given by certified mail. (*Ref 17-107.02(6) RS Neb.*)

§1-705 ELECTIONS; GENERAL ELECTION, PREPARATION OF BALLOT. When more than one person becomes a candidate by filing, petition, or write-in procedures for the same position in the primary, the County Clerk, in preparing the official ballot for the general election, shall place thereon the names of the persons who received the greatest number of votes in the primary; but in no event shall the names on the general election ballot be more than twice the number of vacancies to be filled at the general election.

The County Clerk shall place the names of the candidates on the general election ballot in the direct order according to the number of votes received at the primary election. If no primary election was held, the name of the candidates shall be placed upon the general election ballot in the order of their filing. (*Ref 17-107.02(6)&(7) RS Neb.*)

§1-706 ELECTIONS; JOINT, GENERAL. The general Municipal election shall be held in accordance with the provisions of Chapter thirty-two (32), Revised Statutes of Nebraska. The Governing Body has determined by ordinance duly adopted, to hold the Municipal Election in conjunction with the Statewide Primary Election held on the first (1st) Tuesday after the second (2nd) Monday in May of each even numbered year. Prior

to February one (1) of the year in which the first such joint election takes place, the Governing Body shall receive the consent in writing of the County Board to so hold the election, and such authorization shall be prescribed according to State law. The County Clerk shall have charge of the election and shall have the authority to deputize the Municipal Clerk for Municipal election purposes. (Ref 19-621 , 32-505, 32-4,147 RS Neb.)

§1-707 ELECTIONS: JOINT, GENERAL, NOTICE. The County Clerk shall publish, in a newspaper designated by the County Board, the notice of the election no less than forty days prior to the Primary or General Election. This notice will serve the notice requirement for all Municipal Elections which are held in conjunction with the County. (Ref 32-402.01 RS Neb.)

§1-708 ELECTIONS; SPECIAL, JOINT. 1. Any issue to be submitted to the registered voters at a special election by the Municipality shall be certified by the Municipal Clerk to the Election Commissioner or County Clerk at least fifty (50) days prior to the election. A special election may be held by mail as provided in sections 32-952 through 32-959 RS Neb. No special election to be conducted by the Election Commissioner or County Clerk shall be held within thirty (30) days prior to or sixty (60) days after the statewide primary election, and no special election to be conducted by the Election Commissioner or County Clerk shall be held within thirty (30) days prior to or sixty (60) days after the statewide general election.

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

3. After the Election Commissioner or County Clerk has received the certification of the issue to be submitted, he or she shall be responsible for all matters relating to the submission of the issue to the registered voters; except that the Municipal Clerk shall be responsible for the publication or posting of any required special notice of the submission of such issue, other than the notice required to be given of the statewide election issues. The Election Commissioner or County Clerk shall prepare the ballots and issue absentee ballots, and shall also conduct the submission of the issue, including the receiving and counting of ballots on the issue. The election returns shall be made to the Election Commissioner or County Clerk. The ballots, including absentee ballots, shall be counted and canvassed at the same time and in the same manner as the other ballots. Upon completion of the canvass of the vote by the County Canvassing Board, the Election Commissioner or County Clerk shall certify the election results to the Governing Body. The canvass by the County Canvassing Board shall have the same force and effect as if made by the Governing Body. (Ref 32-559 RS Neb.) (Amended by Ord. No.572, 2/2/99)

§1-709 ELECTIONS; FILING FEE. Prior to the filing of any nomination papers, there shall be paid to the Municipal Treasurer a filing fee which shall amount to one percent (1%) of the annual salary for the office for which the candidate will file; provided there shall be no filing fee for any candidate filing for an office in which a per diem is paid rather than a salary, or an office for which there is a salary of less than five hundred (\$500.00) dollars per year. No nominating papers shall be filed until the proper Municipal Treasurer's receipt, showing the payment of the filing fee, shall be presented to the election officer with whom the nomination papers are to be filed. *(Ref 32-513 RS Neb.)*

§1-710 ELECTIONS; PETITION CANDIDATES. Candidates for any Municipal office in the Municipality may be nominated by petition. Petitions shall contain signatures of registered voters totaling not less than ten percent (10%) of the total votes received by the candidate receiving the highest number of votes in the Municipality or ward at the preceding general election in which officers were last elected to such office. They shall be accompanied by a treasurer's receipt for the filing fees for the office being sought. All petitions shall provide a space at least two and one half (2-1/2") inches long for written signatures, a space at least two (2 ") inches long for printed names, and sufficient space for any additional information which may be required. Lines on such petitions shall not be less than one-fourth (1/4") inch apart. Petitions may be designed in such a manner that lines for signatures and other information run the length of the page rather than the width. Petition signers and petition circulators shall conform to the requirements of Section 32-713 RS Neb. Petitions must be filed at least sixty (60) days prior to the State Primary. *(Ref 32-4, 156, 32-504, 32-513, 32-535, 32-713 RS Neb.)*

§1-711 ELECTIONS; OFFICIALS. The County Clerk shall, at least fifteen (15) days prior to the State Primary Elections, give notice of the appointment by each political party of three (3) judges and two (2) clerks of election in each election unit in the Municipality, to be known as the Receiving Board. Each of the appointees referred to shall be of good character, approved integrity, well informed, able to read, write, and speak the English language, reside in the election precinct in which he is to serve, be entitled to vote in his election unit, and hold office for a term of two (2) years, or until judges and clerks of election are appointed for the next State Primary Election. *(Ref 32-403 through 32-412 RS Neb.)*

§1-712 ELECTIONS; OFFICIALS OATH. Previous to any votes being received, the judges and clerks of election shall severally take an oath or affirmation according to the form authorized by State law. If there is no judge present at the opening of the polls, it shall be lawful for the judges of election to administer the oath to each other and the clerks of election. The person administering such oath shall cause an entry to be made thereof and affixed to each poll book. *(Ref 11-101.01, 19-3015, 32-413, 32-414 RS Neb.)*

§1-713 ELECTIONS; VOTER QUALIFICATIONS. Electors shall mean every person of the constitutionally prescribed age or upwards, who shall have the right to vote for all officers to be elected to public office, and upon all questions and proposals, lawfully submitted to the voters at any and all elections authorized or provided for by the Constitution or the laws of the State of Nebraska, except school elections; provided, no person shall be qualified to vote at any election unless such person shall be a resident of the State and shall have been properly registered with the election official of the county. *(Ref 17-602,32-102 RS Neb.)*

§1-714 ELECTIONS; WARDS. *(Repealed by Ord. No.553, 11/4/97)*

§1- 715 ELECTIONS; COUNCIL MEMBERS. Council members shall be elected from the Municipality at large unless the residents of the Municipality have voted to elect its Council members by wards. Council members shall serve for a term of four (4) years and shall be a resident and qualified elector. If the election of Council members takes place by wards, each nominee for Council member shall be a resident and qualified elector of the ward for which he is a candidate, and only residents of that ward may sign the candidate's nomination petitions. *(Ref 5-108 R Neb.)*

§1-716 ELECTIONS; BALLOTS. The County Clerk shall provide printed ballots for every general Municipal election, and the expense of printing and delivering the ballots and cards of instruction shall be a charge upon the Municipality. *(Ref. 32-417, 32-418 RS Neb.)*

§1-717 ELECTIONS; CERTIFICATE OF NOMINATION OR ELECTION.

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

A certificate of election prepared by the Municipal Clerk shall be in the form as nearly as possible prescribed in Neb. RS 32-1003 and shall be signed by the Mayor, under the seal of the Municipality, and countersigned by the Clerk. *(Neb. RS 19-3041, 32-558, 32-1033)(Amended by Ordinance No. 609)*

§1- 718 ELECTIONS; INABILITY TO ASSUME OFFICE. In any general election where the person who received the highest number of votes is ineligible, disqualified, deceased, or for any other reason is unable to assume the office for which he was a candidate, and the electorate had reasonable notice of such disability at the time of the election, the candidate in such election who received the next highest number of votes

shall be declared elected, and shall be entitled to the certificate of election; provided, that any candidate so declared elected received not less than thirty-five percent (35%) of the total number of votes cast for such office in the election. If any of the qualifications of this section are not met by the candidate to be declared elected or reasonable notice of the winner's ineligibility is not available to the voters, a vacancy in such office shall be declared to exist at the time of commencement of the term and shall be filled as prescribed by law. (*Ref 32-537 (7) & (8) RS Neb.*)

§1-719 ELECTIONS; RECALL PROCEDURE. Any or all of the elected officials of the Municipality may be removed from office by the registered voters of the Municipality. Petition papers to do such shall be procured from and filed with the Municipal Clerk, who shall keep a sufficient number of such blank petition papers on file for distribution. An affidavit to procure such papers shall be made by one (1) or more registered voters and filed with the Municipal Clerk, stating the name and office of the officer or officers sought to be removed. The Clerk, upon issuing any petition paper, shall enter in a record to be kept in his or her office; the name of the registered voter or voters to whom issued, the date of such issuance, and the number of papers issued and shall certify on the papers the name of the registered voter or voters to whom the papers were issued and the date they were issued.

Circulators of such petitions shall comply will all requirements of the Statutes of Nebraska. Such petition demanding that recall be submitted to the registered voters shall be signed by registered voters equal in number to at least thirty-five (35%) percent of the total votes cast at the last General Municipal Election; except for an office where more than one (1) candidate is chosen, in which case the petition shall be signed by registered voters equal in number to at least thirty-five (35%) percent of the number of votes cast for the person receiving the most votes for such office in the last General Election. If officers are elected by ward, only registered voters of that officer's ward may sign a recall petition or vote at the recall election. All petitions shall be filed with the Clerk for signature verification as one instrument within thirty (30) days of issuance of the original petition papers. Within ten (10) days after the filing of the petition, the Clerk shall ascertain whether or not the petition is signed by the requisite number of registered voters and shall attach to the petition a certificate showing whether any signatures need to be corrected in order to comply with the requirements of this section and State Statutes. If the Clerk finds incorrect signatures, he or she shall promptly notify the person filing the petition that the petition may be cured at any time within ten (10) days after the giving of such notice by the filing of a supplementary petition with the corrected signatures on additional petition papers issued and filed as provided for the original petition. No new signatures may be added after the initial filing of the petition, and no signatures may be removed unless the Clerk receives an affidavit signed by the person requesting his or her signature be removed. The Clerk shall, within five (5) days after any correction, examine the corrected petition and attach a certificate, as in the case of the original petition. If the certificate shows the corrected petition to be

insufficient or if no correction was made, the Clerk shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose.

If the petition or corrected petition is found to be sufficient, the Clerk shall attach to the petition a certificate showing the result of such examination and shall notify the officer whose removal is sought. If the officer does not resign within five (5) days after the notice, the Clerk shall submit, within ten (10) days after the five (5) day period has elapsed, the original petition and supplement, together with his or her certificates, to the Governing Body. Upon receipt of such petition and certificate, the Governing Body shall order an election to be held not less than thirty (30) nor more than forty-five (45) days after the five (5) day period; except that if any other election is to be held in that district within ninety (90) days of the five (5) day period, the Governing Body may provide for the holding of the removal election on the same day.

No recall petition shall be filed against members of the Governing Body within twelve (12) months after a recall election has failed to remove him or her from office or within six (6) months from the end of his or her term of office. (*Ref 32-1401 through 32-1408 RS Neb.*)

§1-720 ELECTIONS; CANDIDATE QUALIFICATIONS. Any person seeking elected office in the Municipality shall be a registered voter prior to holding such office, and in addition, shall have reached the age of majority. The Mayor and members of the Council shall be residents and qualified electors of the City. They shall not hold any other public elective public office, except for officers of public power districts, public power and irrigation districts, and public utility companies. (*Ref 17-108.02, 32-4,157RS Neb.*)

§1-721 ELECTIONS; EXIT POLLS. No person shall conduct any exit poll, public opinion poll, or any other interview with voters on election day seeking to determine voter preference within twenty (20') feet of the entrance of any polling place room or, if inside the polling place building, within one hundred (100') feet of any voting booth. (*Ref 32-1221 RS Neb.*) (*Ord. No.412, 11/5/85*)

Article 8. Fiscal Management

§1-801 FISCAL MANAGEMENT; FISCAL YEAR. The fiscal year of the Municipality and any public utility of the Municipality commences on October 1 and extends through the following September 30, except as provided in the Municipal Proprietary Function Act. (*Ref 17-701 RS Neb.*) (*Amended by Ord. No.538, 12/3/96*)

§1-802 FISCAL MANAGEMENT; PROPOSED BUDGET STATEMENT; FILING.

1. The Governing Body shall, not later than the first (1st) day of August of each year, on forms prescribed and furnished by the Nebraska State Auditor, prepare in writing and file with the Municipal Clerk a proposed budget statement containing the following:

a. For the immediate two (2) prior fiscal years, the revenue from all sources other than revenue received from taxation allocated to each of the several funds, and separately stated as to each such source and for each fund: The unencumbered cash balance of such fund at the beginning and end of the year, the amount received by taxation allocated to each fund, and the amount of actual expenditure for each fund;

b. For the current fiscal year, actual and estimated revenue from all sources, allocated to each of the several funds and separately stated as to each such source and for each fund: The actual unencumbered cash balance available for such fund at the beginning of the year, the amount received from taxation allocated to each fund, and the amount of actual and estimated expenditure, whichever is applicable. Such statement shall contain the cash reserve for each such fund for such fiscal year and shall note whether or not such reserve is encumbered. Such cash reserve projections shall be based upon the actual experience of prior years. The cash reserve shall not exceed fifty percent (50%) of the total budget adopted for such fund exclusive of capital outlay items;

c. For the immediately ensuing fiscal year, an estimate of revenue from all sources, other than revenue to be received from taxation, separately stated as to each such source to be allocated to each of the several funds, and for each fund: The actual or estimated unencumbered cash balances, whichever is applicable, to be available at the beginning of the file year, the amounts proposed to be expended during the year, and the amount of cash reserve, based on actual experience of prior years, which cash reserve shall not exceed fifty percent (50%) of the total budget adopted exclusive of capital outlay items;

d. A statement setting out separately the amount sought to be raised from the levy of a tax on the taxable value of real property (i) for the purpose of paying the principal or interest on bonds issued by the Governing Body and (ii) for all other purposes;

e. A uniform summary of the proposed budget statement which shall include a separate total for each fund, including each proprietary function fund included in a separate proprietary budget statement prepared pursuant to the

Municipal Proprietary Function Act, and a grand total of all funds maintained by the Governing Body; and

f. A list of the proprietary functions which are not included in the budget statement if a separate proprietary budget statement has been prepared for such proprietary functions, pursuant to the Municipal Proprietary Function Act.

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

3. The estimated expenditures plus the required cash reserve for the ensuing fiscal year, less all estimated and actual unencumbered balances at the beginning of the year, and less the estimated income from all sources other than taxation shall equal the amount to be received from taxes, and such amount shall be shown on the proposed budget statement filed pursuant to this section. The amount to be raised from taxation as determined above, plus the estimated revenue from other sources other than taxation, and the unencumbered balances, shall equal the estimated expenditures, plus the necessary required cash reserve for the ensuing year. *(Ref 13-504, 13-505 RS Neb.)*
(Amended by Ord. No.573, 2/2/99)

§1-803 FISCAL MANAGEMENT; PROPOSED BUDGET STATEMENT; HEARING; ADOPTION; CERTIFICATION OF AMOUNT TO BE RECEIVED FROM

TAXATION. 1. After the filing of the proposed budget statement with the Municipal Clerk, the Governing Body shall each year conduct a public hearing on the proposed budget statement. Notice of the place and time of the hearing, together with a summary of the proposed budget statement, shall be published at least five (5) days prior to the date set for the hearing in a newspaper of general circulation within the Municipality or by direct mailing of the notice to each resident within the Municipality.

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

3. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of such changes shall be published within twenty (20) days after its adoption in the manner provided in this section, but without provision for hearing, setting forth the items changed and the reasons for such changes.

4. When a levy increase has been authorized by vote of the electors, the adopted budget statement shall indicate the amount of the levy increase. (*Ref 13-506, 13-507 RS Neb.*) (*Amended by Ord. No.580, 6/3/99*)

§1-804 FISCAL MANAGEMENT; ADOPTED BUDGET STATEMENT; FILING. The Governing Body shall file with and certify to the levying board on or before September twentieth (20th) of each year, and file with the Nebraska State Auditor, a copy of the adopted budget statement, together with the amount of tax to be levied, setting out separately the amount to be levied for the payment of principal or interest on bonds issued by the Governing Body and the amount to be levied for all other purposes. Proof of publication shall be attached to the statements. The Governing Body shall not certify any tax that exceeds the maximum levy prescribed by State law; except that in certifying the amount to be so levied, allowance may be made for delinquent taxes not exceeding five percent (5%) of the amount to be levied, plus the actual percentage of delinquent taxes for the preceding tax year. (*Ref. 13-508 RS Neb.*) (*Amended by Ord. Nos. 542, 5/6/97; 574, 2/2/99*)

§1-804.01 FISCAL MANAGEMENT; EXPENDITURES PRIOR TO ADOPTION OF BUDGET.

1. On and after the first day of its fiscal year in 1996 and of each succeeding year and until the adoption of the budget by the Governing Body in September, the Governing Body may expend any balance of cash on hand for the current expenses of the Municipality. Except as provided in subsection (2) of this section, such expenditures shall not exceed an amount equivalent to the total amount expended under the last budget in the equivalent period of the prior budget year. Such expenditures shall be charged against the appropriations for each individual fund or purpose as provided in the budget when adopted.

(2) The restriction on expenditures in subsection (1) of this section may be exceeded upon the express finding of the Governing Body that expenditures beyond the amount authorized are necessary to enable the Municipality to meet its statutory duties and responsibilities. The finding and approval of the expenditures in excess of the statutory authorization shall be adopted by the Governing Body in open public session. Expenditures authorized by this section shall be charged against appropriations for each individual fund or purpose as provided in the budget when adopted, and nothing in this section shall be construed to authorize expenditures by the Municipality in excess of that authorized by any other statutory provision. (*Ref 13-509.01, 13-509.02 RS Neb.*) (*Ord. No.532, 1/3/96*)

§1-805 FISCAL MANAGEMENT; BUDGET PROCEDURE. The Manual of Instructions for City/Village: Budgets, prepared by the Auditor of Public Accounts, State Capitol, Lincoln, Nebraska 68509 is incorporated by reference for the purpose of proper budget preparation.

§1-806 FISCAL MANAGEMENT; APPROPRIATIONS. The Governing Body shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed The Annual Appropriation Bill, in which are appropriated such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the City. (Ref. 17-706 RS Neb.) (Amended by Ord. No. 543, 5/6/97)

§1-807 FISCAL MANAGEMENT; PROPERTY TAX; CERTIFICATION OF AMOUNT. The Governing Body shall, at the time and in the manner provided by law, cause to be certified to the County Clerk the amount of tax to be levied upon the taxable value of all the taxable property of the Municipality which the Municipality requires for the purposes of the adopted budget statement for the ensuing year, including all special assessments and taxes assessed as otherwise provided. Subject to *Section 77-3442 RS Neb.*, the maximum amount of tax which may be so certified, assessed, and collected shall not require a tax levy in excess of the amounts specified in *Section 17-702 RS Neb.* (Ref. 17-702 RS Neb.) (Amended by Ord. No.583, 6/3/99)

§1-808 FISCAL MANAGEMENT; EXPENDITURES. No Municipal official shall have the power to appropriate, issue, or draw any order or warrant on the Municipal Treasury for money, unless the same has been appropriated or ordered by ordinance. No expenditure for any improvement to be paid for out of the general fund of the Municipality shall exceed in any one (1) year the amount provided for that improvement in the adopted budget statement. (Ref. 17-708 RS Neb.)

§1-809 CONTRACTS AND PURCHASES; BIDDING AND OTHER REQUIREMENTS. (A) Except as provided in *Neb. RS 18-412.01* for a contract with a public power district to operate, renew, replace, or add to the electric distribution, transmission, or generation system of the city, no contract for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of the enlargement or improvement is assessed to the property, costing over \$20,000, shall be made unless it is first approved by the City Council.

(B) Except as provided in *Neb. RS 18-412.01*, before the City Council makes any contract in excess of \$20,000 for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of the enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the City Engineer and submitted to the City Council. In advertising for bids as provided in divisions (C) and (E) of this section, the City Council may publish the amount of the estimate.

(C) Advertisements for bids shall be required for any contract costing over \$20,000 entered into:

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

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

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

- (1) \$20,000 or less;
- (2) \$40,000 or less and the municipal electric utility has gross annual revenue from retail sales in excess of \$1,000,000;
- (3) \$60,000 or less and the municipal electric utility has gross annual revenue from retail sales in excess of \$5,000,000; or
- (4) \$80,000 or less and the municipal electric utility has gross annual revenue from retail sales in excess of \$10,000,000.

(E) The advertisement provided for in division (C) of this section shall be published at least 7 days prior to the bid closing in a legal newspaper published in or of general circulation in the city, and if there is no legal newspaper published in or of general circulation in the city, then in some newspaper of general circulation published in the county in which the city is located, and if there is no legal newspaper of general circulation published in the county in which the city is located, then in a newspaper designated by the County Board, having a general circulation within the county where bids are required, and if no newspaper is published in the city or county, or if no newspaper has general circulation in the county, then by posting a written or printed copy thereof in each of 3 public places in the city at least 7 days prior to the bid closing. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of or serious injury or damage to life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by *Neb. RS 17-613* when adopted by a $\frac{3}{4}$ vote of the City Council and entered of record.

(F) If, after advertising for bids as provided in this section, the City council receives fewer than 2 bids on a contract or if the bids received by the City Council contain a price which exceeds the estimated cost, the City council may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.

(G) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the City Council, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the purchasing municipality, the City Council may authorize the manufacture and assemblage of those materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer. (*Neb. RS 17-568.01*)

(H) Any municipal bidding procedure may be waived by the City council:

- (1) When materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding procedure in *Neb. RS 81-162*; or
- (2) When the contract is negotiated directly with a sheltered workshop pursuant to *Neb. RS 48-1503*. (*Neb. RS 17-568.02*)

(I) (1) Notwithstanding any other provisions of law or a home rule charter, a municipality which has established, by an interlocal agreement with any country, a joint purchasing division or agency may purchase personal property without competitive bidding if the price for the property has been established by the federal

General Services Administration or the material division of the Department of Administrative Services.

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

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

PURCHASING or PURCHASE. The obtaining of personal property by sale, lease, or other contractual means. (*Neb. RS 18-1756*) (*Neb. RS 73-101 et seq.*)

§1-810 FISCAL MANAGEMENT; ANNUAL AUDIT; FINANCIAL STATEMENTS.

The Governing Body shall cause an audit of the Municipal accounts to be made by a qualified accountant as expeditiously as possible following the close of the fiscal year. Such audit shall be made on a cash or accrual method at the discretion of the Governing Body. The said audit shall be completed and the annual audit report made not later than six (6) months after the close of the fiscal year. The accountant making the audit shall submit not less than three (3) copies of the audit report to the Governing Body. All public utilities or other enterprises which substantially generate their own revenue shall be audited separately, except in villages having a population of less than eight hundred (800); and the results of such audits shall appear separately in the annual audit report, and such audits shall be on an accrual basis and shall contain statements and materials which conform to generally accepted accounting principles. The audit report shall set forth the financial position and results of financial operations for each fund or group of accounts of the Municipality, as well as an opinion by the accountant with respect to the financial statements. Two (2) copies of the annual audit report shall be filed with the Municipal Clerk, and shall become a part of the public records of the Municipal Clerk's office, and will at all times thereafter be open for public inspection. One (1) copy shall be filed with the Auditor of Public Accounts; provided, that all villages may file an unedited statement of cash receipts and disbursements annually in lieu of an annual audit. Such unedited statement shall be filed with the Auditor of Public Accounts in a form prescribed by him. The unedited statement of cash receipts and disbursements shall become a part of the public records of the Municipal Clerk and shall at all times thereafter be open and subject to public inspection. Every Governing Body that is required herein to submit to an audit of its accounts shall provide and file with the Municipal Clerk, not later than August 1 of each year, financial statements showing its actual and budgeted figures for the most recently completed fiscal year. (*Ref. 19-2901 through 19-2909, 23-934 RS Neb.*)

§1-811 FISCAL MANAGEMENT; CLAIMS. All claims against the Municipality shall be presented to the Governing Body in writing with a full account of the items, and no claim or demand shall be audited or allowed unless presented as provided for in this Section. No costs shall be recovered against the Municipality in any action brought against it for an unliquidated claim which has not been presented to the Governing Body to be audited, nor upon claims allowed in part unless the recovery shall be for a

greater sum than the amount allowed with the interest due. No order or warrant shall be drawn in excess of eighty-five (85%) per cent of the current levy for the purpose for which it is drawn unless there shall be sufficient money in the Municipal Treasury for the appropriate fund against which it is to be drawn; provided that in the event there exists obligated funds from the Federal and/or State government for the general purpose of such warrant, then such warrant may be drawn in excess of eighty-five (85%) per cent, but not more than one hundred (100%) per cent of the current levy for the purpose for which said warrant is drawn. *(Ref. 17-714, 17-715 RS Neb.)*

§1-812 FISCAL MANAGEMENT; WARRANTS. All warrants drawn upon the Municipal Treasury must be signed by the Mayor and countersigned by the Municipal Clerk; stating the particular fund to which the warrant is chargeable, the person to whom it is payable, and the purpose of the expenditure. No money shall be otherwise paid than upon warrants so drawn. Each warrant shall specify the amount included in the adopted budget statement for the fund upon which it is drawn and the amount already expended of such fund. *(Ref. 17- 711 RS Neb.)*

§1-813 FISCAL MANAGEMENT; TRANSFER OF FUNDS. The Governing Body may, whenever during the current fiscal year it becomes apparent due to unforeseen emergencies that there is temporarily insufficient money in a particular fund to meet the requirements of the adopted budget of expenditures for that fund, by a majority vote, transfer money from other funds to such fund. No expenditure during any fiscal year shall be made in excess of the amounts indicated in the adopted budget statement except as authorized herein. If, as the result of unforeseen circumstances, the revenue of the current fiscal year shall be insufficient, the Governing Body may propose to supplement the previously adopted budget statement and shall conduct a public hearing at which time any taxpayer may appear or file a written statement protesting the application for additional money. A written record shall be kept of all such hearings. Notice of a place and time for the said hearing shall be published at least five (5) days prior to the date set for the hearing in a newspaper of general circulation in the Municipality. The published notice shall set forth the time and place of the proposed hearing, the amount of additional money required, the purpose of the required money, a statement setting forth the reasons why the adopted budget of expenditures cannot be reduced to meet the need for additional money, and a copy of the summary of the originally adopted budget previously published. Upon the conclusion of the public hearing on the proposed supplemental budget and the approval by the Governing Body, the Governing Body shall file with the County Clerk and the Nebraska State Auditor a copy of the supplemental budget and shall certify the amount of additional tax to be levied. The Governing Body may then issue warrants in payment for expenditures authorized by the adopted supplemental budget. The said warrants shall be referred to as "registered warrants," and shall be repaid during the next fiscal year from funds derived from taxes levied therefore. *(Ref. 23-928, 23-929 RS Neb.)*

§1-814 FISCAL MANAGEMENT; SPECIAL ASSESSMENT FUND. All money received on special tax assessments shall be held by the Municipal Treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and such money shall be used for no other purpose unless to reimburse the Municipality for money expended for any such improvement. (*Ref. 17-710 RS Neb.*)

§1-815 FISCAL MANAGEMENT; SINKING FUNDS. The Governing Body, subject to the limitations set forth herein, shall have the power to levy a tax not to exceed that prescribed by State law upon the assessed value of all taxable property within the Municipality for a term not to exceed that prescribed by State law, in addition to the amount of tax which may be annually levied for the purposes of the adopted budget statement of the Municipality, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension, or repair of the approved uses as authorized by State law. To initiate the said sinking fund, the Governing Body shall declare its purpose by resolution to submit to the qualified electors of the Municipality the proposition to provide the improvement at the next general Municipal election. The resolution shall set forth the improvement, the estimated cost, the amount of the annual levy, the number of years required to provide the required revenue, the name of the sinking fund proposed, and the proposition as it will appear on the ballot. Notice of the said proposition shall be published in its entirety three (3) times on successive weeks before the day of the election in a legal newspaper of general circulation in the Municipality. The sinking fund may be established after the election if a majority or more of the legal votes were in favor of the establishment of the fund. The Governing Body may then proceed to establish the said fund in conformity with the provisions of the proposition and applicable State law. The funds received by the Municipal Treasurer shall, as they accumulate, be immediately invested with the written approval of the Governing Body in the manner provided by State law. No sinking fund so established shall be used for any purpose or purposes contrary to the purpose as it appeared on the ballot unless the Governing Body is authorized to do so by sixty (60%) per cent of the qualified electors of the Municipality voting at a general election favoring such a change in the use of the sinking fund. (*Ref. 19-1301 through 19-1304, 77-2337, 77-2339 RS Neb.*)

§1-816 FISCAL MANAGEMENT; GENERAL FUND. All money not specifically appropriated in the annual appropriation bill shall be deposited in and known as the General Fund.

§1-817 FISCAL MANAGEMENT; DEPOSIT OF FUNDS.

A. The City Council, at its first meeting in each fiscal year, shall designate some one or more banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing in which the City Treasurer shall keep at all times, subject to payment of his or her demand, all money held by him or her as City Treasurer. If there is one or more banks, capital stock financial

institutions, or qualifying mutual financial institutions located in the City which apply for the privilege of keeping such money and give bond or give security for the repayment of deposits as provided in this section, such banks, capital stock financial institutions, or qualifying mutual financial institutions shall be selected as such depositories. The City Treasurer shall not give a preference to any one or more of them in the money he or she may so deposit.

B. The City Council shall require from all banks, capital stock financial institutions, or qualifying mutual financial institutions (1) a bond in such penal sum as may be the maximum amount on deposit at any time less the amount insured by the Federal Deposit Insurance Corporation or, in lieu thereof, (2) security given as provided in the Public Funds Deposit Security Act to secure the payment of all such deposits and accretions. The City Council shall approve such bond or giving of security. The City Treasurer shall not be liable for any loss of any money sustained by reason of the failure of any such depository so designated and approved. The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution is also serving as Mayor, as a member of the City Council, or as any other officer of the City shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds. (*Neb. RS 17-607*)

C. The insurance afforded to depositors in banks, capital stock financial institutions, or qualifying mutual financial institutions through the Federal Deposit Insurance Corporation shall be deemed and construed to be a surety bond to the extent that the deposits are insured by such corporation, and for deposits so insured, no other surety bond or other security shall be required. *Neb. RS 77-2366* shall apply to deposits in capital stock financial institutions. *Neb. RS 77-2365.01* shall apply to deposits in qualifying mutual financial institutions. (*Neb. RS 77-2362*)

D. The City Treasurer may deposit the funds received and held by him or her, by virtue of such office, with a cooperative credit association situated within the boundaries of the county, or a county adjoining thereto, where the City is situated, if the City is the depositor, as well as in a commercial state or national bank if the cooperative credit association performs all the conditions precedent required by the laws of this state of commercial, state, and national banks to qualify them to receive deposits of such public funds. It shall not be necessary for the City, in making such a deposit of public funds, to purchase shares in such credit association or become a member thereof, and such a cooperative credit association is hereby authorized and empowered to receive such money under such conditions. (*Neb. RS 21-11316.01*)(*Amended by Ord. No.637, 11/4/2003*)

§1-818 FISCAL MANAGEMENT; INVESTMENT OF FUNDS. The Governing Body may, by resolution, direct and authorize the Municipal Treasurer to invest surplus funds in the outstanding bonds or registered warrants of the Municipality and other approved bonds and obligations as provided by law. The interest on such bonds or

warrants shall be credited to the fund out of which the said bonds or warrants were purchased. (Ref. 17-608, 17-609, 21-1316.01, 77-2341 RS Neb.)

§1-819 FISCAL MANAGEMENT; BOND ISSUES. The Governing Body may, after meeting all the requirements of State law, issue bonds, fund bonds, and retire bonds for such purposes as may be permitted by State law. The Governing Body shall have the authority to levy special assessments for the payment of interest and principal on such bonds, and may spread the payments up to the maximum number of years permitted by State law. (Ref. 10-201 through 10-411, 10-601 through 10-614, 12-1001, 17-529.01, 17-529.08, 17-534, 17-905, 17-908, 17-911, 17-939, 17-958, 17-968, 18-1801 through 18-1805, 23-343.13, 39-836 RS Neb.)

§1-820 FISCAL MANAGEMENT; COLLECTION OF SPECIAL ASSESSMENTS; PROCEDURE. (1) The Municipality shall collect the special assessments which it levies and perform all other necessary functions related thereto including foreclosure. Notice that special assessments are due shall be mailed or otherwise delivered to the last known address of the person against whom such special assessments are assessed or to the lending institution or other party responsible for paying such special assessments. Failure to receive such notice shall not relieve the taxpayer from any liability to pay such special assessments and any interest or penalties accrued thereon.

(2) The Municipality shall:

- (a) File notice of the assessments and the amount of assessment being levied for each lot or tract of land to the Register of Deeds; and
- (b) File a release of assessment upon final payment of each assessment with the Register of Deeds. (Ref. 18-1216 RS Neb.) (Ord. No.575, 2/2/99)

§1-821 FISCAL MANAGEMENT; PROPERTY TAX LEVY; AUTHORITY TO SET.

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

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

(1) The dollar amount of the prior year's tax request and the property tax rate that was necessary to fund that tax request;

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

(3) The proposed dollar amount of the tax request for the current year and the property tax rate that will be necessary to fund that tax request.

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

(D) Any tax levy which is not in compliance with this section and Neb. RS 77-1601 shall be construed as an unauthorized levy under *Neb. RS 77-1606*.
(*Neb. RS 77-1601.02*)(*Amended by Ord. No. 610*)

§1-822 FISCAL MANAGEMENT; CERTIFICATES OF DEPOSIT; TIME DEPOSITS; CONDITIONS. The City Treasurer may, upon resolution of the mayor and City Council authorizing the same, purchase certificates of deposit from and make time deposits in any bank, capital stock financial institution, or qualifying mutual financial institution in the State of Nebraska to the extent that such certificates of deposit or time deposits are insured by the Federal Deposit Insurance Corporation. Deposits may be made in excess of the amounts so secured by the corporation, and the amount of the excess deposit shall be secured by a bond or by security given in the same manner as is provided for cities of the first class in *Neb. RS 16-714 to 16-716*, *Neb. RS 77-2366* shall apply to deposits in capital stock financial institutions. *Neb. RS 77-2365.01* shall apply to deposits in qualifying mutual financial institutions. (*Neb. RS 17-720*) (*Amended by Ord. No. 636, 11/4/2003*)

§1-823 FISCAL MANAGEMENT; CREDIT CARDS; AUTHORITY TO ACCEPT.

(1) The Governing Body may authorize municipal officials to accept credit cards, charge cards, or debit cards as a method of cash payment of any tax, levy, excise, duty, custom, toll, interest, penalty, fine, license, fee, or assessment of whatever kind or nature, whether general or special, as provided by section 77-1702 *RS Neb.*

(2) The total amount of such taxes, levies, excises, duties, customs, tolls, interest, penalties, fines, licenses, fees, or assessments of whatever kind or nature, whether general or special, paid for by credit card, shall be collected by the municipal official.

(3) The Governing Body may choose to accept credit cards, charge cards, or debit cards as a means of cash payment to any facility it operates in a proprietary capacity and may adjust the price for services to reflect the handling and payment costs.

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

(5) The Governing Body may choose to accept the types of credit cards, charge cards, or debit cards accepted by and the services provided to the State pursuant to the contract entered into by the State with one or more credit card, charge card, or debit card companies or third-party merchant banks for services on behalf of the state and those political subdivisions that choose to participate in the state contract. The Governing Body may choose not to participate in the state contract and may choose types of credit cards, charge cards, and debit cards and may negotiate and contract independently or collectively as a governmental entity with one or more financial institutions, vending service companies, credit card, charge card, or debit card companies, or third-party merchant banks for the provision of such services.

(6) When authorizing acceptance of credit card or charge card payments, the Governing Body shall be authorized but not required to impose a surcharge or convenience fee upon the person making a payment by credit card or charge card so as to wholly or partially offset the amount of any discount or administrative fees charged

to the Municipality. The surcharge or convenience fee shall be applied only when allowed by the operating rules and regulations of the credit card or charge card involved or when authorized in writing by the credit card or charge card company involved. When a person elects to make a payment to the Municipality by credit card or charge card and such a surcharge or convenience fee is imposed, the payment of such surcharge or convenience fee shall be deemed voluntary by such person and shall be in no case refundable. (*Ref. 13-609 RS Neb.*) (*Ord. No. 581, 6/3/99*)

§1-824 FISCAL MANAGEMENT; SALES AND USE TAX; GENERAL FUND.

The Governing Body shall cause to be implemented a sales and use tax of one and one half percent (1 1/2%) upon the same transactions within such Municipality on which the State of Nebraska is authorized to impose a tax.

(A) All revenue collections from the imposition of a sales and use tax on affected transactions within the corporate limits of the City of Lyons and any interest accruing on the same, shall be used only for general fund purposes.

(B) To ensure compliance with subsection A above, the Mayor and City Council shall have a separate account entitled "General Fund" set up and subject to annual review and audit of the use of the sales and use tax revenue collections will be reported to the newspaper in general circulation annually.

(C) This section of the Official City Code shall not be amended or repealed except by a vote of the electors of the City of Lyons or by subsequently enacted state statutes as long as there is a sales and use tax imposed on affected transactions within the corporate limits of the City of Lyons.

The following wording was placed on the general election held on November 7, 2000 "SHALL THE GOVERNING BODY OF THE INCORPORATED MUNICIPALITY IMPOSE A SALES AND USE TAX OF ONE AND ONE HALF PERCENT (1 1/2%) UPON THE SAME TRANSACTIONS WITHIN SUCH MUNICIPALITY ON WHICH THE STATE OF NEBRASKA IS AUTHORIZED TO IMPOSE A TAX?"

The following votes were cast:

[235] FOR SALES TAX TO BE USED FOR THE GENERAL FUND

[160] AGAINST SALES TAX TO BE USED FOR GENERAL FUND

(*Ord. No. 613*)

§1-825 FISCAL MANAGEMENT; REVISION OF BUDGET.

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

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

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

(3) The Governing Body has been notified by the State Auditor of a mathematical or accounting error or noncompliance with the Nebraska Budget Act.

(B) Notice of the time and place of the hearing shall be published at least five days prior to the date set for hearing in a newspaper of general circulation within the Governing Body's jurisdiction. Such published notice shall set forth the following:

- (1) The time and place of the hearing;
- (2) The amount of dollars of additional or reduced money required and for what purpose;
- (3) A statement setting forth the nature of the unanticipated circumstances and, if the budget requirements are to be increased, the reasons why the previously adopted budget of expenditures cannot be reduced during the remainder of the current year to meet the need for additional money in that manner; and
- (4) A copy of the summary of the originally adopted budget previously published; and
- (5) A copy of the summary of the proposed revised budget.

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

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

(E) Within 30 days after the adoption of the budget under *Neb. RS 13-506*, a Governing Body may, or within 30 days after notification of an error by the State Auditor, a Governing Body shall correct an adopted budget which contains a clerical, mathematical, or accounting error which does not affect the total amount budgeted by more than 1% or increase the amount required from property taxes. No public hearing shall be required for such a correction. After correction, the Governing Body shall file a copy of the corrected budget with the County Clerk of the county or counties in which such Governing Body is located and with the State Auditor. The Governing Body may then issue warrants in payment for expenditures authorized by the budget.
(*Ref. 13-511 RS Neb.*)

Article 9. Compensation

§1-901 COMPENSATION; MUNICIPAL OFFICIALS. The compensation of any elective official of the Municipality shall not be increased or diminished during the term for which he shall have been elected except when there has been a merger of offices; provided, the compensation of the members of the Governing Body, a board, or commission may be increased or diminished at the beginning of the full term of any member whether or not the terms of one or more members commence and end at different times. No elected official may be rehired at a greater salary if he resigns and desires to be rehired during the unexpired term of office. He may be rehired after the term of office during which he resigned at a greater salary. All salaries shall be set by ordinance of the Governing Body and will be available for public inspection at the office of the Municipal Clerk. (*Ref 17-108.02,17-612 RS Neb.*)

§1-902 COMPENSATION; CONFLICT OF INTEREST. (A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS ASSOCIATION.

(a) A business:

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

(b) An individual who occupies a confidential professional relationship protected by law shall be exempt from this definition. This definition shall not apply to publicly traded stock under a trading account if the filer reports the name and address of the stockbroker. (*Neb. RS 49-1408*)

IMMEDIATE FAMILY. A child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes. (*Neb. RS 49-1425*)

OFFICER.

(a) Includes;

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

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

(B) (1) Except as provided in Neb. RS 49-1499.04 or 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its

benefit, is a party. The existence of such an interest in any contract shall render the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment of the contract with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the County Attorney, the governing body, or any resident within the jurisdiction of the governing body and shall be brought within 1 year after the contract is signed or assigned. The decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the governing body has benefited thereby.

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

(a) Has a business association with the business involved in the contract; or

(b) Will receive a direct pecuniary fee or commission as a result of the contract.

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

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

(2) Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matters; and

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

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

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

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

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

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

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

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

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

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

(K) The governing body may exempt from divisions (A) through (I) of this section, contracts involving \$100 or less in which an officer of that body may have an interest. *(Neb. RS 49-14,103.06)*

Statutory reference:

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

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

§1-903 MUNICIPAL OFFICIALS. (A) The officers and employees of the city shall receive such compensation as the Mayor and Council shall fix by ordinance. *(Neb. RS 17-108)*. The pay ranges for each officer or employee are hereby fixed as follows:

<u>OFFICER or EMPLOYEE</u>	<u>SALARY</u>
Mayor	\$ 1,275 per quarter
Council Member	\$ 675 per quarter
City Attorney	By contract

City Clerk-Treasurer	\$ 3,000 - \$ 5,000 monthly
Deputy Clerk	\$ 11.00 - \$ 20.00 per hour
Utility Superintendent	\$ 3,000 - \$ 6,000 monthly
Electric Foreman	\$ 11.00 - \$ 25.00 per hour
Water Operator	\$ 11.00 - \$ 25.00 per hour
Power Plant Foreman-Wastewater Operator	\$ 11.00 - \$ 25.00 per hour
Police Chief	\$ 3,000 - \$ 5,000 monthly
Police Officer (certified)	\$ 2,500 - \$ 5,000 monthly
Police Officer (part-time)	\$ 12.00 Patrol time per hour \$ 3.00 Call time per hour
Grant Writer	\$ 11.00 - \$ 20.00 per hour
Library Director	\$ 11.00 - \$ 20.00 per hour
Librarian	\$ 9.00 - \$ 15.00 per hour
Library Janitor	\$ 9.00 - \$ 15.00 per hour
Police Station Janitor	\$ 9.00 - \$ 15.00 per hour
Recycling Care Tech	\$ 9.00 - \$ 15.00 per hour
Property Care Tech (mowing)	\$ 9.00 - \$ 15.00 per hour
Pool/Bathhouse Manager (seasonal)	\$ 9.00 - \$ 15.00 per hour
Assistant Pool Manager (seasonal)	\$ 8.50 - \$ 14.00 per hour
Lifeguards (seasonal)	\$ 7.25 - \$ 11.00 per hour

(Amended by Ord. No. 728; 01/04/2016)

Article 10. Initiative and Referendum

§1-1001 INITIATIVE AND REFERENDUM; DEFINITIONS. The powers of initiative and referendum are reserved to the qualified electors of the Municipality by state law. This Article shall govern the use of initiative to enact, and the use of referendum to amend or repeal measures affecting the governance of the Municipality. For purposes of this Article, the definitions set out in this section, unless the context otherwise requires, shall apply.

CIRCULATOR shall mean any person who solicits signatures for an initiative or referendum petition.

CLERK shall mean the Municipal Clerk or the Municipal Official in charge of elections.

GOVERNING BODY shall mean the legislative authority of the Municipality.

MEASURE shall mean an ordinance, charter provision, or resolution which is within the legislative authority of the Governing Body to pass, and which is not excluded from the operation of referendum by the exceptions in Section 1-1012.

MUNICIPALITY shall mean the City of Lyons, Nebraska.

PETITION shall mean a document authorized for circulation pursuant to Section 1-1002. or any copy of such document.

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

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

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

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

SIGNATURE SHEET shall mean a sheet of paper which is part of a petition and which is signed by persons wishing to support the petition effort. (*Ref. 18-2501 thru 18-2511 RS Neb.*)

§1-1002 INITIATIVE AND REFERENDUM; PETITIONS, BALLOTS. Before circulating an initiative or referendum petition, the petitioner shall file with the Clerk a prospective petition. The Clerk shall date the prospective petition immediately upon its receipt. The Clerk shall verify that the prospective petition is in proper form and shall provide a ballot title for the initiative or referendum proposal, as described below. If the prospective petition is in proper form, the Clerk shall authorize the circulation of the petition and such authorization shall be given within three (3) working days from the date the prospective petition was filed. If the form of the prospective petition is incorrect, the Clerk shall, within three (3) working days from the date the prospective

petition was filed, inform the petitioner of necessary changes and request that those changes be made. When the requested changes have been made and the revised prospective petition has been submitted to the Clerk in proper form, the Clerk shall authorize the circulation of the petition and such authorization shall be given within two (2) working days from the receipt of the properly revised petition. Verification by the Clerk that the prospective petition is in proper form does not constitute an admission by the Clerk, Governing Body, or Municipality that the measure is subject to referendum, or limited referendum, or that the measure may be enacted by initiative.

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

1. A briefly-worded caption by which the measure is commonly known or which accurately summarizes the measure;
2. A briefly-worded question which plainly states the purpose of the measure, and is phrased so that an affirmative response to the question corresponds to an affirmative vote on the measure; and
3. A concise and impartial statement, of not more than seventy-five (75) words, of the chief purpose of the measure.

The ballots used when voting on an initiative or referendum proposal shall contain the entire ballot title. Proposals for initiative and referendum shall be submitted on separate ballots and the ballots shall be printed in lower case ten point type, except that the caption shall be in bold face type. All initiative and referendum measures shall be submitted in a nonpartisan manner without indicating or suggesting on the ballot that they have or have not been approved or endorsed by any political party or organization. (*Ref. 18-2512, 18-2513 RS Neb.*)

§1-1003 INITIATIVE AND REFERENDUM; PETITIONS; FORM; DECLARATORY JUDGMENTS. The Secretary of State shall design the form to be used for initiative and referendum petitions, including signature sheets. These forms shall be made available to the public by the Clerk, and they shall serve as a guide for individuals preparing prospective petitions. Substantial compliance with initiative and referendum forms is required before authorization to circulate such petition shall be granted by the Clerk pursuant to Section 1-1002. Chief petitioners or circulators preparing prospective petitions shall be responsible for making copies of the petition for circulation, once authorization for circulation has been granted, and each petition presented for signature must be identical to the petition authorized for circulation by the Clerk pursuant to Section 1-1002.

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

for purposes of determining whether a measure is subject to limited referendum or referendum, or whether a measure may be enacted by initiative, may be filed in the district court at any time after the filing of a referendum or initiative petition with the Municipal Clerk for signature verification until forty (40) days from the date the Governing Body received notification pursuant to Section 1-1006. If the Municipality does not bring an action for declaratory judgment to determine whether the measure is subject to limited referendum or referendum, or whether the measure may be enacted by initiative until after it has received notification pursuant to Section 1-1006, it shall be required to proceed with the initiative or referendum election in accordance with the provisions of this Article. If the Municipality does file such an action prior to receiving notification pursuant to Section 1-1006, it shall not be required to proceed to hold such election until a final decision has been rendered in the action. Any action for a declaratory judgment shall be governed generally by *Sections 25-21,149 to 25-21,164 RS Neb.*, except that only the Municipality and each chief petitioner shall be required to be made parties. The Municipality, Clerk, Governing Body, or any of the Municipality's officers shall be entitled to rely on any order rendered by the court in any such proceeding. Any action brought for declaratory judgment pursuant to this section shall be given priority in scheduling, hearings, and in disposition as determined by the court when an action is brought to determine whether the measure is subject to limited referendum or referendum, or whether a measure may be enacted by initiative, a decision shall be rendered by the court no later than five (5) days prior to the election. The provisions of this section relating to declaratory judgments shall not be construed as limiting, but construed as supplemental and additional to other rights and remedies conferred by law.

Every petition shall contain the name and place of residence of not more than three (3) persons as chief petitioners or sponsors of the measure. The chief petitioners or sponsors shall be qualified electors of the Municipality potentially affected by the initiative or referendum proposal. Every petition shall contain the caption and ballot title required in Section 1-1002, and only qualified electors shall circulate petitions. When a special election is being requested, such fact shall be stated on every petition. (*Ref. 25-510.02, 25-2514, 25-515 RS Neb.*)

§1-1004 INITIATIVE AND REFERENDUM; SIGNATURE SHEETS. Every signature sheet shall:

1. Contain the caption required in subsection A of Section 1-1002 of this Article;
2. Be part of a complete and authorized petition when presented to potential signatories;
3. Provide space for signatories to write their names, places of residence, and the date of signing; and
4. Contain a statement that anyone falsifying information on a signature sheet shall be subject to penalties provided by law.

No more than twenty-five (25) signatures on each signature sheet shall be counted. In order to be valid, a signature shall be that of an individual registered to

vote, at the time of signing, in the jurisdiction governed or to be governed by the measure addressed in the petition. A signature shall include the signatory's full name, his or her place of residence, and the date of signing. No signatory shall use ditto marks as a means of affixing his or her place of residence or date on any petition. A wife shall not use her husband's Christian or given name when she signs a petition and she shall sign her own Christian or given name along with her surname. *(Ref. 18-2516 RS Neb.)*

§1-1005 INITIATIVE REFERENDUM; PETITIONS, AFFIDAVIT. Included in the contents of every petition shall be an affidavit, to be signed by the circulator in the presence of a notary, which states that the circulator is a qualified elector, that each person who signed the petition did so in the presence of the circulator on the date indicated, and that the circulator believes that each signatory was registered to vote in the affected jurisdiction at the time he or she signed the petition and that the circulator believes that each signatory has stated his or her name and place of residence correctly. *(Ref. 18-2517 RS Neb.)*

§1-1006 INITIATIVE AND REFERENDUM; PETITIONS, NOTIFICATION.

A. Signed petitions shall be filed with the Clerk for signature verification. Upon the filing of a petition, and passage of a resolution by the Governing Body, the Municipality and the County Clerk or Election Commissioner of the County in which such Municipality is located may, by mutual agreement, provide that the County Clerk or Election Commissioner shall ascertain whether the petition is signed by the requisite number of voters. The Municipality shall reimburse the County for any costs incurred by the County Clerk or Election Commissioner. When the verifying official has determined that one hundred (100%) per cent of the necessary signatures required by this Article have been obtained, he or she shall notify the Governing Body of that fact, and shall immediately forward to the Governing Body a copy of the petition.

B. In order for an initiative or referendum proposal to be submitted to the Governing Body and the voters, the necessary signatures shall be on file with the Clerk within six (6) months from the date the prospective petition was authorized for circulation. If the necessary signatures are not obtained by such date, the petition shall be void. *(Ref. 18-2518 RS Neb.)*

§1-1007 INITIATIVE AND REFERENDUM; FREQUENCY OF OCCURRENCE. The same measure; either in form or in essential substance, may not be submitted to the people by initiative petition, either affirmatively or negatively, more often than once every two (2) years. No attempt to repeal or alter an existing measure or portion of such measure by referendum petition may be made within two (2) years from the last attempt to do the same. Such prohibition shall apply only when the subsequent attempt to repeal or alter is designed to accomplish the same, or essentially the same purpose as the previous attempt. *(Ref. 18-2519 RS Neb.)*

§1-1008 INITIATIVE AND REFERENDUM; DIRECT VOTE. The Executive Officer and Governing Body of the Municipality may at any time, by resolution, provide for the submission to a direct vote of the electors of any measure pending before it, passed by it, including an override of any veto, if necessary, or enacted by the electors under this Article and may provide in such resolution that such measure shall be submitted at a special election or the next regularly scheduled primary or general election.

Immediately upon the passage of any such resolution for submission, the Clerk shall cause such measure to be submitted to a direct vote of the electors, at the time specified in such resolution and in the manner provided in this Article for submission of measures upon proposals and petitions filed by voters. Such matter shall become law if approved by a majority of the votes cast. *(Ref. 18-2520 RS Neb.)*

§1-1009 INITIATIVE AND REFERENDUM; ELECTIONS. The Clerk shall call elections under this Article, either at a special election or regularly scheduled primary or general election. He or she shall cause notice of every such election to be printed in one (1) or more newspapers of general circulation in such Municipality at least once, not less than thirty (30) days prior to such election, and also posted in the office of the Clerk, and in at least three (3) conspicuous places in such Municipality at least thirty (30) days prior to such election. The notice shall be substantially as follows :

Notice is hereby given that on Tuesday, the _____ day of _____, _____, at (identify polling place or precinct) _____ of the Municipality of Lyons, Nebraska, an election will be held at which there will be submitted to the electors of the Municipality for their approval or rejection, the following measures, propositions, or issues: (naming measures, propositions, or issues) , which election will be open at 8: 00 a.m. and will continue open until 8:00 p.m. , of the same day. Dated this _____ day of _____, _____.

Clerk of the City of Lyons, Nebraska.

The Clerk shall make available for photocopying a copy in pamphlet form of measures initiated or referred. Such notice provided in this section shall designate where such a copy in pamphlet form may be obtained. *(Ref. 18-2521 RS Neb.)*

§1-1010 INITIATIVE AND REFERENDUM; BALLOTS. All ballots for use in special elections under this Article shall be prepared by the Clerk and furnished by the Governing Body, unless the Governing Body contracts with the County for such service, and shall be in form the same as provided by law for election of the Executive Officer and Governing Body of such Municipality. When ordinances under such sections are submitted to the electors at a regularly scheduled primary or general election, they shall be placed upon the official ballots as provided in this Article. *(Ref. 18-2522 RS Neb.)*

§1-1011 INITIATIVE AND REFERENDUM; INITIATIVE.

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

B. An initiative shall not be effective if the direct or indirect effect of the passage of such initiative measure shall be to repeal or alter an existing law, or portion thereof, which is not subject to referendum or subject only to limited referendum pursuant to Section 1-1012.

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

D. Whenever an initiative petition bearing signatures equal in number to at least twenty (20%) percent of the qualified electors which requests that a special election be called to submit the initiative measure to a vote of the people has been filed with the Clerk and verified pursuant to section 1-1006, it shall be the duty of the Governing Body to consider passage of the measure contained in the petition including an override of any veto if necessary. If the Governing Body fails to pass the measure without amendment, including an override of any veto, if necessary, within thirty (30) days from the date it received notification, the Clerk shall cause the measure to be submitted to a vote of the people at a special election called for such purpose. The date of such election shall not be less than thirty (30) nor more than sixty (60) days from the date the Governing Body received notification pursuant to section 1-1006.

E. If a majority of voters voting on the initiative measure shall vote in favor of such measure, it shall become a valid and binding measure of the Municipality thirty (30) days after certification of the election results, unless the Governing Body, by resolution, orders an earlier effective date, or the measure itself provides for a later effective date. Which resolution shall not be subject to referendum or limited referendum? A measure passed by such method shall not be amended or repealed except by two-thirds (2/3) majority of the members of the Governing Body. No such attempt to amend or repeal shall be made within one (1) year from the passage of the measure by the electors. (*Ref. 18-2523 through 18-2526 RS Neb.*)

§1-1012 INITIATIVE AND REFERENDUM; REFERENDUM LIMITATIONS. The power of referendum allows citizens the right to repeal or amend existing measures, or portions thereof, affecting the governance of the Municipality.

1. The following measures shall not be subject to referendum or limited referendum;

(a) Measures necessary to carry out contractual obligations, including but not limited to, those relating to the issuance of or provided for in bonds, notes, warrants, or other evidences of indebtedness, for projects previously approved by a measure which was or is subject to referendum or limited referendum, or previously approved by a measure adopted prior to the effective date of this Article;

(b) Measures relating to any industrial development projects subsequent to measures giving initial approval to such projects;

(c) Measures adopting proposed budget statements following compliance with procedures set forth in the Nebraska Budget Act;

(d) Measures relating to the immediate preservation of the public peace, health, or safety which have been designated as urgent measures by unanimous vote of those present and voting of the Governing Body and approved by its Executive Officer;

(e) Measures relating to projects for which notice has been given as provided for in subsection 4 of this section for which a sufficient referendum petition was not filed within the time limit stated in such notice or which received voter approval after the filing of such petition;

(f) Resolutions directing the Clerk to cause measures to be submitted to a vote of the people at a special election as provided in section 1-1011 subsection C and section 1-1013 subsection A;

(g) Resolutions ordering an earlier effective date for measures enacted by initiative as provided in section 1-1011 subsection E; and

(h) Measures relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act by the Municipality and which are necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidence of indebtedness.

2. The following measures shall be subject to limited referendum;

(a) Measures in furtherance of a policy of the Municipality or relating to projects previously approved by a measure which was subject to referendum or which was enacted by initiative or has been approved by the voters at an election, except that such measures shall not be subject to referendum or limited referendum for a period of one (1) year after any such policy or project was approved at a referendum election, enacted by initiative, or approved by the voters at an election;

(b) Measures relating to the acquisition, construction, installation, improvement, or enlargement; including the financing or refinancing of the costs

of public ways, public property, utility systems, and other capital projects, and measures giving initial approval for industrial development projects;

(c) Measures setting utility system rates and charges, except for measures necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidences of indebtedness, and pay rates and salaries for Municipal employees other than the members of the Governing Body and the Executive Officer; and

(d) Measures relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act by the Municipality; except for measures necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidence of indebtedness.

3. Measures subject to limited referendum shall ordinarily take effect thirty (30) days after their passage by the Governing Body, including an override of any veto, if necessary. Referendum petitions directed at measures subject to limited referendum shall be filed for signature verification pursuant to section 1-1006 within thirty (30) days after such measure's passage by the Governing Body, including an override of any veto, if necessary, or after notice is first published pursuant to subdivision 4(c) of this section. If the necessary number of signatures as provided in section 1-1011 has been obtained within the time limitation, the effectiveness of the measure shall be suspended unless approved by the voters.

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

(a) By holding a public hearing on the project, the time and place of such hearing being published at least once, not less than five (5) days prior to the date set for hearing in a newspaper of general circulation within the Governing Body's jurisdiction;

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

(c) After passage of such measure, including an override of a veto if necessary, by giving notice as follows;

(i) For those projects for which applicable statutes require an ordinance or resolution of necessity creating a district or otherwise establishing the project, notice shall be given for such project by including either as part of such ordinance or resolution, or as part of any publicized notice concerning such ordinance or resolution, a statement that the project as described in the ordinance or resolution is subject to limited referendum for a period of thirty (30) days after the first (1st) publication of such notice, and that after such thirty (30) day period the project and

measures related to it will not be subject to any further right of referendum; and

(ii) For projects for which applicable statutes do not require an ordinance or resolution of necessity, notice shall be given by publication of a notice concerning such projects, stating in general terms the nature of the project and the Engineer's estimate of costs of such project, and stating that the project described in the notice is subject to limited referendum for a period of thirty (30) days after the first (1st) publication of such notice, and that after such thirty (30) day period, the project and measures related to it will not be subject to any further right of referendum. The notice required by this subdivision shall be published in at least one (1) newspaper of general circulation within the Municipality and shall be published not later than fifteen (15) days after passage by the Governing Body, including an override of a veto, if necessary, of a measure approving the project.

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

5. All measures, except as provided in subsections 1, 2, and 4 of this section, shall be subject to the referendum procedure at any time after such measure has been passed by the Governing Body, including an override of a veto if necessary or enacted by the voters by initiative. (*Ref 18-2527. 18-2528 RS Neb.*) (*Amended by Ord. No.494. 9/7/93*)

§1-1013 INITIATIVE AND REFERENDUM; REFERENDUM, PASSAGE.

A. Whenever a referendum petition bearing signatures equal in number to at least fifteen (15%) percent of the qualified electors of the Municipality has been filed with the Clerk and verified pursuant to section 1-1006, it shall be the duty of the Governing Body to reconsider the measure or portion of such measure which is the object of the referendum. If the Governing Body fails to repeal or amend the measure or portion thereof in the manner proposed by the referendum, including an override of any veto, if necessary, within thirty (30) days from the date the Governing Body receives notification pursuant to section 1-1006, the Clerk shall cause the measure to be submitted to a vote of the people at the next regularly scheduled primary or general election held within the Municipality. If the Governing Body desires to submit the measure to a vote of the people at a special election prior to the next regularly scheduled primary or general election held within the Municipality, the Governing Body shall, by resolution, direct the clerk to cause the measure to be submitted at a special election. Such resolution shall not be subject to referendum or limited referendum.

B. Whenever a referendum petition bearing signatures equal in number to at least twenty (20%) percent of the qualified voters of the Municipality which requests

that a special election be called to submit the referendum measure to a vote of the people has been filed with the Clerk and verified, it shall be the duty of the Governing Body to reconsider the measure or portion of such measure which is the object of the referendum. If the Governing body fails to repeal or amend the measure or portion thereof in the manner proposed by the referendum, including an override of any veto if necessary, the Clerk shall cause the measure to be submitted to a vote of the people at a special election called for such purpose within thirty (30) days from the date the Governing Body received notification. The date of such special election shall not be less than thirty (30) days nor more than sixty (60) days from the date the Governing Body received notification.

C. If a majority of the electors voting on the referendum measure shall vote in favor of such measure, the law subject to the referendum shall be repealed or amended. A measure repealed or amended by referendum shall not be reenacted or returned to its original form except by a two-thirds (2/3) majority of the members of the Governing Body. No such attempt to reenact or return the measure to its original form shall be made within one (1) year of the repeal or amendment of the measure by the electors. If the referendum measure does not receive a majority vote, the ordinance shall immediately become effective or remain in effect. (*Ref. 18-2529 through 18-2531 RS Neb.*)

§1-1014 INITIATIVE AND REFERENDUM; VIOLATIONS, PENALTIES.

A. Whoever knowingly or willfully makes a false affidavit or takes a false oath regarding the qualifications of any person to sign petitions under *Sections 18-2501 through 18-2531 RS Neb.* shall be guilty of a Class I misdemeanor with a limit of three hundred (\$300.00) dollars on the fine.

B. Whoever falsely makes or willfully destroys a petition or any part thereof, or signs a false name thereto, or signs or files any petition knowing the same or any part thereof to be falsely made, or suppresses any petition, or any part thereof which has been duly filed pursuant to *Sections 18-2501 through 18-2531 RS Neb.* shall be guilty of a Class I misdemeanor with a limit of three hundred (\$300.00) dollars on the fine.

C. Whoever signs any petition under *Sections 18-2501 through 18-2531 RS Neb.* knowing that he or she is not a registered voter in the place where such petition is made, aids or abets any other person in doing any of the acts mentioned in this section, bribes or gives or pays any money or thing of value to any person directly or indirectly to induce him or her to sign such petition, or engages in any deceptive practice intended to induce any person to sign a petition, shall be guilty of a Class I misdemeanor with a limit of three hundred (\$300.00) dollars on the fine.

D. Any Clerk who willfully refuses to comply with the provisions of *Sections 18-2501 through 18-2531 RS Neb.*, or who willfully causes unreasonable delay in the execution of his or her duties under such sections, shall be guilty of a Class I misdemeanor; but imprisonment shall not be included as part of the punishment, and the fine shall not exceed five thousand (\$5,000.00) dollars. (*Ref 18-2532 through 18-2535 RS Neb.*) (*Amended by Ord. Nos. 249, 11/8/83; 396, 12/6/83*)

§1-1015 INITIATIVE AND REFERENDUM; APPLICABILITY. The provisions of the statutes of the State of Nebraska relating to election of officers, voting places, election apparatus and blanks, preparation and form of ballots, information to voters, delivery of ballots, calling of elections, conduct of elections, manner of voting, counting of votes, records and certificates of election, and recounts of votes, so far as applicable, shall apply to voting on ordinances by the electors pursuant to this Article.

Nothing in this Article shall apply to procedures for initiatives or referendums provided in *Nebraska Revised Statutes Sections 18-412 and 18-412.02* relating to Municipal light and power plants, *Sections 70-504, 70-650.01 and 70-650.02* relating to public power districts, and *Sections 80-203 to 80-205* relating to soldiers and sailors monuments. (Ref. 18-2536, 18-2537 RS Neb.)

Article 11. Intergovernmental Risk Management

§1-1101 INTERGOVERNMENTAL RISK MANAGEMENT.

(A) PUBLIC AGENCY means any county, city, village, school district, public power district, rural fire district, or other political subdivision of this state, the State of Nebraska, the University of Nebraska, and any corporation whose primary function is to act as an instrumentality or agency of the State of Nebraska. (*Neb RS 44-4303*)

(B) The City Council and any one or more public agencies may make and execute an agreement providing for joint and cooperative action in accordance with the Intergovernmental Risk Management Act to form, become members of, and operate a risk management pool for the purpose of providing to members risk management services and insurance coverages in the form of group self-insurance or standard insurance, including any combination of group self-insurance and standard insurance, to protect members against losses arising from any of the following:

- (1) General liability;
- (2) Damage, destruction, or loss of real or personal property, including, but not limited to, loss of use or occupancy, and loss of income or extra expense resulting from loss of use or occupancy;
- (3) Errors and omissions liability; and
- (4) Workers' compensation liability.

(C) The City Council and any one or more public agencies, other than school districts and educational service units, may make and execute an agreement providing for joint and cooperative action in accordance with the act to form, become members of, and operate a risk management pool for the purpose of providing to members risk management services and insurance coverages in the form of group self-insurance or standard insurance, including any combination of group self-insurance and standard insurance, to provide health, dental, accident, and life insurance to member's employees and officers. (*Neb. RS 44-4304*)

Article 12. Penal Provision

§1-1201 VIOLATION; PENALTY. (A) Any person, or any person's agent or servant, who violates any of the provisions of this municipal code, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500.00. A new violation shall be deemed to have been committed every twenty- four (24) hours of such failure to comply.

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

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (*Ref. Neb. RS 17-505, 18-1720*)

CHAPTER 2

COMMISSIONS AND BOARDS

Article 1. Standing Committees

§2-101 STANDING COMMITTEES; GENERAL PROVISIONS. At the organizational meeting of the City Council, the Mayor shall appoint members of such standing committees as the City Council may by ordinance or resolution create. The membership of such standing committees may be changed at any time by the Mayor. The Mayor shall be a member ex officio of such standing committee. The members of the standing committees shall serve a term of office of one (1) year, unless reappointed.

The following standing committees shall be appointed or reappointed each year until changed by the Governing Body:

Streets, Alleys, and Fire

Utilities, Power and Maintenance

Recreation, Park and Pool

Utility Distribution Service and Dump

Article 2. Commissions and Boards

§2-201 LIBRARY BOARD.

(A) (1) The Library Board shall consist of five (5) appointed members who shall be residents of the Municipality and who shall serve terms of four (4) years. The board members shall be appointed by a majority vote of the members of the City Council. Neither the Mayor nor any member of the City Council shall be a member of the Library Board. The terms of members serving on the effective date of a change in the number of members shall not be shortened, and any successors to those members shall be appointed as the terms of those members expire. In cases of vacancies by resignation, removal, or otherwise, the City Council shall fill the vacancy for the unexpired term. No member shall receive any pay or compensation for any services rendered as a member of the Library Board. (*Neb. RS 51-202*)

(2) The City Council may require the members of the Library Board to give a bond in a sum set by resolution and conditioned upon the faithful performance of their duties.

(B) (1) The members of the Library Board shall immediately after their appointment meet and organize by electing from their number a President, a Secretary, and such other officers as may be necessary. A majority of the members of the Library Board shall constitute a quorum for the transaction of business. (*Neb. RS 51-204*)

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

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

§2-202 PLANNING COMMISSION. (1) The Planning Commission shall consist of five (5) regular members who shall represent, insofar as is possible, the different professions or occupations in the Municipality and shall be appointed by the Mayor, by and with the approval of a majority vote of the members elected to the City Council. Two (2) of the regular members may be residents of the area over which the Municipality is authorized to exercise extraterritorial zoning and subdivision regulation. When there are a sufficient number of residents in the area over which the Municipality exercises extraterritorial zoning and subdivision regulation, one (1) regular member of the Commission shall be a resident from such area. If it is determined by the City Council that a sufficient number of residents reside in the area subject to extraterritorial zoning and subdivision regulation, and no such resident is a regular member of the Commission, the first available vacancy on the Commission shall

be filled by the appointment of such an individual. For purposes of this section, a sufficient number of residents shall mean five hundred (500) residents. The term of each regular member shall be three (3) years, except that approximately one-third (1/3) of the regular members of the first Commission shall serve for terms of one (1) year, one-third (1/3) for terms of two (2) years, and one-third (1/3) for terms of three (3) years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before the City Council, be removed by the Mayor, with the consent of a majority vote of the members elected to the City Council, for inefficiency, neglect of duty, or malfeasance in office, or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term, shall be filled for the unexpired portion of the term by the Mayor.

(2) All regular members of the Commission shall serve without compensation and shall hold no other Municipal office except when appointed to serve on the Board of Adjustment, as provided in *Section 19-908 RS Neb.* All members of the Commission may be required, in the discretion of the Mayor and City Council, to give bond in a sum set by resolution of the City Council, and conditioned upon the faithful performance of their duties. The Commission shall elect its Chairperson and a Secretary from its members and create and fill such other of its offices as it may determine. The term of the Chairperson and the Secretary shall be one year, and they shall be eligible for reelection. No member of the Commission shall serve in the capacity of both the Chairperson and Secretary of the Commission. It shall be the duty of the Secretary to keep the full and correct minutes and records of all meetings and to file them with the Municipal Clerk where they shall be available for public inspection during office hours. The Commission shall be funded by the City Council from time to time out of the General Fund. The expenditures of the Commission, exclusive of gifts, shall be within the amounts appropriated for that purpose by the City Council; and no expenditures nor agreements for expenditures shall be valid in excess of such amounts. A number of Commissioners equal to a majority of the number of regular members appointed to the Commission shall constitute a quorum for the transaction of any business. The Commission shall hold at least one regular meeting in each calendar quarter, except the City Council may require the Commission to meet more frequently and the Chairperson of the Commission may call for a meeting when necessary to deal with business pending before the Commission. Special meetings may also be held upon the call of any three (3) members of the Commission. The Commission shall adopt rules and regulations for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which shall be a public record. The Commission shall make and adopt plans for the physical development of the Municipality, including any areas outside its boundaries which, in the Commission's judgment, bear relation to the planning of the Municipality, and shall carry out the other duties and exercise the powers specified in *Section 19-929 RS Neb.* All actions by the Commission shall be subject to the review and supervision of the Mayor and City Council. The Commission shall make its recommendations to the City Council so that they are received by the City Council within ninety (90) days after the Commission begins consideration of a

matter relating to the comprehensive development plan, capital improvements, building codes, subdivision development, the annexation of territory, or zoning. The Commission shall be responsible for making such reports and performing such other duties as the Mayor and City Council may, from time to time, designate.

(3) The Mayor, with the approval of a majority vote of the elected members of the City Council, shall appoint one (1) alternate member to the Commission. The alternate member shall serve without compensation and shall hold no other Municipal office. The term of the alternate member shall be three (3) years, and he or she shall hold office until his or her successor is appointed and approved. The alternate member may be removed from office in the same manner as a regular member. If the alternate member position becomes vacant other than through the expiration of the term, the vacancy shall be filled for the unexpired portion of the term by the Mayor, with the approval of a majority vote of the elected members of the City Council. The alternate member may attend any meeting and may serve as a voting and participating member of the Commission at any time when less than the full number of regular Commission members are present and capable of voting. *(Ref. 19-924 through 19-929 RS Neb.)*
(Amended by Ord. Nos. 469, 5/7/91; 533, 1/3/96; 585, 6/3/99)

§2-203 BOARD OF ADJUSTMENT. (A) The Mayor shall appoint, with the consent of the City Council, a Board of Adjustment which shall consist of five regular members plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason. Each member shall be appointed for a term of three years, and shall be removable for cause by the Mayor upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by such member shall also result in his or her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment. If the Board does not include a member who resides in the extraterritorial zoning jurisdiction of the City, the first vacancy occurring on the Board of Adjustment after the effective date of this section shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city at such time as more than two hundred persons reside within such area. Thereafter, at all times, at least one member of the Board of Adjustment shall reside outside the corporate boundaries of the city but within its extraterritorial zoning jurisdiction. Neither the Mayor nor any member of the City Council shall serve as a member of the Board of Adjustment.

(B) The members of the Board shall serve without compensation and may be required, in the discretion of the City Council, to give a bond in a sum set by resolution of the City Council and conditioned upon the faithful performance of their duties. The Board shall organize at its first meeting each year after the City Council meeting when appointments are regularly made and shall elect from its membership a Chairperson

and Secretary. No member of the Board of Adjustment shall serve in the capacity of both Chairperson and Secretary of the Board.

(C) The Board shall adopt rules in accordance with the provisions of this section and *Neb. RS 19-901 to 19-914*. Meetings of the Board shall be held at the call of the chairperson and at such other times as the Board may determine. Special meetings may be also held upon the call of three members of the Board. A. Majority of the Board shall constitute a quorum for the purpose of doing business. The Chairperson, or in his or her absence the acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. It shall be the duty of the Secretary to keep complete and accurate minutes of the Board's proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and to keep records of the Board's examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be public record. The Board shall be responsible for making such reports and performing such other duties as the Mayor and City Council may designate. (*Neb. RS 19-908*)

(D) Appeals to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board, after the notice of appeal shall have been filed with him or her, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. The Board shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. (*Neb. RS 19-909*)

(E) The Board shall have only the following powers;

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

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

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

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

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

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

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

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

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

(G) In exercising the powers granted in this section, the Board may, in conformity with *Neb. RS 19-901 to 19-915*, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation. (*Neb. RS 19-910*)

(H) Appeals from a decision by the Board may be taken as provided in *Neb. RS 19-912*.

§2-204 BOARD OF HEALTH. (1) The Governing Body shall appoint a Board of Health which shall consist of four (4) members. The members of the Board shall include the Mayor, who shall serve as Chairperson, the President of the City Council, and two (2) other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the Board's medical advisor. If the Mayor has appointed a Chief of Police, the Chief of Police shall serve on the Board as Secretary and quarantine officer. The members of the Board shall serve, without compensation, a one (1) year term of office,

unless reappointed, and shall reorganize at the first meeting in December of each year. No member of the Board of Health shall hold more than one (1) Board of Health position.

(2) The Secretary shall keep full and correct minutes and records of all meetings and file the same with the Municipal Clerk where they shall be available for public inspection during office hours. The Board of Health shall be funded by the Governing Body, from time to time, out of the General Fund. A majority of the Board shall constitute a quorum for the purpose of doing business. The Board shall meet at such times as the Governing Body may designate. Special meetings may be held upon the call of the chairperson, or any two (2) members of the Board.

(3) The Board shall enact rules and regulations, which shall have the full force and effect of law, to safeguard the health of the people of the Municipality. The Board shall enforce the rules and regulations and provide fines and punishments for any violations thereof. It may regulate, suppress, and prevent the occurrence of nuisances and enforce all laws of the State of Nebraska and ordinances of the Municipality relating to nuisances and to matters of sanitation which affect the health and safety of the people. The Board shall regularly inspect such premises and businesses as the Governing Body may direct. All members of the Board shall be responsible for making such reports and performing such other duties as the Governing Body may, from time to time, designate.

§2-205 HOUSING AUTHORITY BOARD. The Governing Body shall appoint five (5) persons who shall constitute the Housing Authority and such persons shall be called the Commissioners. One (1) Commissioner shall be appointed each year. Each Commissioner shall serve a five (5) year term of office or until his successor is duly appointed, provided that all vacancies shall be filled for the unexpired terms. The Governing Body may appoint one (1) of its members to serve as one of the five (5) members of such Housing Authority for such term as the Governing Body may determine. No person shall serve as a Commissioner unless he or she resides within the area of operation of that Housing Authority. A certificate of appointment or reappointment of any Commissioner shall be filed with the Municipal Clerk and such certificate shall be conclusive evidence of the proper appointment of such Commissioner. A Commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including travel expenses, incurred in discharge of his duties. A majority of Commissioners shall constitute a quorum of the Authority for the purpose of conducting its business, exercising its powers, and for all other purposes. Action may be taken by the Authority upon the vote of the majority of the Commissioners present unless, in any case, the bylaws of the Authority shall require a larger number. The Commissioners shall elect a chairman and vice-chairman from among the Commissioners and shall have the power to employ an executive director who shall serve as ex officio secretary of the Authority. The Authority may also employ legal counsel, or it may call upon the chief law officer of the Municipality for such services as it may require. It may employ technical experts and such other officers,

agents, and employees as it may require and shall determine their qualifications, duties, compensations, and terms of office. The Authority may delegate such other powers and duties to its agents or employees as it may deem proper. During his tenure and for one (1) year thereafter, no commissioner, officer, or employee of the Municipal Housing Authority shall voluntarily acquire property included or planned to be included in any project, or in any contract or proposed contract relating to any housing project. If any such commissioner, officer, or employee involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as commissioner, officer, or employee, he shall immediately disclose his interest in writing to the Authority, and such disclosure shall be entered upon the minutes of the Authority, and he shall not participate in any action by the Authority relating to the property or contract in which he has any such interest; provided that nothing herein shall apply to the acquisition of any interest in notes or bonds of the Authority issued in connection with any housing project, or to the execution of agreements by banking institutions for deposit or handling of funds in connection with a project, or to act as trustee under any trust indenture, or to utility services, the rates for which are fixed or controlled by a governmental agency. The Mayor may remove a Commissioner for neglect of duty or misconduct in office in the manner prescribed hereinafter. The Mayor shall send a notice of removal to such Commissioner which notice shall contain a statement containing the charges against him. Unless, within ten (10) days from the receipt of such notice, such Commissioner files with the Clerk a request for a hearing before the Governing Body, the Commissioner shall be deemed as removed from office. If a request for a hearing is filed with the Clerk, the Governing Body of the Municipality shall hold a hearing at which the Commissioner shall have the right to appear in person or by counsel and the Governing Body shall determine whether the removal shall be disapproved or upheld. If the removal is disapproved, the Commissioner shall continue to hold his position.

The Housing Authority shall keep an accurate account of all its activities and of all its receipts and disbursements and shall make a report to the Governing Body on all such information. (*Ref. 71-1524 through 71-1526, 71-1552 RS Neb.*)

§2-206 HOUSING AUTHORITY; CONTINUED EXISTENCE HOUSING AGENCY.

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

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

(C) Any resolution by the authority and any action taken by the authority prior to January 1, 2000, with regard to any project or program which is to be completed within or to be conducted for a twelve-month period following January 1, 2000, and

which resolution or action is lawful under state law as it existed prior to January 1, 2000, is a lawful resolution or action of the successor agency and binding upon the successor agency and enforceable by or against the agency notwithstanding that such resolution or action is inconsistent with, not authorized by, or prohibited under the provisions of the Nebraska Housing Agency Act.

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

§2-207 HOUSING AUTHORITY; OPERATION AND MANAGEMENT. The Authority shall at all times observe the following duties with respect to rentals and tenant selection:

1. It may rent or lease dwelling accommodations therein only to persons of low income, elderly, or handicapped persons of low income, and displaced persons in need.

2. There shall be no discrimination in the eligibility or occupancy of tenants on the basis of race, sex, marital status, religion, color, creed, national origin, or ancestry.

3. The Authority shall not accept any person as a tenant in any dwelling in the housing project if the persons who occupy the dwelling have an aggregate annual income which equals or exceeds the amount which the Authority has conclusively determined to be sufficient to enable one to secure, safe, sanitary, and uncongested dwelling accommodations within the area served by the Authority and to provide an adequate standard of living.

4. The Authority may rent or lease to a tenant a dwelling consisting of a number of rooms which is deemed necessary to provide safe and sanitary accommodations to the occupants without overcrowding.

5. The Authority shall fix income limits for occupancy and rents after taking into consideration;

a. The family size, composition, age, physical handicaps, and other factors which might affect the rent-paying ability of the person.

b. The economic factors which affect the financial stability and solvency of the project.

6. The Authority may accept as a tenant any displaced person or persons in need, regardless of income, but in no event shall such person or persons remain as a tenant or tenants of the Authority for more than a period of six (6) months unless such persons also qualify as persons of low income, elderly, or handicapped persons of low income.

7. All persons of low income, elderly, or handicapped persons of low income, or displaced persons in need, shall be entitled to the benefits of this Article and the Authority may establish rules and regulations consistent with the purposes of this

Article and the Authority may establish rules and regulations consistent with the purposes of this Article concerning eligibility and occupancy of the housing project or other such shelter.

8. Nothing herein shall prohibit the right of the Authority to inquire into the financial condition, family composition, medical, personal, and employment history of any tenant or prospective tenant.

9. The Authority shall prohibit subletting by tenants.

The Authority may establish, from time to time, rules and regulations consistent with federal and state laws and regulations and the purposes of this Article concerning the termination of tenancy. Any tenant so terminated shall be sent a written notice of termination setting out the reasons for such termination, and any tenant served with a notice shall be given the opportunity to contest the termination in an appropriate hearing; except that tenants who have created or maintained a threat constituting a serious and clear danger to the health or safety of other tenants or Authority employees need not be given such a hearing by the Authority. Such notice may provide that if the tenant fails to pay his or her rent or comply with any covenant or condition of his or her lease, or the rules and regulations of such Authority, or cure a violation or default thereof, as the case may be, as specified in such notice, or follow the procedure for a hearing as set forth in the notice, all within the time or times set forth in such notice; the tenancy shall then be automatically terminated and no other notice or notices need be given of such termination or the intent to terminate the tenancy, and upon such termination, and without any notice other than as provided for in this section, the Authority may file suit against any tenant for recovery of possession of the premises and may recover the same as provided by law.

The Authority may establish, from time to time, rules and regulations consistent with the purposes of this Article concerning personal property of tenants and other persons located in projects of the Authority; and if such personal property is not removed from a dwelling unit at the time of the termination of the lease, at the time of vacation or abandonment of the dwelling unit, or at the time of the death of any tenant, then the authority may remove the same and store such property at the tenant's risk and expense. In the event that possession of such personal property is not taken by the tenant or other person authorized by law to take possession within forty-five (45) days after such termination, vacation, or abandonment, and any storage removal charges remain unpaid, then the Authority may, at its option, dispose of the personal property in any manner which the Authority deems fit, except that any proceeds from the disposal of such personal property shall be paid to the general fund of the body which created the Authority. No tenant or other person shall have any cause of action against the Authority for such removal or disposition of such personal property. (*Ref 71-1536 RS Neb.*)

§2-208 HOUSING AUTHORITY; REPORTS. The Housing Authority shall keep an accurate account of all its activities and of all its receipts and disbursements and shall make an annual report at the second (2nd) regular meeting in January of each year to

the Governing Body. Such report shall include all mortgages and other interests in real property held by the sale, essential terms and obligations, and all other financial obligations of the Housing Authority over fifty thousand (\$50,000.00) dollars. Such reports shall be considered public records. If there has been no change from the last report in the status of any of the items reported pursuant to this section, the Housing Authority may file a statement to that effect in lieu of the report. *(Ref. 71-1552 RS Neb.)*

Article 3. Penal Provision

§2-301 VIOLATION PENALTY.

(A) Any person, or any person's agent or servant, who violates any of the provisions of this municipal code, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500.00. A new violation shall be deemed to have been committed every twenty- four (24) hours of such failure to comply.

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

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (*Ref. Neb. RS 17-505, 18-1720*)

Chapter 3

DEPARTMENTS

Article 1. Water Department

§3-101 MUNICIPAL WATER DEPARTMENT; OPERATION AND FUNDING. The Municipality owns and operates the Municipal Water Department through the Utilities Superintendent. The Governing Body, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Water Department may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Water Fund and shall remain in the custody of the Municipal Treasurer. The Utilities Superintendent shall have the direct management and control of the Municipal Water Department and shall faithfully carry out the duties of his office. The Utilities Superintendent shall have the authority to adopt rules and regulations for the sanitary and efficient management of the Water Department subject to the supervision and review of the Governing Body. The Governing Body shall set the rates to be charged for services rendered by ordinance and shall file a copy of the rates in the office of the Municipal Clerk for public inspection at any reasonable time. (*Ref. 17-531, 17-534, 19-1305 RS Neb.*)

§3-102 MUNICIPAL WATER DEPARTMENT; DEFINITIONS. The following definitions shall be appointed throughout this Chapter. Where no definition is specified, the normal dictionary usage of the word shall apply.

MAIN. The term "main" is hereby defined to be any pipe other than a supply or service pipe that is used for the purpose of carrying water to, and dispersing the same in the Municipality.

SUPPLY PIPE. The term "supply pipe" is hereby defined to be any pipe tapped into a main and extending from there to a point at or near the lot line of the consumer's premise where the shut-off, stop box, or curb cock is located.

SERVICE PIPE. The term "service pipe" is hereby defined to be any pipe extending from the shut-off, stop box, or curb cock at or near the lot line to and beyond the property line of the consumer to the location on the premise where the water is to be dispersed.

SEPARATE PREMISE. The term "separate premise" is hereby defined to be more than one (1) consumer procuring water from the same service or supply pipe. The second (2nd) premise may be a separate dwelling, apartment, building, or structure used for a separate business.

§3-103 MUNICIPAL WATER DEPARTMENT; CONSUMER'S APPLICATION. Every person or persons desiring a supply of water must make application therefore to the

Utilities Superintendent. The Superintendent shall require a water tap fee of fifty (\$50.00) dollars from every applicant. Water may not be supplied to any house or private service pipe except upon the order of the Superintendent. The Department shall not supply water service to any person outside the corporate limits without special permission from the Governing Body; provided the entire cost of laying mains, service pipe, and supply pipe shall be paid by the consumer. Nothing herein shall be construed to obligate the Municipality to provide water service to non-residents. (*Ref. 17-537, 19-2701 RS Neb.*) (*Amended by Ord. No .385, 11/10/80*)

§3-104 MUNICIPAL WATER DEPARTMENT; WATER CONTRACT. The Municipality, through its Water Department, shall furnish water to persons within its corporate limits whose premises abut a street or alley in which a commercial main now is or may hereafter be laid. The Municipality may furnish water to persons within its corporate limits whose premises do not abut a street or alley in which a Municipal commercial main is now or may hereafter be laid and may also furnish water to persons whose premises are situated outside the corporate limits of the Municipality, as and when, according to law, the Governing Body may see fit to do so. The rules, regulations, and water rates hereinafter named in this Article, shall be considered a part of every application hereafter made for water service and shall be considered a part of the contract between every consumer now or hereafter served. Without further formality, the making of application on the part of any applicant or the use or consumption of water service by present consumers thereof and the furnishing of water service to said consumer shall constitute a contract between the consumer and the Municipality, to which said contract both parties are bound. If the consumer shall violate any of the provisions of said contract or any reasonable rules and regulations that the Governing Body may hereafter adopt, the Governing Body may order the Utilities Superintendent to cut off or disconnect the water service from the building or premise or place of such violation. No further connection for water service to said building, premise, or place shall again be made save or except by order of said Superintendent or his agent.

§3-105 MUNICIPAL WATER DEPARTMENT; INSTALLATION EXPENSE. The expense of providing water service to the lot line shall be paid by the Municipality. The consumer shall then pay the cost of installation and pipe from the lot line to the place of dispersion, as well as the cost of installing said meter in place where it will properly measure all water consumed and will be convenient for the representatives of the Municipality to read and keep in repair. Said meter shall be located in a place where it will be protected from freezing. (*Ref. 17-542 RS Neb.*)

§3-106 MUNICIPAL WATER DEPARTMENT; REPAIRS. Repairs to the service pipe shall be made by and at the expense of the customer. All other repairs to the property of the Water Department, including the meter, shall be made by the Municipality. All water meters shall be kept in repair by the Municipality at the expense of the Municipality. When meters are worn out, they shall be replaced with meters purchased

by the Municipality and installed at the expense of the customer; provided, that if the customer permits or allows a water meter to be damaged, injured, or destroyed through his own recklessness, carelessness, or neglect so that the meter must be repaired or replaced, the Municipal Clerk shall bill and collect from the customer the cost of such meter repair or replacement in the same manner as water rent is collected. Permitting a water meter to be damaged or destroyed by freezing shall always be considered negligence on the part of the customer. The Municipality reserves the right to test any water service meter at any time, and if said meter is found to be beyond repair the Municipality shall always have the right to place a new meter on the customer's water service fixtures with the expense of installation being charged to the customer. Should a consumer's meter fail to register properly, the customer shall be charged for water during the time the meter is out of repair on the basis of the monthly consumption during the same month of the preceding year; provided that if no such basis for comparison exists, the customer shall be charged such amount as may be reasonably fixed by the Municipal Clerk. *(Ref. 17-542 RS Neb.)*

§3-107 MUNICIPAL WATER DEPARTMENT; FEES AND COLLECTIONS. The Governing Body has power and authority to fix the rates to be paid by the water consumers for the use of water from the Water Department. The Municipal Clerk shall bill the consumers and collect all money received by the Municipality on the account of the Water Department. He shall faithfully account for, and pay to the Municipal Treasurer all revenue collected by him, taking his receipt therefore in duplicate, filing one (1) with the Municipal Clerk and keeping the other on file in the Water Department's official records. *(Ref. 17-540 RS Neb.)*

§3-108 MUNICIPAL WATER DEPARTMENT; RATES. All water consumers shall pay a base charge of \$ 31.00, per month. In addition, each consumer shall pay \$ 2.80 per 1000 gallons of water used, each month. *(Ref. 17-542 RS Neb.) (Amended by Ord. Nos. 364 ,6/8/76; 527,10/3/95; 618, 2/7/02 642, 12/4/2003; (Ord. No. 650)(10/5/2004) (Amended by Ord. No. 667, 07/01/08) (Amended by Ord. No. 711; 04/01/2014)*

§3-109 MUNICIPAL WATER DEPARTMENT; BILLINGS. All users shall be billed monthly for water usage, provided by the Municipal Water Department. The Utilities Superintendent shall read, or cause to be read, water meters, monthly. Monthly bills are due and payable at the office of the Municipal Clerk. Payment of the net amount is allowed until the 25th day of the month the bill is mailed. After that date, the bill is considered delinquent and payable in the gross amount. Delinquent bills will be collected as provided for in Section 3, Article 11 of these ordinances. *(Ref. 17-542, 18-416 RS Neb.) (Amended by Ord.No. 670; 09-02-2008)*

§3-110 MUNICIPAL WATER DEPARTMENT; LIEN. In addition to all other remedies, if a customer shall for any reason remain indebted to the Municipality for water service furnished, such amount due, together with any rents and charges in

arrears, shall be considered a delinquent water rent which is hereby declared to be a lien upon the real estate for which the same was used. The Municipal Clerk shall notify in writing or cause to be notified in writing, all owners of premises or their agents whenever their tenants or lessees are sixty (60) days or more delinquent in the payment of water rent. It shall be the duty of the Municipal Clerk on the first (1st) day of June of each year to report to the Governing Body a list of all unpaid accounts due for water together with a description of the premise upon which the same was used. The report shall be examined, and if approved by the Governing Body, shall be certified by the Municipal Clerk to the County Clerk to be collected as a special tax in the manner provided by law.

§3-111 MUNICIPAL WATER DEPARTMENT; SINGLE PREMISE. No consumer shall supply water to other families or allow them to take water from his premises nor after water is supplied into a building shall any person make or employ a plumber or other person to make a tap or connection with the pipe upon the premises for alteration, extension, or attachment without the written permission of the Governing Body. It shall further be unlawful for any person to tamper with any water meter or by means of any contrivance or device to divert the water from the service pipe so that the water will not pass through the meter or while passing through said meter to cause the meter to register inaccurately. *(Ref. 17-537 RS Neb.)*

§3-112 MUNICIPAL WATER DEPARTMENT; RESTRICTED USE. The Governing Body or the Utilities Superintendent may order a reduction in the use of water or shut off the water on any premises in the event of a water shortage due to fire or other good and sufficient cause. The Municipality shall not be liable for any damages caused by shutting off the supply of water of any consumer while the system or any part thereof is undergoing repairs or when there is a shortage of water due to circumstances over which the Municipality has no control. *(Ref. 17-537 RS Neb.)*

§3-113 MUNICIPAL WATER DEPARTMENT; HYDRANTS. All hydrants for the purpose of extinguishing fires are hereby declared to be public hydrants, and it shall be unlawful for any person other than members of the Municipal Fire Department under the orders of the Fire Chief, or the Assistant Fire Chief, or members of the Water Department, to open or attempt to open any of the hydrants and draw water from the same, or in any manner to interfere with the hydrants.

§3-114 MUNICIPAL WATER DEPARTMENT; WATER SERVICE CONTRACTS. Contracts for water service are not transferable. Any person wishing to change from one location to another shall make a new application and sign a new contract. If any consumer shall move from the premises where service is furnished, or if the said premises is destroyed by fire or other casualty, he shall at once inform the Utilities Superintendent who shall cause the water service to be shut off at the said premises.

If the consumer should fail to give such notice, he shall be charged for all water used on the said premises until the Utilities Superintendent is otherwise advised of such circumstances. (Ref. 17-537 RS Neb.)

§3-115 MUNICIPAL WATER DEPARTMENT; INSPECTION. The Utilities Superintendent shall have free access, at any reasonable time, to all parts of each premises and building to, or in which, water is delivered for the purpose of examining the pipes, fixtures, and other portions of the system to ascertain whether there is any disrepair or unnecessary waste of water. (Ref. 17-537 RS Neb.)

§3-116 MUNICIPAL WATER DEPARTMENT; POLICE REPORTS. It shall be the duty of the Municipal Police to report to the Utilities Superintendent all cases of leakage and waste in the use of water and all violations of the Municipal Code relating to the Water Department. They shall have the additional duty of enforcing the observance of all such regulations.

§3-117 MUNICIPAL WATER DEPARTMENT; DESTRUCTION OF PROPERTY. It shall be unlawful for any person to willfully or carelessly break, injure, or deface any building, machinery, apparatus, fixture, attachment, or appurtenance of the Municipal Water Department. No person may deposit anything in a stop box or commit any act tending to obstruct or impair the intended use of any of the above mentioned property without the written permission of the Governing Body.

§3-118 MUNICIPAL WATER DEPARTMENT; PROHIBITION OF LEAD PIPES, SOLDER, AND FLUX. Any pipe, solders or flux used in the installation or repair of any residential or nonresidential facility which is connected to the public water supply system shall be lead free.

For purposes of this section, lead free shall mean:

- I. Solders and flux -not more than two-tenths (.2%) percent lead, and
2. Pipe and pipe fittings -not more than eight (8%) percent lead. (Ord. No.442, 6/7/88)

§3-119 MUNICIPAL WATER DEPARTMENT; BACKFLOW /BACKSIPHONAGE PREVENTION; STATEMENT OF POLICY.

- A. Purpose: The purpose of this ordinance is;
 1. To protect the public potable water supply of the City of Lyons water system from contamination or pollution by containing within the consumer's internal distribution system or private water system contaminants or pollutants which could backflow through the service connection into the public potable water supply system.
 2. To promote the elimination, containment, isolation or control of existing cross connections, actual or potential, between the public or consumer's

potable water systems and non-potable water systems, plumbing fixtures, and industrial process systems.

3. To provide for the maintenance of a continuing program of cross connection control which will systematically and effectively prevent the contamination or pollution of all potable water systems.

B. Application: This ordinance shall apply to all premises served by the public potable water system of the City of Lyons.

C. Policy: This ordinance will be reasonably interpreted. It is the City's intent to recognize the varying degrees of hazard and to apply the principle that the degree of protection shall be commensurate with the degree of hazard.

The Municipal Water Department shall be primarily responsible for protection of the public potable water distribution system from contamination or pollution due to backflow of contaminants or pollutants through the water service connection. The cooperation of all consumers is required to implement and maintain the program to control cross connections. The consumer is responsible for preventing contamination of the water system within consumer's own premises.

§3-120 MUNICIPAL WATER DEPARTMENT; BACKFLOW/BACKSIPHONAGE PREVENTION; DEFINITIONS.

A. The following definitions shall apply in the interpretation and enforcement of this ordinance.

1. "Air gap separation" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the overflow level rim of the receptacle.

2. "Approved tester" means a person qualified to make inspections: to test and repair backflow prevention/cross connection control devices; and who is approved by the City.

3. "Authorized representative" means any person designated by the City to administer this cross connection control ordinance.

4. "Auxiliary water supply" means any water source system, other than the public water supply, that may be available in the building or premises.

5. "Backflow" means the flow other than the intended direction of flow, or any foreign liquids, gases, or substances into the distribution system of a public water supply.

6. "Backsiphonage" means the flowing back of water or other foreign liquids, gases, or substances into the water distribution system due to negative pressure in the piping of the water distribution system.

7. "Backflow prevention device" means any device, method, or type of construction intended to prevent backflow into a potable water system provided backflow preventers have been tested and approved by a reputable testing laboratory.

8. "Consumer" means the owner or person in control of any premises supplied by or in any manner connected to a public water system.

9. "Containment" means protection of the public water supply by installing a cross connection control device or air gap separation on the main service line to a facility, or as an installation within equipment handling potentially hazardous materials.

10. "Contamination" means an impairment of the quality of the water by sewage, process fluids, or other wastes to a degree which could create the actual hazard to the public health through poisoning or through spread of disease by exposure.

11. "Cross connection" means any physical link between a potable water supply and any other substance, fluid, or source which makes possible contamination of the potable water supply due to the reversal of flow of the water in the piping or distribution system.

12. "Hazard, Degree of" means an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.

a. Hazard-Health - any condition device, or practice in the water supply system and its operation which could create, or may create, a danger to the health and well-being of the water consumer.

b. Hazard-Plumbing - a plumbing type cross connection in a consumer's potable water system that has not been properly protected by a vacuum breaker, air-gap separation, or backflow prevention device.

c. Hazard-Pollutional - an actual or potential threat to the physical properties of the water system or to the potability of the public or the consumer's potable water system, but which would constitute a nuisance or be aesthetically objectionable, or could cause damage to the system or its appurtenances, but would not be dangerous to health.

d. Hazard-System - an actual or potential threat of severe damage to the physical properties of the public potable water system or the consumer's potable water system, or of a pollution or contamination which would have a protracted effect on the quality of the potable water in the system.

13. "Isolation" means protection of a facility service line by installing a cross connection control device or air gap separation on an individual fixture, appurtenance, or system.

14. "Pollution" means the presence of any foreign substance (organic, inorganic, or biological) in water which tends to degrade its quality so as to constitute a hazard or impair the usefulness of the water to a degree which does not create an actual hazard to the public health, but which does adversely and unreasonably affect such waters for domestic use.

15. "Public Potable Water System" means any publicly or privately owned water system supplying water to the general public which is satisfactory

for drinking culinary and domestic purposes, and meets the requirements of the Nebraska Department of Health.

16. "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 down stream end of the meter.

17. "Water Department" means the Municipal Water Department of the City of Lyons, Nebraska.

§3-121 MUNICIPAL WATER DEPARTMENT; BACKFLOW/BACKSIPHONAGE PREVENTION; CROSS CONNECTIONS PROHIBITED.

A. No water service connection shall be installed or maintained to any premises where actual or potential cross connections to the public water supply system may exist, unless such actual or potential cross connections are abated or controlled to the satisfaction of the City or its authorized representative.

B. No connection shall be installed or maintained whereby an auxiliary water supply may enter a public water supply system.

C. No water service connection shall be installed or maintained by any premises in which the plumbing system, facilities, and fixtures have not been constructed and installed using acceptable plumbing practices considered by the Municipal Water Department as necessary for the protection of health and safety.

§3-122 MUNICIPAL WATER DEPARTMENT; BACKFLOW/BACKSIPHONAGE PREVENTION; SURVEY AND INVESTIGATIONS.

A. The consumer's premises shall be open at all reasonable times to the City or its authorized representative for the conduction of surveys and investigations of water use practices within the consumer's premises to determine whether there are actual or potential cross connections in the consumer's water system.

B. On request by the City or its authorized representative, the consumer shall furnish requested information on water use practices within his premises and in the consumer's water system.

C. On request by the City or its authorized representative, the consumer shall conduct periodic surveys of water use practices on the premises of the consumer's water system to determine whether there are actual or potential cross connections. The consumer shall provide the survey results to the City or its authorized representative.

§3-123 MUNICIPAL WATER DEPARTMENT; BACKFLOW/BACKSIPHONAGE PREVENTION; 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 City or authorized representative, a health, plumbing, pollution, or system hazard exists.

B. An approved air gap separation or reduced pressure principle backflow prevention device shall be installed at the service connection or within any premises

where, in the judgment of the Municipal Water Department, the nature and extent of activities on the premises, or the materials used in connection with the activities, or materials stored on the premises, would present an immediate and dangerous hazard to health should a cross connection occur; even though such cross connection may not exist at the time the backflow prevention device is required to be installed. This includes, but is not limited to, the following situations;

1. Premises having an auxiliary water supply, unless the quality of the auxiliary supply is acceptable to the City or its authorized representative and the Nebraska Department of Health;
2. Premises having internal cross connections that are not correctable, or intricate plumbing arrangements, which make it impractical to ascertain whether or not cross connections exist;
3. Premises where entry is restricted so that inspections for cross connections cannot be made with sufficient frequency or at sufficiently short notice to assure the cross connections do not exist;
4. Premises having a repeated history of cross connections being established or re-established;
5. Premises, which due to the nature of the enterprise therein, are subject to recurring modification or expansion;
6. Premises on which any substance is handled under pressure so as to permit entry into the public water supply system or where a cross connection could reasonably be expected to occur. This shall include the handling of process waters and cooling waters; and
7. Premises where toxic or hazardous materials are handled.

C. The following types of facilities fall into one or more of the categories or premises where an approved air gap separation or reduced pressure principle backflow prevention device may be required by the City, or its authorized representative, or the Nebraska Department of Health to protect the public water supply and must be installed at these facilities, unless all hazardous or potentially hazardous conditions have been eliminated or corrected by other methods to the satisfaction of the City or its authorized representative and the Nebraska Department of Health;

1. Agricultural chemical facilities;
2. Auxiliary water systems, wells;
3. Premises having water re-circulating system as used for boilers or cooling systems;
4. Bulk water loading facilities;
5. Car washes, automobile servicing facilities;
6. Chill water systems;
7. Feedlots;
8. Fire protection systems;
9. Hazardous waste storage and disposal sites;
10. Irrigation and lawn sprinkler systems capable of chemical injection;

11. Laundries and dry cleaning;
12. Petroleum processing or storage plants;
13. Beauty salons;
14. Schools;
15. Sewage pumping stations; and
16. Other commercial or industrial facilities which may constitute potential cross connection.

§3-124 MUNICIPAL WATER DEPARTMENT; BACKFLOW /BACKSIPHONAGE PREVENTION; TYPE OF PROTECTION REQUIRED.

The type of protection required by this ordinance shall depend on the degree of hazard which exists as follows:

1. An approved air gap separation shall be installed where the potable water system may be contaminated with substances that could cause a severe health hazard.
2. An approved air gap separation or an approved reduced pressure principle backflow prevention device shall be installed where the public potable water system may be contaminated with a substance that could cause a health hazard.
3. An approved air gap separation or an approved reduced pressure principle backflow prevention device, or an approved double check valve assembly shall be installed where the public potable water system may be polluted with substances that could cause a pollutional hazard not dangerous to health.

§3-125 MUNICIPAL WATER DEPARTMENT; BACKFLOW /BACKSIPHONAGE PREVENTION; BACKFLOW PREVENTION DEVICES. Any backflow prevention device required by this ordinance shall be of a model or construction approved by the City or its authorized representative and the Nebraska Department of Health.

1. Air gap separation to be approved shall be at twice the diameter of the supply pipe measured vertically above the top rim of the vessel, but in no case less than one inch.
2. Double check valve assemblies or reduced pressure principle backflow prevention devices shall appear on the current list of approved backflow prevention devices established by the Nebraska Department of Health, unless the device was installed at the time this ordinance was passed and complies with required inspection and maintenance.

§3-126 MUNICIPAL WATER DEPARTMENT; BACKFLOW /BACKSIPHONAGE PREVENTION; INSTALLATION .

A. Backflow prevention devices required by this policy shall be installed at a location in a manner approved by the City or its authorized agent. All devices shall be installed at the expense of the consumer, unless the City or its authorized representative agrees otherwise.

B. Backflow prevention devices installed on the service connection shall be located on the consumer's side of the water meter (if one is installed) or the corporation

stop, as close to the meter or corporation stop as is reasonably practical, and prior to any other connection.

C. Backflow prevention devices shall be conveniently accessible for maintenance and testing, protected from freezing, and where no part of the device will be submerged or subject to flooding by any fluid. All devices shall be installed according to manufacturer's recommendations.

§3-127 MUNICIPAL WATER DEPARTMENT; BACKFLOW/BACKSIPHONAGE PREVENTION; TESTING. Backflow and backsiphonage prevention devices designed to be tested shall be tested for proper operation annually or when necessary in the opinion of the City or its authorized representative. Actual testing shall be at the expense of the consumer, unless the City or its authorized representative agrees otherwise. Any required maintenance or repairs shall be at the expense of the consumer and subject to the approval of the City. If testing shall require entry into the premises, the City's authorized representative shall give notice, setting forth a proposed date and time to the customer at least ten (10) working days in advance, by first class mail, return receipt requested. If the customer cannot make the premises available for inspection on that date and time, the customer shall contact the City's authorized representative to arrange another date and time.

§3-128 MUNICIPAL WATER DEPARTMENT; BACKFLOW/BACKSIPHONAGE PREVENTION; AUTHORIZED REPRESENTATIVE; AUTHORITY. The authorized representative shall have the authority to issue any order consistent with the provisions of this ordinance in order to protect the public health and safety. Any order of the authorized representative shall be in writing and shall clearly state the nature of the order, compliance requirements, and set a reasonable date by which compliance must be met. All orders will be mailed to the consumer by first class mail, return receipts requested.

§3-129 MUNICIPAL WATER DEPARTMENT; BACKFLOW/BACKSIPHONAGE PREVENTION; APPEALS. In the event that it is claimed that the true intent and meaning of this ordinance has been wrongfully interpreted by the authorized representative, that the time allowed for compliance with any order of the authorized representative is too short, or that conditions peculiar to a particular premise make it unreasonably difficult to meet the literal requirements prescribed by this ordinance, the owner may file a written notice of appeal with the Municipal Clerk within ten (10) days after the decision or order of the authorized representative has been made. The Governing Body shall hear all appeals and shall have the power and authority, when appealed to, to modify the decision or order of the authorized representative. Such a decision shall be final, subject only to any remedy which the aggrieved party may have at law or equity.

Appeals shall be in writing and shall state the reason for the appeal.

§3-130 MUNICIPAL WATER DEPARTMENT; BACKFLOW/BACKSIPHONAGE PREVENTION; VIOLATION AND PENALTIES.

A. The City or its authorized representative shall deny or discontinue the water service to any premises or any consumer wherein any backflow prevention device required by this policy is not installed, tested, and maintained in a manner acceptable to the City or its authorized representative, or if it is found that the backflow prevention device has been removed or bypassed, or if an unprotected cross connection exists.

B. Water service to such premises shall not be restored until the consumer is in compliance with this cross connection ordinance to the satisfaction of the City or its authorized representative.

§3-131 MUNICIPAL WATER DEPARTMENT; BACKFLOW/BACKSIPHONAGE PREVENTION; LIABILITY CLAIMS.

The authorized representative shall be relieved from personal liability. The City shall hold harmless the authorized representative 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 title, or by reason of any act or omission of the authorized representative in the discharge of his/her duties hereunder. Any suit brought carrying out the provisions of the title shall be defended by the City or the City's insurance carrier, if any, through final determination of such proceeding.

§3-132 MUNICIPAL WATER DEPARTMENT; WELLHEAD PROTECTION AREA.

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

The City Council of Lyons, Nebraska designates a Wellhead Protection Area for the purpose of protecting the public water supply system. The boundaries of the Wellhead Protection Area are based upon a map prepared by the Nebraska Department of Environmental Quality presented to the City of Lyons on July 2003. (*Ord. No. 653*)(4/3/2005)

§3-133 MUNICIPAL WATER DEPARTMENT; WATER DROUGHT EMERGENCY.

The purpose of this ordinance is to provide for the declaration of a water supply watch, warning or emergency and the implementation of voluntary and mandatory water conservation measures throughout the City in the event such a watch, warning or emergency is declared.

1. Definitions:

- (a) "Water," as the term is used in this ordinance, shall mean water available to the City of Lyons for treatment by virtue of its water rights or any treated water introduced by the City into its water distribution system, including water offered for sale at any coin-operated site.

- (b) "Customer," as the term is used in this ordinance, shall mean the customer of record using water for any purpose from the City's water distribution system and for which either a regular charge is made or, in the case of coin sales, a cash charge is made at the site of delivery.
- (c) "Waste of water," as the term is used in this ordinance, includes, but is not limited to: (1) permitting water to escape down a gutter, ditch, or other surface drain; or (2) failure to repair a controllable leak of water due to defective plumbing.
- (d) The following classes of uses of water are established:

Class 1:

Water used for outdoor watering; either public or private, for gardens, lawns, trees, shrubs, plants, parks, golf courses, playing fields, swimming pools or other recreational areas; or the washing of motor vehicles, boats, trailers or the exterior of any building or structure.

Class 2:

Water used for any commercial or industrial, including agricultural purposes, except water actually necessary to maintain the health and personal hygiene of bona fide employees while such employees are engaged in the performance of their duties at their placement of employment.

Class 3

Domestic usage, other than that which would be included in either Classes 1 or 2

Class 4:

Water necessary only to sustain human life and the lives of domestic pets and maintain standards of hygiene and sanitation.

2. Declaration of Water Watch. Whenever the governing body of the City finds that conditions indicate that the probability of a drought or some other condition causing a major water supply shortage is rising, it shall be empowered to declare, by resolution, that a water watch exists and that it shall take steps to inform the public and ask for voluntary reductions in water use. Such a watch shall be deemed to continue until it is declared by resolution of the governing body to have ended. The resolutions declaring the existence and end of a water watch shall be effective upon their publication.

3. Declaration of Water Warning. Whenever the governing body of the City finds that drought conditions or some other condition causing a major water supply shortage are present and supplies are starting to decline, it shall be empowered to declare by resolution that a water warning exists and that it will recommend restrictions on nonessential uses during the period of warning. Such a warning shall be deemed to continue until it is declared by resolution of the governing body to have ended. The resolutions declaring the beginning and ending of the water warning shall be effective upon their publication.

4. Declaration of Water Emergency. Whenever the governing body of the City finds that an emergency exists by reason of a shortage of water supply needed for essential uses, it shall be empowered to declare by resolution that a water supply emergency exists and that it will impose mandatory restrictions on water use during the period of the emergency. Such an emergency shall be deemed to continue until it is declared by resolution of the governing body to have ended. The resolutions declaring the existence and end of a water supply emergency shall be effective upon their publication.

5. Voluntary Conservation Measures. Upon the declaration of a water watch or water warning as provided in Sections 3 and 4, the mayor is authorized to call on all water consumers to employ voluntary water conservation measures to limit or eliminate nonessential water uses including, but not limited to, limitations on the following uses;

- (a) Sprinkling of water on lawns, shrubs or trees (including golf courses);
- (b) Washing of automobiles;
- (c) Use of water in swimming pools, fountains and evaporative air conditioning systems; and
- (d) Waste of water.

6. Mandatory Conservation Measures. Upon the declaration of a water supply emergency as provided in section 5, the mayor is also authorized to implement certain mandatory water conservation measures, including, but not limited to, the following;

- (a) Suspension of new connections to the City's water distribution system, except connections of fire hydrants and those made pursuant to agreements entered into by the City prior to the effective date of the declaration of the emergency;
- (b) Restrictions on the uses of water in one or more classes of water use, wholly or in part;
- (c) Restrictions on the sales of water at coin-operated facilities or sites;
- (d) The imposition of water rationing based on any reasonable formula including, but not limited to, the percentage of normal use and per capita or per consumer restrictions;
- (e) Complete or partial bans on the waste of water; and,
- (f) Any combination of the foregoing measures.

7. Emergency Water Rates. Upon the declaration of a water supply emergency as provided in Section 5, the governing body of the City shall have the power to adopt emergency water rates by ordinance designed to conserve water supplies. Such emergency rates may provide for, but are not limited to; (a) higher charges for increasing usage per unit of use (increasing block rates); (b) uniform charges for water usage per unit of use (uniform unit rate); or (c) extra charges in excess of a specified level of water use(excess demand surcharge).

8. Regulations. During the effective period of any water supply emergency as provided for in Section 5, the mayor is empowered to promulgate such regulations as may be necessary to carry out the provisions of this ordinance, any water supply emergency resolution, or emergency water rate ordinance. Such regulations shall be subject to the approval of the governing body at its next regular or special meeting.

9. Violations, Disconnections and Penalties.

a. If the mayor or other city official or officials charged with implementation and enforcement of this ordinance or a water supply emergency resolution learn of any violation of any water use restrictions imposed pursuant to Section 7 or 9 of this ordinance, a written notice of the violation shall be affixed to the property where the violation occurred and the customer of record or any other person known to the City who is responsible for the violation or its correction shall be provided with either actual or mailed notice. Said notice shall describe the violation and order that it be corrected, cured or abated immediately or within such specified time as the City determines is reasonable under the circumstances. If the order is not complied with, the City may terminate water service to the customer subject to the following procedures:

- (1) The City shall give the customer notice by mail or actual notice that water service will be discontinued within a specified time due to the violation and that the customer will have the opportunity to appeal the termination by requesting a hearing scheduled before the City governing body or a city official designated as a hearing officer by the governing body;
- (2) If such a hearing is requested by the customer charged with the violation, he or she shall be given a full opportunity to be heard before termination is ordered; and,
- (3) The governing body or hearing officer shall make findings of fact and order whether service should continue or be terminated.
- (4) A fee of \$ 50.00 shall be paid for the reconnection of any water service terminated pursuant to subsection (a). In the event of subsequent violations, the reconnection fee shall be \$ 200.00 for the second reconnection and \$300.00 for any additional reconnections.

(b) Each day's violation shall constitute a separate offense. The penalty for an initial violation shall be a fine of up to \$ 100.00. In addition, such customer may be required by the Court to serve a definite term of confinement in the county jail which shall be fixed by the Court and which shall not exceed 30 days. The penalty for a second or subsequent conviction shall be a fine of up to

\$200.00. In addition, such customer shall serve a definite term of confinement in the county jail which shall be fixed by the Court and which shall not exceed 30 days.

10. Emergency Termination. Nothing in this ordinance shall limit the ability of any properly authorized city official from terminating the supply of water to any or all customers upon the determination of such city official that emergency termination of water service is required to protect the health and safety of the public.

11. Severability. If any provision of this ordinance is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the ordinance and its applicability to other persons and circumstances shall not be affected thereby. (Ord. No. 623)(7/9/02)

§3-134 MUNICIPAL WATER DEPARTMENT; DRILLING AND OPERATION OF WELLS AND OTHER UNDERGROUND FACILITIES.

1. **DRILLING WITHOUT A PERMIT UNLAWFUL.** From and after the effective date of this ordinance, it shall be unlawful for any person, corporation or other legal entity to drill and/or operate any of the following facilities within the corporate City limits of the City of Lyons without first having obtained the proper permit from the governing body of the City of Lyons; potable water well, any other well, sewage lagoon, absorption or disposal field for water, cesspool, dumping grounds, feedlots, livestock pasture or corral, chemical product storage facility, petroleum product storage facility, pit toilet, sanitary landfill, septic tank, sewage treatment plant, sewage wet well.

2. **PROCEDURE TO OBTAIN PERMIT.** In order to obtain a permit to drill and/or operate any of the facilities listed in paragraph 1 above, the owner of the property on which the proposed facility is to be located must make application on the proper form provided by the governing body of the City of Lyons. Such application must be presented to the City Council at any regular or special meeting. After reviewing the application of any person desiring to drill or operate any of the above described facilities, the City Council shall approve or deny said permit.

3. **DRILLING OR INSTALLATION OF OTHER FACILITIES WITHIN DESIGNATED DISTANCE FROM MUNICIPAL WATER SOURCES; PROHIBITED.** Under no circumstances shall the City Council approve any permit to drill or operate any of the below described facilities within the indicated number of feet from any City of Lyons' municipal water well:

<u>Category</u>	<u>Distance</u>
Non-potable Water Well	1,000 feet
Sewage Lagoon	1,000 feet
Absorption or Disposal Field for Waste	500 feet
Cesspool	500 feet
Dump	500 feet
Feedlot or Feedlot Runoff	500 feet
Corral	500 feet

Pit Toilet	500 feet
Sanitary Landfill	500 feet
Chemical or Petroleum Product Storage	500 feet
Septic Tank	500 feet
Sewage Treatment Plant	500 feet
Sewage Wet Well	500 feet
Sanitary Sewer Connection	100 feet
Sanitary Sewer Manhole	100 feet
Sanitary Sewer Line	100 feet
Sanitary Sewer Line (permanently water tight)	10 feet

4. PENALTIES AND ABATEMENT PROCEDURE. In the event any of the above described facilities are installed or operated without first having obtained a permit from the City of Lyons and/or within the designated number of feet from any municipal water supply, then such facilities shall be deemed a nuisance and the governing body shall abate such facility as a public nuisance. In addition thereto, any person violating any of the terms of this ordinance is hereby determined to be "guilty" of a Class III misdemeanor as the same is defined by Nebraska Statute. The penalty for such violation shall be that as defined by Nebraska law for the violation of a Class 3 misdemeanor. (*Ord. No. 630, 4/1/03*)

Article 2. Sewer Department

§3-201 MUNICIPAL SEWER DEPARTMENT; OPERATION AND FUNDING.

(1) The Municipality owns and operates the Municipal Sewer System through the Utilities Department.

(2) For the purpose of defraying the cost of the maintenance and repairing of any sewer or water utilities in the Municipality, the Governing Body may each year levy a tax not exceeding the maximum limit prescribed by State law, on the taxable value of all the taxable property in the Municipality. The revenue from the tax shall be known as the Water and Sewer Maintenance Fund, and shall be used exclusively for the purpose of maintenance and repairs of the water and sewer system.

(3) The Utilities Superintendent shall have the direct management and control of the Sewer Department, shall faithfully carry out the duties of the office, and shall have the authority to adopt rules and regulations for the sanitary and efficient management of the Department subject to the supervision and review of the Governing Body. (*Ref. 17-149, 17-925.01 RS Neb.*) (*Amended by Ord No.584, 6/3/99*)

§3-202 MUNICIPAL SEWER DEPARTMENT; DEFINITIONS. The following definitions shall be applied throughout this Article. Where no definition is specified, the normal dictionary usage of the word shall apply.

1. "BOD" (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 C. expressed in milligrams per liter .
2. "Building Drain" shall mean 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 (5) feet (1.5 meters) outside the inner face of the building wall.
3. "Building Sewer" shall mean the extension from the building drain to the public sewer or other place of disposal.
4. "Combined Sewer" shall mean a sewer receiving both surface runoff and sewage.
5. "Garbage" shall mean solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.
6. "Industrial Wastes" shall mean the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.
7. "Natural Outlet" shall mean any outlet into a watercourse, pond, ditch, lake, or other body or surface of groundwater .
8. "Person" shall mean any individual, firm, company, association, society , corporation, or group.
9. "pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

10. "Properly Shredded Garbage" shall mean 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 (1/2) inch (1.27 centimeters) in any dimension.
11. "Public Sewer" shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.
12. "Sanitary Sewer" shall mean a sewer which carries sewage, and to which storm, surface, and ground-waters are not intentionally admitted.
13. "Sewage" shall mean a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and storm-waters as may be present.
14. "Sewage Treatment Plant" shall mean any arrangement of devices and structures used for treating sewage.
15. "Sewage Works" shall mean all facilities for collecting, pumping, treating, and disposing of sewage.
16. "Sewer" shall mean a pipe or conduit for carrying sewage.
17. "Shall" is mandatory; "May" is permissive.
18. "Slug" shall mean 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 fifteen (15) minutes, more than five (5) times the average twenty-four (24) hour concentration, or flows during normal operation.
19. "Storm Drain" (sometimes termed "storm sewer") shall mean a sewer which carries stand surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.
20. "Superintendent" shall mean the Superintendent of Sewage Works and/or of Water Pollution Control of the City of Lyons or his authorized deputy, agent, or representative.
21. "Suspended Solids" shall mean 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.
22. "Watercourse" shall mean a channel in which a flow of water occurs, either continuously or intermittently.
23. "Normal Domestic Wastewater" shall mean wastewater that has a BOD concentration of not more than 300 mg/l and a suspended solids concentration of not more than 300 mg/l.
24. "Operation and Maintenance" shall mean all expenditures during the useful life of the treatment works for materials, labor, utilities, and other items which are necessary for managing and maintaining the sewage works to achieve the capacity and performance for which such works were designed and constructed.

25. "Replacement" shall mean expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the useful life of the treatment works, to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.
26. "Residential Contributor" shall mean any contributor to the City of Lyons' treatment works whose lot, parcel of real estate, or building is used for domestic dwelling purposes only.
27. "SS" (denoting Suspended Solids) shall mean 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.
28. "Treatment Works" shall mean any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes. These include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances, extensions, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities, and any works including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.
29. "Useful Life" shall mean the estimated period during which a treatment works will be operated.
30. "User Charge" shall mean that portion of the total waste-water service charge which is levied in a proportional and adequate manner for the cost of operation, maintenance, and replacement of the wastewater treatment works.
31. "Water Meter" shall mean a water volume measuring and recording device, furnished and/or installed by the City of Lyons or furnished and/or installed by _____ as used and approved by the City of Lyons.

§3-203 MUNICIPAL SEWER DEPARTMENT; DISCHARGE OF SEWAGE.

1. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City of Lyons, or in any area under the jurisdiction of said City of Lyons, any human or animal excrement, garbage, or other objectionable waste.
2. It shall be unlawful to discharge to any natural outlet within the City of Lyons, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.
3. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

4. The owner of all houses, buildings, or properties used for human employment, recreation, or other purposes, situated within the City of Lyons 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 or combined sewer of the City of Lyons, is hereby required at his 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 ordinance within ninety (90) days after date of official notice to do so, provided that said public sewer is within one hundred (100) feet (30.5 meters) of the property line.

§3-204 MUNICIPAL SEWER DEPARTMENT; PRIVATE SEWER PERMITS.

1. Where a public sanitary or combined sewer is not available under the provisions of section 3-203 (D), the building sewer shall be connected to a private sewage disposal system complying with the provisions of this Article.

2. Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the Superintendent. The application of such permit shall be made on a form furnished by the City of Lyons which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the Superintendent. A permit and inspection fee of fifty dollars (\$50.00) shall be paid to the City of Lyons at the time the application is filed.

3. A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. 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 Superintendent when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within two hours of the receipt of notice by the Superintendent.

4. The type, capacities, location, and layout of a private sewage disposal system shall comply with the Nebraska Department of Environmental Control's Title 124 Rules and Regulations for the Design, Operation, and Maintenance of Septic Tank Systems.

5. At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in section 3-204, a direct connection shall be made to the public sewer in compliance with this ordinance, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable material.

6. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City of Lyons.

7. No statement contained in this Article shall be construed to interfere with any additional requirements that may be imposed by the Health Officer.

8. When a public sewer becomes available, the building sewer shall be connected to said sewer within sixty (60) days and the private sewage system shall be abandoned in accordance with Nebraska Department of Environmental Control's Title

124 Rules and Regulations for the Design, Operation and Maintenance of Septic Tank Systems.

§3-205 MUNICIPAL SEWER DEPARTMENT; SEWER HOOKUP; PERMITS.

1. 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 Superintendent.
2. There shall be two (2) classes of building sewer permits: (a) for residential service, and (b) for commercial service and for service to establishments producing industrial wastes. In either case, the owner or his agent shall make application on a special form furnished by the City of Lyons. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. A permit and inspection fee of three hundred dollars (\$300.00) for a residential building sewer permit and five hundred dollars (\$500.00) for a commercial or industrial building sewer permit shall be paid to the City of Lyons at the time the application is filed.
3. 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 of Lyons from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
4. 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, court yard, or driveway. The building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.
5. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet all requirements of this ordinance.
6. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City of Lyons. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the S.S.T.M. and W.P.C.F. Manual of Practice No.9 shall apply.
7. 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.
8. No person shall make connection of roof downspouts, interior and exterior foundation drains, areaway 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.

9. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City of Lyons, or the procedures set forth in appropriate specifications of the A.S.T.M. and the S.P.C.F. Manual of Practice No. 9. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Superintendent before installation.

10. The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Superintendent or his representative.

11. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, park-ways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City of Lyons.

(Amended by Ord. No .565, 12/8/98)

§3-206 MUNICIPAL SEWER DEPARTMENT; PROHIBITED DISCHARGE; MANHOLES.

1. No person shall discharge or cause to be discharged any storm water, 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.

2. Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the Superintendent. Industrial cooling water or unpolluted process waters may be discharged, on approval of the Superintendent, to a storm sewer, combined sewer or natural outlet.

3. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

(a) Any gasoline, benzene, naphta, fuel oil, or other flammable or explosive liquid, solid, or gas.

(b) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two (2) mg/l as CN in the wastes as discharged to the public sewer.

(c) 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, ungrounded garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

5. No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Superintendent 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 Superintendent will give consideration to such factors as the quantities of such wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are:

(a) Any liquid or vapor having a temperature higher than one hundred fifty (150) F (65 C).

(b) Any water or wastes containing fats, wax, grease or oils, whether emulsified or not, in excess of the one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) f (0 and 65 C).

(c) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths (3/4) horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Superintendent.

(d) Any waters or wastes containing strong acid from pickling wastes or concentrated plating solutions, whether neutralized or not.

(e) Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances or wastes exerting an excessive chlorine requirement to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the Superintendent for such materials.

(f) Any waters or wastes containing phenols or other taste or odor producing substances in such concentrations exceeding limits which may be established by the Superintendent 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.

(g) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable State or Federal regulations.

(h) Any waters or wastes having a pH in excess of (9.5).

(i) Materials which exert or cause:

- (i) Unusual concentrations of inert suspended solids (such as but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as but not limited to sodium chloride or sodium sulfate).
- (ii) Excessive discoloration (such as but not limited to dye wastes and vegetable tanning solutions).
- (iii) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
- (iv) Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.
- (j) 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.
- (k) Any waters or wastes having, (1) a 5-day BOD greater than 300 parts per million by weight, or (2) containing more than 350 parts per million by weight of suspended solids, or (3) having an average daily flow greater than 2 percent of the average sewage flow of the City of Lyons, shall be subject to the review of the Superintendent. Where necessary, in the opinion of the Superintendent, the owner shall provide, at his expense, such preliminary treatment as may be necessary, to (1) reduce the biochemical oxygen demand to 300 parts per million by weight, or (2) reduce the suspended solids to 350 parts per million by weight, or (3) control the quantities and rates of discharge of such waters or wastes. Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Superintendent, and no construction of such facilities shall be commenced until said approvals are obtained in writing.

5. 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 paragraph 4 of this section and which, in the judgment of the Superintendent, 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 Superintendent may;

- (a) Reject the wastes,
- (b) Require pretreatment to an acceptable condition for discharge to the public sewers,
- (c) Require control over the quantities and rates of discharge, and/or
- (d) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of section 10 of the Article.

If the Superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Superintendent and subject to the requirements of all applicable codes, ordinances and laws.

6. Grease, oil, and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent and shall be located as to be readily and easily accessible for cleaning and inspection.

7. 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.

8. When required by the Superintendent, the owner of any property services by a building sewer carrying industrial wastes shall install a suitable control manhole, together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Superintendent. 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.

9. All measurements, tests, and analyses of the characteristics of waters and wastes, to which reference is made in this ordinance, shall be detonated 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 detonated 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 analyses involved will determine whether a twenty-four (24) hour composite of all outfalls of a premises is appropriate, or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24-hour composites of all outfalls, whereas PHS is determined from periodic grab samples.)

10. No statement contained in this article shall be construed as preventing any special agreement or arrangement between the City of Lyons and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City of Lyons for treatment, subject to payment therefore, by the industrial concern.

§3-207 MUNICIPAL SEWER DEPARTMENT; DAMAGE TO SEWER WORKS. 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.

§3-208 MUNICIPAL SEWER DEPARTMENT; INSPECTION.

1. The Superintendent and other duly authorized employees of the City of Lyons bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this ordinance. The Superintendent or his representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

2. While performing the necessary work on private properties referred to above, the Superintendent or duly authorized employees of the City of Lyons shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the City of Lyons employees; and the City shall indemnify the company against loss or damage to its property by City of Lyons employees and against liability claims and demands for personal injury or property damage asserted against the company, and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in section 3-205 (8).

3. The Superintendent and other duly authorized employees of the City of Lyons bearing proper credentials and identification shall be permitted to enter all private properties through which the City of Lyons holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement, and shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

§3-209 MUNICIPAL SEWER DEPARTMENT; SEWER USE CHARGE. It is determined and declared to be necessary and conducive to the protection of the public health, safety, welfare and convenience of the City of Lyons to collect charges from all users who contribute wastewater to the City of Lyons' treatment works. The proceeds of such charges so derived will be used for the purpose of operating, maintaining and retiring the debt for such public wastewater treatment works.

§3-210 MUNICIPAL SEWER DEPARTMENT; SERVICE REVENUES.

1. The user charge system shall generate adequate annual revenues to pay costs of annual operation and maintenance; including replacement of costs associated

with debt retirement, and of bonded capital associated with financing the treatment works which the City of Lyons may, by ordinance, designate to be paid by the user charge system. That portion of the total user charge which is designated for operation and maintenance, including replacement of the treatment works, shall be established by this ordinance.

2. That portion of the total user charge collected which is designated for operation and maintenance, including replacement purposes as established in section 3-210, shall be deposited in a separate non-lapsing fund known as the Operation, Maintenance and Replacement Fund, and will be kept in two primary accounts as follows;

(a) An account designated for the specific purpose of defraying operation and maintenance costs (excluding replacement) of the treatment works (Operation and Maintenance Account).

(b) An account designated for the specific purpose of insuring replacement needs over the useful life of the treatment works (Replacement Account). Deposits in the replacement account shall be made at least annually from the operation, maintenance, and replacement revenue in the amount of \$1286.00 annually.

3. The minimum charge per month shall be \$5.65. In addition, each contributor shall pay a user rate for operation and maintenance; including replacement of \$.475 per thousand gallons of water as determined in the preceding paragraph and an additional \$.221 per thousand gallons of water for debt retirement.

(Amended by Ord. Nos. 528, 10/3/95; 619, 2/7/02; 620, 2/7/02; 643, 12/4/2003)

§3-211 MUNICIPAL SEWER DEPARTMENT; RATE STRUCTURE.

1. Each user shall pay for the services provided by the City of Lyons based on his use of the treatment works as determined by water meter(s) acceptable to the City of Lyons.

2. For residential contributors, monthly user charges will be based on average monthly water usage during the months of January, February and March. If a residential contributor has not established a January, February and March average, his monthly user charge shall be the median charge of all other residential contributors.

For industrial and commercial contributors, user charges shall be based on water used during the current month. If a commercial or industrial contributor has a consumptive use of water, or in some other manner uses water which is not returned to the waste-water collection system, the user charge for that contributor may be based on a wastewater meter(s) or separate water meter(s), installed and maintained at the contributor's expense, and in a manner acceptable to the City of Lyons.

3. The minimum charge per month shall be \$ 19.00. In addition, each contributor shall pay a user charge rate for operation and maintenance, including replacement of \$ 2.50 per 1000 gallons of water as determined in the preceding paragraph.

4. For those contributors who contribute wastewater, the strength of which is greater than normal domestic sewage, a surcharge for operation and maintenance, including replacement, will be determined by City staff and approved by the City Council at such time as the need arises.

5. Any user which discharges any toxic pollutants which cause an increase in the cost of managing the effluents or the sludge from the City of Lyons' treatment works, or any user which discharges any substance which, singly or by interaction with other substances, causes identifiable increases in the cost of operation, maintenance, or replacement of the treatment works, shall pay for such increased costs. The charge to each such user shall be as determined by the responsible plant operating personnel and approved by the City Council.

6. The user charge rates established in this Article apply to all users, regardless of their location, of the City of Lyons' treatment works. *(Amended by Ord. No. 644, 12/4/2003)(Amended by Ord. No. 668) (Amended by Ord.No.675, 05/05/09)(Amended by Ord.No.712; 04/01/2014)*

§3-212 MUNICIPAL SEWER DEPARTMENT; BILLINGS. All users shall be billed monthly for sewer service, provided by the Municipal Sewer Department. Monthly bills are due and payable at the office of the Municipal Clerk. Payment of the net amount is allowed until the 25th day of the month the bill is mailed. After that date, the bill is considered delinquent and payable at the gross amount. Delinquent bills will be collected as provided for in Section 3, Article 11, of these ordinances. *(Ord. No. 671, 09/02/08)*

§3-213 MUNICIPAL SEWER DEPARTMENT; REVIEW OF CHARGES.

1. The City of Lyons will review the user charge system at least every two years and revise user charge rates as necessary to ensure that the system generates adequate revenues to pay the costs of operation and maintenance, including replacement, and that the system continues to provide for the proportional distribution of operation and maintenance, including replacement costs among users and user classes.

2. The City of Lyons will notify each user at least annually, in conjunction with a regular bill, of the rate being charged for operation and maintenance, including replacement of the treatment works.

§3-214 MUNICIPAL SEWER DEPARTMENT; PENALTIES.

1. Any person found to be violating any provision of this ordinance, except section 3-206, shall be served by the City of Lyons 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.

2. Any person who shall continue any violation beyond the time limit provided for in section 3-205 (1) shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding five hundred dollars (\$500.00) for

each violation. Each twenty-four (24) hour period in which any such violation shall continue shall be deemed a separate offense.

3. Any person violating any of the provisions of this ordinance shall become liable to the City of Lyons for any expense, loss, or damage occasioned the City by reason of such violation.

§3-215 MUNICIPAL SEWER DEPARTMENT; CLEAN WATER ACT COMPLIANCE.

The user charge system takes precedence over any terms or conditions of agreements or contracts between the grantee and users (including industrial users, special districts, other municipalities, or Federal agencies or installations) which are inconsistent with the requirements of section 204 (8) (I) (A) of the Clean Water Act and the corresponding regulations.

Article 3. Police Department

§3-301 POLICE DEPARTMENT; DUTIES. The Police Department shall consist of the Chief of Police and such further number of regular policemen as may be duly ordered by resolution of the Council. The Chief of Police shall, subject to the direction of the Mayor, have control and management of all matters relating to the Police Department, its officers and members, and shall have the custody and control of all property and books belonging to the department. The Department shall execute and enforce all laws and also the orders of the Mayor. It shall be the duty of the Department to protect the rights of persons and property. There shall be a proper police force at all fires. The Department shall take notice of all nuisances, impediments, obstructions, and defects in the streets, avenues, alleys, business places, and residences of the Municipality. The Department shall execute, or cause to be executed, the processes issued, and shall cause all persons arrested to be brought before the proper court for trial as speedily as possible. The Chief of Police and all regular and special policemen shall become thoroughly conversant with the laws of the Municipality, and shall see that the same are strictly enforced and shall make sworn complaints against any person or persons for violation of the same.

§3-302 POLICE DEPARTMENT; RESERVE OFFICER BOND. No appointment of a law enforcement reserve officer shall be valid until a bond in the amount of two thousand (\$2,000.00) dollars, payable to the City, has been filed with the Municipal Clerk by the individual appointed, or a blanket surety bond arranged and paid for by the Governing Body, and bonding all such officers of the Governing Body has been filed. Such bonds shall be subject to the provisions of Chapter 11, Article I, Nebraska Revised Statutes. (*Ref. 81-1444 RS Neb.*) (*Ord. No. 421, 10/7/86*)

§3-303 POLICE DEPARTMENT; POLICE OFFICERS; DISCIPLINE OR REMOVAL FROM DUTY; NOTICE AND HEARING; DETERMINATION.

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

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

(3) At the hearing, the police officer shall have the right to: (1) respond in person to the charges and to present witnesses and documentary evidence; (2) confront and cross-examine available adverse witnesses; and (3) to be represented by counsel.

(4) Not later than thirty days following the adjournment of the meeting at which the hearing was held, the City Council shall vote to uphold, reverse, or modify the disciplinary action, suspension, demotion, removal, or discharge. The failure of the City Council to act within thirty days or the failure of a majority of the elected Council members to vote to reverse or modify the disciplinary action, suspension, demotion, removal, or discharge shall be construed as a vote to uphold the disciplinary action, suspension, demotion, removal, or discharge. The decision of the City Council shall be based upon its determination that, under the facts and evidence presented at the hearing, the challenged disciplinary action, suspension, demotion, removal, or discharge was necessary for the proper management and the effective operation of the Police Department in the performance of its duties under the state statutes.

(5) Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders. (*Ref 17-107 RS Neb.*) (*Ord. No .540, 12/3/96*)

§3-304 POLICE DEPARTMENT; ARREST AND ENFORCEMENT JURISDICTION.

(1) Every Municipal law enforcement officer shall have the power and authority to enforce the laws of this state and the Municipality or otherwise perform the functions of that office anywhere within his or her primary jurisdiction. Primary jurisdiction shall mean the geographic area within territorial limits of the Municipality.

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

(a) Any Municipal law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a felony, may follow such person into any other jurisdiction in this state and there arrest and detain such person and return such person to the officers primary jurisdiction;

(b) Any Municipal law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow such person anywhere in an area within twenty-five (25) miles of the boundaries of the officer's primary jurisdiction, and there arrest and detain such person and return such person to the officers primary jurisdiction;

(c) Any Municipal law enforcement officer shall have such enforcement and arrest and detention authority when responding to a call in which a local, state, or federal law enforcement officer is in need of assistance. A

law enforcement officer in need of assistance shall mean (a) a law enforcement officer whose life is in danger or (b) a law enforcement officer who needs assistance in making an arrest and the suspect (i) will not be apprehended unless immediately arrested, (ii) may cause injury to himself or herself or others or damage to property unless immediately arrested, or (iii) may destroy or conceal evidence of the commission of a crime; and

(d) If the Municipality, under the provisions of the Interlocal Cooperation Act, enters into a contract with any other Municipality or county for law enforcement services or joint law enforcement services, law enforcement personnel may have such enforcement authority within the jurisdiction of each of the participating political subdivisions if provided for in the agreement. Unless otherwise provided in the agreement, the Municipality shall provide liability insurance coverage for its own law enforcement personnel as provided in *Section 13-1802 RS Neb.*

(3) If Municipal law enforcement personnel are rendering aid in their law enforcement capacity outside the limits of the Municipality in the event of disaster, emergency, or civil defense emergency; or in connection with any program of practice or training for such disaster, emergency, or civil defense emergency when such program is conducted or participated in by the Nebraska Emergency Management Agency; or with any other related training program, the law enforcement personnel shall have the power and authority to enforce the laws of this state or any legal ordinances or resolutions of the local government where they are rendering aid or otherwise perform the functions of their office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within the territorial limits of their primary jurisdiction. The Municipality shall self-insure or contract for insurance against any liability for personal injuries or property damage that may be incurred by it or by its personnel as the result of any movement of its personnel outside the limits of the Municipality pursuant to this subsection. (81-829.65 RS Neb.)

Article 4. Parks

§3-401 MUNICIPAL PARKS; OPERATION AND FUNDING. The Municipality owns and operates the Municipal Parks and other recreational areas through the Governing Body. The Governing Body, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Park, may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Park Fund and shall remain in the custody of the Municipal Treasurer. The Governing Body shall have the authority to adopt rules and regulations for the efficient management of the Municipal Parks and other recreational areas of the Municipality.

§3-402 MUNICIPAL PARKS; INJURY TO PROPERTY. It shall be unlawful for any person to maliciously or willfully cut down, injure, or destroy any tree, plant, or shrub. It shall be unlawful for any person to injure or destroy any sodded or planted area, or injure or destroy any building, structure, equipment, fence, bench, table, or any other property of the Municipal Parks and recreational areas. No person shall commit any waste on or litter the Municipal Parks or other public grounds.

Article 5. Swimming Pool

§3-501 MUNICIPAL SWILLING POOL; OPERATION AND FUNDING. The Municipality owns and manages the Municipal Swimming Pool. The Governing Body, for the purpose of defraying the cost of the management, maintenance, and improvements of the Swimming Pool, may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the Municipality that is subject to taxation. The revenue from the said tax shall be known as the Swimming Pool Fund and shall include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the Swimming Pool. The Swimming Pool Fund shall at all times be in the custody of the Municipal Treasurer. The Governing Body shall manage the Swimming Pool. The Governing Body shall have the power and authority to hire and supervise the Swimming Pool Manager and such employees as they may deem necessary, and shall pass such rules and regulations for the operation of the Swimming Pool as may be proper for its efficient operation. (*Ref 17-948, 17-951, 17-952 RS Neb.*)

§3-502 MUNICIPAL SWIMMING POOL; ADMISSION CHARGE. The Governing Body may, for the purpose of defraying the expenses involved in maintaining, improving, managing, and beautifying the Swimming Pool, make a reasonable admission charge for the use by any person of the Municipal Swimming Pool. The said charges shall be on file at the office of the Municipal Clerk, and shall also be posted in a conspicuous place at the Municipal Swimming Pool for public inspection. Such rates may be structured for classes of persons in a reasonable manner; provided that nothing herein shall be construed to permit or allow discrimination on the basis of race, creed, color, or national origin in the classification of persons for admission charges. (*Ref. 17-949 RS Neb.*)

§3-503 MUNICIPAL SWIMMING POOL; RENTALS. The Governing Body shall have the authority to rent the Municipal Swimming Pool to such organizations and other persons as they may, in their discretion, see fit. The Governing Body shall prescribe rules and regulations for such rentals and shall require an appropriate number of qualified lifeguards to be in attendance during the rental period. Such fees and other costs shall be on file at the office of the Municipal Clerk and posted in a conspicuous place at the Municipal Swimming Pool. (*Ref. 17-949 RS Neb.*)

§3-504 MUNICIPAL SWIMMING POOL; NO TRESPASSING WHEN CLOSED. No person shall enter the fenced area of the Lyons Municipal Swimming Pool or the Lyons Municipal Swimming Pool itself when the Municipal Swimming Pool is closed. Anyone found violating this ordinance shall be deemed guilty of trespass. (*Ord. No.446, 6/7/88*)

Article 6. Library

§3-601 LIBRARY; OPERATION AND FUNDING.

(A) The Municipality owns and manages the Municipal Library through the Library Board.

(B) The Governing Body, for the purpose of defraying the cost of the management, purchases, improvements, and maintenance of the Library may each year levy a tax not exceeding the maximum limit prescribed by state law, on the taxable value of all the taxable property within the Municipality. The amount collected from the levy shall be known as the Library Fund. (*Neb. RS 51-201*)

(C) The fund shall also include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the municipal library.

(D) All taxes levied or collected and all funds donated or in any way acquired for the erection, maintenance, or support of the municipal library shall be kept for the use of the library separate and apart from all other funds of the Municipality and shall be drawn upon and paid out by the Municipal Treasurer upon vouchers signed by the President of the Library Board and authenticated by the Secretary of the Board, and shall not be used or disbursed for any other purpose or in any other manner. The Governing Body may establish a public library sinking fund for major capital expenditures. (*Neb. RS 51-209*)

(E) Any money collected by the library shall be turned over monthly by the Librarian to the Municipal Treasurer along with a report of the sources of the revenue.

§3-602 LIBRARY BOARD; GENERAL POWERS AND DUTIES.

(A) The Library Board shall have the power to make and adopt such bylaws, rules and regulations for its own guidance and for the government of the library and reading room as it may deem expedient, not inconsistent with *Neb. RS 51-201 through 51-219*. (*Neb. RS 51-205*)

(B) The Library Board shall have exclusive control of expenditures, of all money collected or donated to the credit of the Library Fund of the renting and construction of any library building and the supervision, care and custody of the grounds, rooms, or buildings constructed, leased, or set apart for that purpose. (*Neb. RS 51-207*)

(C) The Library Board shall have the power to appoint a suitable librarian and assistants, to fix their compensation, and to remove such appointees at pleasure. It shall have the power to establish rules and regulations for the government of the library as may be deemed necessary for its preservation and to maintain its usefulness and efficiency. It shall have the power to fix and impose, by general rules, penalties and forfeitures for trespasses upon or injury to the library grounds, rooms, books, or other property, for failure to return any book, or for violation of any bylaw, rule, or regulation. The Board shall have and exercise such power as may be necessary to carry

out the spirit and intent of Neb. RS 51-201 through 51-219 in establishing and maintaining the library and reading room. (*Neb. RS 51-211*)

§3-603 LIBRARY; GROUNDS AND BUILDING.

(A) The Library Board may purchase or lease grounds, exercise the power of eminent domain, and condemn real estate for the purpose of securing a site for a library building. The procedure to condemn property shall be exercised in the manner set forth in *Neb. RS 76-704 through 76-724*. (*Neb. RS 51-210*)

(B) The Board may erect, lease, or occupy an appropriate building for the use of the library. (*Neb. RS 51-211*)

§3-604 LIBRARY; SALE AND CONVEYANCE OF REAL ESTATE.

The Library Board may, by resolution, direct the sale and conveyance of any real estate owned by the Board or by the municipal library, which is not used for library purposes, or of any real estate so donated or devised to the Board or to the library upon such terms as the Board may deem best and as otherwise provided in *Neb. RS 51-216*. (*Neb. RS 51-216*)

§3-605 LIBRARY; MORTGAGES; RELEASE OR RENEWAL.

The President of the Library Board shall have the power to release, upon full payment, any mortgage constituting a credit to the Library Fund and standing in the name of the Library Board. The signature of the President on any such release shall be authenticated by the Secretary of the Board. The President and Secretary in like manner, upon resolution duly passed and adopted by the Board, may renew any such mortgage. (*Neb. RS 51-206*)

§3-606 LIBRARY; COST OF USE.

(A) Except as provided in division (B) of this section, the municipal library and reading room shall be forever free to the use of the inhabitants of the Municipality, subject always to such reasonable regulations as the Library Board may adopt to render the library of the greatest use to such inhabitants. The Library Board may exclude from the use of the library and reading rooms any person who willfully violates or refuses to comply with the rules and regulations established for the government thereof. (*Neb. RS 51-212*)

(B) The library shall make its basic services available without charge to all residents of the Municipality. The Library board may fix and impose reasonable fees, not to exceed the library's actual cost for nonbasic services. (*Neb. RS 51-211*)

(C) For purposes of this section:

(1) Basic services shall include, but not be limited to, free loan of circulating print and nonprint materials from the local collection and general reference and information services; and

(2) Nonbasic services shall include, but not be limited to, use of:

(a) Photocopying equipment;

- (b) Telephones, facsimile equipment, and other telecommunication equipment;
- (c) Media equipment;
- (d) Personal computers; and
- (e) Videocassette recording and playing equipment. (*Neb. RS 51-201.01*)

§3-607 LIBRARY; DISCRIMINATION PROHIBITED.

No library service shall be denied to any person because of race, sex religion, age, color, national origin, ancestry, physical handicap, or marital status. (*Neb. RS 51-211*)

§3-608 LIBRARY BOARD; ANNUAL REPORT.

The Library Board shall, on or before the second Monday in June of each year, make a report to the Governing Body of the condition of its trust on June 1 of such year, showing all money received or expended; the number of books and periodicals on hand; newspapers and current literature subscribed for or donated to the reading room; the number of books and periodicals ordered by purchase, gift, or otherwise obtained during the year, and the number lost or missing; the number of and character of books loaned or issued, with such statistics, information, and suggestions as it may deem of general interest, or as the Governing Body may require, which report shall be verified by affidavit of the President and Secretary of the Library Board. (*Neb. RS 51-213*)

§3-609 LIBRARY; PENALTIES; RECOVERY; DISPOSITION.

Penalties imposed or accruing by any bylaw or regulation of the Library Board and any court costs and attorney's fees may be recovered in a civil action before any court having jurisdiction, such action to be instituted in the name of the Library Board. Money, other than any court costs and attorney fees, collected in such actions shall be placed in the treasury of the Municipality to the credit of the Library Fund. Attorney's fees collected pursuant to this section shall be placed in the treasury of the Municipality and credited to the budget of the Municipal Attorney's office. (*Neb. RS 51-214*)

§3-610 LIBRARY; DONATIONS.

Any person may make donation of money, lands, or other property for the benefit of the municipal library. The title to property so donated may be made to and shall vest in the Library Board and their successors in office and the Board shall thereby become the owners thereof in trust to the uses of the municipal library. (*Neb. RS 51-215*)

§3-611 LIBRARY; IMPROPER BOOK REMOVAL.

It shall be unlawful for any person not authorized by the regulations made by the Library Board to take a book or any other material from the library, without the consent of the Librarian or an authorized employee of the library. Any person removing a book or other material from the library without properly checking it out shall be deemed to be guilty of an offense.

Article 7. Landfill

§3-701 MUNICIPAL LANDFILL; OPERATION AND FUNDING. The Municipality owns and operates the Municipal Landfill. The Governing Body, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Landfill, may each year levy a tax not to exceed the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Landfill Fund and shall remain in the custody of the Municipal Treasurer. The Governing Body shall have the direct management and control of the Municipal Landfill. The Governing Body shall have the authority to adopt rules and regulations for the sanitary and efficient management of the Landfill. The Governing Body shall provide by ordinance for the management and operation of the Landfill, and shall set the rates to be charged for services rendered by resolution, and file the same in the office of the Municipal Clerk for public inspection at any reasonable time. (*Ref. 19-2101 thru 19-2106 RS Neb.*)

§3-702 MUNICIPAL LANDFILL; USE CHARGE. For the use of the Municipal Landfill, a rental or use charge is hereby established, as follows: Each municipal water meter located within the city limits or outside the city limits shall be billed every month a flat fee of three (\$3.00) dollars per month. (*Amended by Ord. No. 451. 12/5/89*)

Article 8. Auditorium

§3-801 MUNICIPAL AUDITORIUM; OWNERSHIP. The Municipality owns and manages the Municipal Auditorium. The Governing Body, for the purpose of defraying the cost of the management, maintenance, and improvements on the Municipal Auditorium, may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the Municipality that is subject to taxation. The revenue from the said tax shall be known as the Auditorium Fund and shall include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the Municipal Auditorium. The Auditorium Fund shall at all times be in the custody of the Municipal Treasurer. The Governing Body shall have the power to hire and supervise such employees as they may deem necessary and shall pass such rules and regulations for the operation of the Auditorium as may be proper for its efficient management. (*Ref. 17-953 thru 17-955 RS Neb.*)

§3-802 MUNICIPAL AUDITORIUM; RENTALS. The Governing Body may, for the purpose of defraying the expenses involved in maintaining, improving, managing, and beautifying the Auditorium, make a reasonable rental charge for the use by any person or organization of the Auditorium, The Governing Body shall prescribe rules and regulations for such rentals. Rental rates may be structured for classes of persons and organizations in a reasonable manner; provided that nothing herein shall be construed to permit or allow discrimination on the basis of race, creed, color, or national origin in the classification of persons and organizations for rental purposes. (*Ref 17-953 RS Neb.*)

§3-803 MUNICIPAL AUDITORIUM; RULES AND REGULATIONS. The Governing Body shall have the power and authority to enact by-laws, rules, and regulations for the protection of the Municipal Auditorium and the safety of those using the Auditorium facilities. They may provide suitable penalties for the violation of such by-laws, rules, and regulations. All damage suffered by the Auditorium during any rental shall be assessed against the person or organization responsible for the rental thereof, or shall be deducted from the damage deposit which the Governing Body may, in their discretion, have required prior to the said rental. The Governing Body may require during any rental, persons deputized as Municipal Police to insure that the said rules and regulations and the Municipal Code are not violated. The wages of such persons shall be set by the Governing Body and shall be paid prior to the beginning of the rental period. All rental fees, rules, and regulations shall be on file for public inspection at the office of the Municipal Clerk at any reasonable time. (*Ref. 17-953 RS Neb.*)

Article 9. Electrical System

§3-901 MUNICIPAL ELECTRICAL SYSTEM; OWNERSHIP. The Municipality owns and operates the Municipal Electrical System through the Utilities Superintendent. The Governing Body, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Electrical System, may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Electrical Fund and shall remain in the custody of the Municipal Treasurer. The Utilities Superintendent shall have the direct management and control of the Municipal Electrical System, and shall faithfully carry out the duties of his office. He shall have the authority to adopt rules and regulations for the safe and efficient management of the Electrical System subject to the supervision and review of the Governing Body. The Governing Body shall, by ordinance, set the rates to be charged for services rendered and shall file the same in the office of the Municipal Clerk for public inspection at any reasonable time. *(Ref. 17-902 thru 17-904, 17-906, 17-909 RS Neb.)*

§3-902 MUNICIPAL ELECTRICAL SYSTEM; CONTRACTS AND TERMS. The Municipality, through its Electrical Department, shall furnish electric current for light and power purposes to persons whose premises abut on any supply wire of the distribution system and may furnish electric current to such other persons within or without its corporate limits as and when, according to law, the Governing Body may see fit to do so. The rules, regulations, and rates for electric service hereinafter named in this Article, shall be considered a part of every application hereafter made for electric service, and shall be considered a part of the contract between every consumer now served by the Electrical Department. Without further formality, the making of application on the part of any applicant, or the use or consumption of electric energy by present customers, and the furnishing of electric service to said applicant or customer, shall constitute a contract between applicant or customer and the Municipality to which both parties are bound. If customer should violate any of the provisions of said contract or any reasonable rules and regulations that the Governing Body may hereafter adopt, the Utilities Superintendent or his agent shall cut off or disconnect the electric service from the building or place of such violation, and no further connection of electric service for such building or place shall again be made, save or except by order of the Superintendent or his agent.

§3-903 MUNICIPAL ELECTRICAL SYSTEM; CONSUMER'S APPLICATION. Every person or persons desiring electrical service must make application therefore to the Utilities Superintendent. Electricity may not be supplied to any house or building except upon the written order of the Utilities Superintendent. The System shall not supply to any person outside the corporate limits electrical service without special permission from the Governing Body; provided that the entire cost of wire, installation,

and other expenses shall be paid by the consumer. Nothing herein shall be construed to obligate the Municipality to supply electrical service to non-residents. (Ref. 17-902, 19-2701 RS Neb.)(Amended by Ord. No.385, 11/10/80)

§3-904 MUNICIPAL ELECTRICAL SYSTEM; ELECTRICAL SERVICE CONTRACTS.

Contracts for electrical service are not transferable. Any person wishing to change from one location to another shall make a new application and sign a new contract. If any consumer shall sell, dispose, or remove from the premise where service is furnished in his name, or if the said premise is destroyed by fire or other casualty, he shall at once inform the Utilities Superintendent who shall cause the electrical service to be shut off from the said premises. If the consumer should fail to give such notice, he shall be charged for all electricity used on the said premises until the Utilities Superintendent is otherwise advised of such circumstances. (Ref. 17-902 RS Neb.)

§3-905 MUNICIPAL ELECTRICAL SYSTEM; ELECTRICIAN. Under no circumstances shall connections be made between the wires of the electrical distribution system of this Municipality and the meter of the consumer, except by an employee of the Municipality or an electrician authorized to do so by the Utilities Superintendent. The consumer may have wiring done by any competent electrician from the meter to the points of distribution. All wiring, equipment, and apparatus shall be installed according to the electrical code duly adopted by the Municipality. All installation shall be done under the supervision and strictly in accordance with the rules, regulations, and specifications for such installation prescribed by the Utilities Superintendent and Building Inspector; provided that such rules, regulations, and specifications have been reviewed and approved by the Governing Body. (Ref. 17-902 RS Neb.)

§3-906 MUNICIPAL ELECTRICAL SYSTEM; INSTALLATION EXPENSE. The Municipality shall provide the electrical meter up to and including 200 amps. Anything over 200 amps, consumer pays the difference in cost. The Municipality will have final approval of electrical sockets installed. The expense of above ground installation and wiring from the weatherhead to the points of distribution shall be the responsibility of the consumer. Underground installation may be requested by the consumer and, upon approval of said underground installation, the consumer shall pay all expense above and beyond the expense of providing above ground installation by the Municipality, including any additional expense in providing an electrical disconnect switch at a point located at or near the point where the service line enters the ground. Maintenance and replacement expense shall be apportioned in the same manner. (Ref. 17-902 RS Neb.) (Amended by Ord. No.369. 10/5/76)

§3-907 MUNICIPAL ELECTRICAL SYSTEM; METERS. All electrical meters shall be read at least one (1) time each month during which electrical service is used, between the twentieth (20th) day and the last day of the month. In the event a meter is broken or otherwise fails to register accurately the use of electricity by any consumer, the six (6)

month average of the season one (1) year previous to such breakage shall be used for billing purposes.

§3-908 MUNICIPAL ELECTRICAL SYSTEM; FEES AND COLLECTIONS. The Governing Body has the power and authority to fix the rates to be paid by electrical consumers for the use of electricity. All rates shall be on file for public inspection at the office of the Municipal Clerk. The Municipal Clerk shall bill the consumers and collect all money received by the Municipality on the account of the Municipal Electrical System. He shall faithfully account for and pay over the same to the Municipal Treasurer all revenue collected by him, taking his receipt therefore in duplicate, filing one (1) with the Municipal Clerk, and keeping the other on file in his official records. (Ref. 17 -902 RS Neb.)

§3-909 MUNICIPAL ELECTRIC DEPARTMENT; RATES. All electric consumers shall be liable for the following rates as provided by ordinance:

Section 1. Rates:

Residential Rates

Monthly Meter Charge\$11.00
Commodity Charge0943/kwh

Electric Heat and All-Electric Homes

October 1 to May 1
Monthly Meter Charge.....\$11.00
Commodity Charge0919/kwh

May 1 to October 1
Residential Rate Applies

Business

Monthly Meter Charge.....\$11.00
Commodity Charge1047/kwh

Commercial, With 3 Phase Service, No Demand Meter

Monthly Meter Charge.....\$11.00
Commodity Charge1100/kwh

Commercial, with Demand Meter

Monthly Meter Charge.....\$11.00
Commodity Charge0832/kwh
Demand Charge

Demand Charge: The maximum metered demand in the current billing month, but not less than 55% of the highest demand established in the most recent summer period. (June, July, August, September)

Section 2. Purchased Cost Adjustment. All consumers purchasing electric service from the City of Lyons shall be charged the cost of electricity purchased by the City. This charge will be calculated monthly, and charged to each consumer based on the monthly usage. (Ref. 17-902 RS Neb.)(Amended by Ord. No. 358, 10/23/75; 367, 10/5/76; 400, 3/5/85 624, 8/6/2002; 641, 12/4/2003; (Ord. No. 649) (10/5/2004)(Amended Ord.No.690,12/7/2010)

§3-910 MUNICIPAL ELECTRICAL SYSTEM; SERVICE DEPOSIT FUND. The service deposit required for electrical service shall be promptly paid upon demand by all customers of the Electrical System. From the said deposit shall be deducted all delinquent electrical charges. If after two (2) years there are no delinquent electric charges, the deposit shall be refunded to the customer.

§3-911 MUNICIPAL ELECTRICAL SYSTEM; DELINQUENT PAYMENTS. Electrical fees shall be due and payable monthly at the office of the Utilities Superintendent. If said fees are not paid within fifteen (15) days after the same become due, there shall be assessed a ten (10%) per cent penalty for such delinquency. If payment is not received by the twenty-sixth (26th) of the month, the electricity may be turned off after ten (10) days notice by mail to the subscriber and not turned on again until all back fees and charges are paid, including any penalty charge which the Governing Body may, by resolution, prescribe; provided if the delinquent customer is a known welfare recipient, it shall be the duty of the Municipal Clerk to notify the customer and also the Department of Social Services by certified mail of the proposed termination of service. The owner of the premise will, in all cases, be held primarily responsible and will be required to pay for electricity at such premises. (Ref. 17-902 RS Neb.)

§3-912 MUNICIPAL ELECTRICAL SYSTEM; RESTRICTED USE. The Municipal Electrical System does not guarantee the delivery of electric current over the lines of the distribution system except when it has sufficient power, current, equipment, and machinery to do so. The Utilities Superintendent has the power and authority to disconnect or discontinue such service for any good and sufficient reason without liability. The Municipality shall use due care and reasonable diligence to provide and supply uninterrupted service to consumers, but shall not be liable for damages resulting from interruption of service due to causes over which the Municipality has no control; and the Municipality expressly reserves the right to discontinue or disconnect any consumer's service without preliminary notice. (Ref 17-902 RS Neb.)

§3-913 MUNICIPAL ELECTRICAL SYSTEM; BUILDING MOVING. Should any house or building moving occur or be necessary, and it becomes necessary in said work to remove or disturb any of the property or wires of the Municipal Electrical System, the same should not be done except upon written permission received from the Utilities Superintendent, who shall then order, paid in advance, the actual cost of moving the said wires; and such cost shall be paid by the applicant prior to the moving of the building or house. All expense of removing, changing, and replacing the said wires or

apparatus of the Electrical System shall be paid out of the deposit made prior to moving, and any surplus remaining after all expenses are paid shall be returned to the applicant; provided that if, in the course of moving the said building or house, it becomes apparent that additional expense will be incurred, such additional deposit as deemed necessary may be demanded.

§3-914 MUNICIPAL ELECTRICAL SYSTEM; TRIMMING TREES. Any person desiring to cut or remove trees or branches thereof in close proximity to the lines of the Municipal Electrical System shall, before doing the said work, give reasonable written notice to the Utilities Superintendent, and shall follow any and all rules and regulations which he may prescribe for doing such work. It shall be unlawful for any person felling or removing such trees or branches to disrupt or damage the lines without first giving proper notice and receiving permission in writing to do so. Whenever it becomes necessary to protect the lines or property of the Electrical System, the Governing Body shall have the power to order cut and removed any overhanging branches or limbs of trees so that the lines will be free and safe.

§3-915 MUNICIPAL ELECTRICAL SYSTEM; INSPECTIONS. The Utilities Superintendent or his duly authorized agents shall have free access at any reasonable time to each premises and building to or in which electricity is supplied; provided, that in the event of an emergency, such inspections may take place at any time. (*Ref. 17-902 RS Neb.*)

§3-916 MUNICIPAL ELECTRICAL SYSTEM; DESTRUCTION OF PROPERTY. It shall be unlawful for any person to willfully or carelessly break, injure, or deface any building, machinery, apparatus, fixture, attachment, or appurtenance of the Municipal Electrical System. (*Ref 28-512 RS Neb.*)

§3-917 MUNICIPAL ELECTRICAL SYSTEM; LOAD CONTROL MANAGEMENT.

(1) Every electrical meter serviced by the Municipal Electrical System shall have load control management hooked to it for the purpose of regulating the peak electrical use in the City of Lyons. All new electrical services shall include the load control management device before it shall be approved for connection with the Municipal Electrical System. The City shall provide the load control management devices and shall pay the cost of their installation on all services in effect as of the date of this section. All new electrical services shall receive the load management control device from the City, and installation shall be the cost of the City.

(2) Any electrical service found to have the load control management device disconnected shall have their electrical service immediately disconnected from the Municipal Electrical System, and it will remain disconnected until such time as the management load control device has been reinstalled on the service. A reconnection fee of two hundred dollars (\$200.00) will be charged to any service needing to be reconnected as a result of the disconnection or removal of the load control management device. (*Ord. No. 564, 9/15/98*)

**§3-918 MUNICIPAL ELECTRICAL SYSTEM; INTERCONNECTION PROCEDURES
(ALSO KNOW AS NET METERING)**

(1) Pursuant to 70-2001 to 70-2005 Neb. Rev. Stat. the City finds and declares it to be in the public interest and in the interest of the customers of the City's electric utility that the City adopt net metering policies.

2) The City shall allow a customer generator's retail electricity consumption to be offset by the electricity generated from eligible energy resources on the customer generator side of the meter that are interconnected with the facilities of the municipality owned utility; and,

(3) The City shall provide for "avoided costs" as the new rate for the net metering services; along with certain uniform standards and procedures for privately owned electrical generation to be net metered.

(4) Pursuant to 70-2001 to 70-2005 Neb. Rev. Stat. the City shall interconnect the qualified facility of any customer generator that enters into an interconnection agreement, satisfies the requirement for a qualified facility and pays for costs incurred by the city.

(5) Attached to this Ordinance and approved as if fully set out in this ordinance are the following documents to be used in the Net Metering Process:

1. City of Lyons Application for Approval to Connect Distributed or Local Generation
2. Net Metering Service Rate Schedule

(Ord. No. 724; 02-16-2016)

Article 10. Gas Department

§3-1001 MUNICIPAL GAS DEPARTMENT; OWNERSHIP. The Municipality owns and operates the Municipal Gas Department through the Utilities Superintendent. The Governing Body, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Gas Department may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Gas Fund and shall remain in the custody of the Municipal Treasurer. The Utilities Superintendent shall have the direct management and control of the Municipal Gas Department and shall faithfully carry out the duties of his office. He shall have authority to adopt rules and regulations for the safe and efficient management of the Gas Department, subject to the supervision and review of the Governing Body. The Governing Body shall set the rates to be charged for services rendered by ordinance, and shall file the same in the office of the Municipal Clerk for public inspection at any reasonable time. *(Ref. 17-908, 17-909 RS Neb.)*

§3-1002 MUNICIPAL GAS DEPARTMENT; DEPOSITS. *(Repealed by Ord. No: 385, 11/10/80)*

§3-1003 MUNICIPAL GAS DEPARTMENT; TAP FEE. Upon approval of the application for gas service, the applicant shall pay to the Municipal Clerk a tap fee of fifty (\$50.00) dollars to cover the cost of processing the application and the expense of tapping the gas main. The Municipal Clerk shall collect the tap fees and faithfully account for and pay to the Municipal Treasurer all said fees collected by him.

§3-1004 MUNICIPAL GAS DEPARTMENT; GAS SERVICE CONTRACTS. Contracts for gas service are not transferable. Any person wishing to change from one (1) location to another shall make a new application and sign a new contract. If any consumer shall sell, dispose of, or remove from the premises where service is furnished in his name, or if the said premises is destroyed by fire or other casualty, he shall at once inform the Utilities Superintendent who shall cause the gas service to be shut off from the said premises. If the consumer should fail to give such notice, he shall be charged for all gas used on the said premises until the Utilities Superintendent is otherwise advised of such circumstances.

§3-1005 MUNICIPAL GAS DEPARTMENT; INSTALLATION EXPENSE. All natural gas meters shall be located outside the building that they are providing heat for. The expense of installing gas service to the gas meter and the expense of purchase and installation of the gas meter shall be paid by the Municipality. The consumer shall be required to pay the expense of procuring the services of a plumber and shall pay the expense of furnishing and installing pipe, trenching, and the necessary labor to bring

the gas from the outlet spud of the meter to the place of dispersion. *(Amended by Ord. No. 392 ,2/8/83)*

§3-1006 MUNICIPAL GAS DEPARTMENT; REPAIRS AND MAINTENANCE. The Municipality shall pay the expense of repairs and replacements of the gas pipe from the main to the meter located on the consumer's property, and shall repair or replace the gas meter regardless of its location. The consumer shall be responsible for the expense of all repairs and replacement of pipe and appurtenances leading from the outlet spud of the meter to the point of dispersion. Maintenance of the remainder of the Municipal Gas Distribution System shall be the responsibility of the Municipality.

Where emergency situations exist and it is either known or suspected that a gas leak has occurred, the Municipality will assist the consumer in carrying out the following emergency procedures:

- A. Remove all occupants from the building;
- B. Shut down supply of gas from the main to the gas meter; and
- C. Assist consumer in locating natural gas leak whether it is inside or outside the consumer's building.

Liability for personal injury and property damage sustained by anyone as a result of a gas leak or gas explosion shall rest with the Municipality, if said gas leak occurred between the main and the outlet spud on the meter. If the gas leak occurs between the outlet spud on the meter and the place of ultimate dispersement said liability for the same damages shall rest with the consumer. *(Amended by Ord. No.392. 2/8/83)*

§3-1007 MUNICIPAL GAS DEPARTMENT; METERS. The Utilities Superintendent shall read, or cause to be read at least one (1) time each month, the gas meters between the twentieth (20th) day during which service is used and the first (1st) day of the succeeding month.

§3-1008 MUNICIPAL GAS DEPARTMENT; FEES AND COLLECTIONS. The Governing Body has the power and authority to fix the rates to be paid by gas consumers for the use of gas. All rates shall be on file for public inspection at the office of the Municipal Clerk. The Municipal Clerk shall bill the consumers and collect all money received by the Municipality on the account of the Municipal Gas System.

§3-1009 MUNICIPAL GAS DEPARTMENT; RATES. All gas consumers shall be liable for the following rates as provided by ordinance:

Small volume firm: 0-200 mmbtu annual usage:

Monthly meter charge: \$10.00

Commodity Charge: \$0.103601 per Ccf

Medium volume firm: 201-1000 mmbtu annual usage:

Monthly meter charge: \$50.00
Commodity Charge: \$0.094104 per Ccf

Large volume firm: Over 1000 mmbtu annual usage:

Monthly meter charge: \$150.00
Commodity Charge: \$0.098263 per Ccf

School: Special

Monthly meter charge: \$250.00
Commodity Charge: \$0.124695 per Ccf

Grain Dryer off-peak: Special

Monthly meter charge: \$75.00
Commodity Charge: \$0.057286 per Ccf

Purchased Gas Adjustment: All customers purchasing gas from the City of Lyons will also be charged the cost of the gas purchased based upon the Btu content of the gas. This amount will be calculated monthly. *(Amended by Ord. Nos. 359, 10/23/75; 368, 10/5/76; 430, 1/5/88; 425, 5/5/87; 440, 1/5/88; 535, 9/10/96)*

§3-1010 MUNICIPAL GAS DEPARTMENT; DELINQUENT; BILLINGS. All users shall be billed monthly for gas service provided the Municipal Gas Department. The Utilities Superintendent shall read, or cause to be read, gas meters, monthly. Monthly bills shall be due and payable at the office of the Municipal Clerk. Payment of net amount is allowed until the 25th day of the month the bill is mailed. After that date, the bill is considered delinquent and payable at the gross amount. Delinquent bills will be collected as provided for in Section 3, Article 11 of these ordinances. *(Ord. No. 673, 09/02/08)*

§3-1011 MUNICIPAL GAS DEPARTMENT; RESTRICTED USE. The Municipal Gas Department does not guarantee the delivery of gas except when it has a sufficient supply, sufficient equipment, and sufficient personnel to do so. The Utilities Superintendent has the power and authority to disconnect or discontinue service to any consumer for good and sufficient reason without liability. The Municipality shall use due care and reasonable diligence to provide and supply uninterrupted service to consumers, but shall not be liable for damages resulting from interruption of service due to causes over which the Municipality has no control; and the Municipality expressly reserves the right to discontinue or disconnect any consumer service without preliminary notice.

§3-1012 MUNICIPAL GAS DEPARTMENT; BUILDING MOVING. Should any house or building moving occur or be necessary, and it becomes necessary in such work to

remove or disturb any of the property or pipes of the Municipal Gas Distribution System, the same shall not be done except upon reasonable written notice to and written permission received from the Utilities Superintendent; who shall then order paid in advance the actual cost of moving the said pipe and other appurtenances, and such cost shall be paid by the applicant prior to the moving of the building or house. All the expense of removing, changing, and replacing the property of the Gas Distribution System shall be paid out of the deposit made prior to such moving, and any surplus remaining after all expenses are paid shall be returned to the applicant; provided, that if in the course of moving the said building or house it becomes apparent that additional expense will be incurred, such additional deposit as deemed necessary may be demanded.

§3-1013 MUNICIPAL GAS DEPARTMENT; INSPECTIONS. The Utilities Superintendent, or his duly authorized agents, shall have free access at any reasonable time to all parts of each premises and building to or in which gas is delivered, for the purpose of examining the meter, pipes, fixtures, and other portions of the system to ascertain whether there is any disrepair or leakage of gas; provided, that in the case of an emergency, an inspection may be made at any time if proper identification is shown to the occupant, lessee, or owner of the said building or premises.

§3-1014 MUNICIPAL GAS DEPARTMENT; DESTRUCTION OF PROPERTY. It shall be unlawful for any person to willfully or carelessly break, injure or deface any building, machinery, apparatus, fixture, attachment, or appurtenance of the Municipal Gas Department, or commit any act tending to obstruct or impair the intended use of any of the above mentioned property without the written permission of the Utilities Superintendent .

Article 11. Utilities Generally

§3-1101 MUNICIPAL UTILITIES; DEPOSIT REQUIRED. (1) Applicants for utility services, namely, gas, water or electricity, or any two (2) or three (3) of such services, from the City shall make a utility deposit as follows:

(a) Applicants engaged in business in the City, \$300.00, plus \$15.00 for installation of three (3) meters;

(b) Non-business applicants, \$300.00, plus \$15.00 for installation of three (3) meters;

(2) If additional meters are required by the applicant, the deposit for each additional meter shall be \$100.00;

(3) If any applicant's service is disconnected as a result of the procedure set forth in section 3-1102 below, that applicant's service, on the first occasion of a disconnect, shall not be restored until the applicant pays a deposit of \$ 300.00; however, on the second or subsequent disconnect, the deposit shall be \$ 600.00; and,

(4) When the applicant ceases to require utility service and surrenders the meters to the City, the deposit shall be refunded to the applicant less any charges due the City of the applicant. (*Ord. No. 385, 11/10/80*) (*Amended by Ord. No.485, 8/3/93*) (*Amended by Ord. No. 663,6/5/2008*) (*Amended by Ord.No.669, 07/15/2008*)(*Amended by Ord.No. 721; 08-04-2015*)

§3-1102 MUNICIPAL UTILITIES; DISCONTINUANCE OF SERVICE, NOTICE PROCEDURE.

(1) The Municipality shall have the right to discontinue utility services and remove its properties if the charges for such services are not paid within seven (7) days after the date that the charges become delinquent. Before any termination, the Municipality shall first give notice by first-class mail or in person to any domestic subscriber whose service is proposed to be terminated. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Service shall not be discontinued for at least seven (7) days after notice is sent or given. As to any subscriber who has previously been identified to the Municipality by the Department of Health and Human Services, as a recipient of energy assistance, such notice shall be by certified mail and notice of such proposed termination shall be given to the Department of Health and Human Services.

(2) The notice shall contain the following information:

(a) The reason for the proposed disconnection;

(b) A statement of the intention to disconnect unless the domestic subscriber either pays the bill or reaches an agreement with the Municipality regarding payment of the bill;

(c) The date upon which service will be disconnected if the domestic subscriber does not take appropriate action;

(d) The name, address, and telephone number of the employee or department to whom the domestic subscriber may address an inquiry or complaint;

(e) The domestic subscriber's right, prior to the disconnection date, to request a conference regarding any dispute over such proposed disconnection;

(f) A statement that the Municipality may not disconnect service pending the conclusion of the conference;

(g) A statement to the effect that disconnection may be postponed or prevented upon presentation of a duly licensed physician's certificate which shall certify that the domestic subscriber or a resident within such subscriber's household has an existing illness or handicap which would cause such subscriber or resident to suffer an immediate and serious health hazard by the disconnection of the Municipality's service to that household. Such certificate shall be filed with the Municipality within five (5) days of receiving notice under this section and will prevent the disconnection of the Municipality's service for a period of thirty (30) days from such filing. Only one (1) postponement of disconnection shall be allowed under this subsection for each incidence of nonpayment of any past-due account;

(h) The cost that will be borne by the domestic subscriber for restoration of service;

(i) A statement that the domestic subscriber may arrange with the Municipality for an installment payment plan;

(j) A statement to the effect that those domestic subscribers who are welfare recipients may qualify for assistance in payment of their utility bill and that they should contact their caseworker in that regard; and,

(k) Any additional information not inconsistent with this section which has received prior approval from the Governing Body.

(3) A domestic subscriber may dispute the proposed discontinuance of service by notifying the Municipality with a written statement that sets forth the reasons for the dispute and the relief requested. If a statement has been made by the subscriber, a conference shall be held before the Municipality may discontinue services.

(4) The procedures adopted by the Governing Body for resolving utility bills, copies of which are on file in the office of the Municipal Clerk, are hereby incorporated by reference in addition to any amendments thereto and are made a part of this section as though set out in full.

(5) This section shall not apply to any disconnections or interruptions of services made necessary by the Municipality for reasons of repair or maintenance or to protect the health or safety of the domestic subscriber or of the general public. (*Ref 70-1602 et seq. RS Neb.*) (*Amended by Ord. No. 578, 2/2/99*) (*Amended by Ord.No.720;08-4-2015*)

§3-1103 UTILITIES GENERALLY; DIVERSION OF SERVICES; PENALTY. The Municipality may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts (a) bypassing, (b) tampering, or (c) unauthorized metering, when such act results in damages to a Municipal Utility. A

Municipality may bring a civil action for damages, pursuant to this section, against any person receiving the benefit of utility service through means of bypassing, tampering or unauthorized metering.

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

A. The amount of actual damage or loss if the amount of the damage or loss is susceptible of reasonable calculation; or

B. Liquidated damages of (i) until July 1, 1985, five hundred (\$500.00) dollars and (ii) on July 1, 1985, and thereafter, seven hundred fifty (\$750.00) dollars if the amount of actual damage or loss is not susceptible of reasonable calculation.

In addition to damage or loss under subdivision A or B of this section, the Municipality may recover all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering; including but not limited to, disconnection, reconnection, service calls, equipment, costs of the suit, and reasonable attorneys' fees in cases within the scope of section 25-1801 Reissue Revised Statutes of Nebraska 1943.

There shall be a rebuttable presumption that a tenant or occupant at any premises where bypassing, tampering or unauthorized metering is proven to exist, caused, or had knowledge of such bypassing, tampering, or unauthorized metering if the tenant or occupant (a) had access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering is proven to exist and (b) was responsible or partially responsible for payment, either directly or indirectly, to the utility or to any other person for utility services to the premises. There shall be a rebuttable presumption that a customer at any premises where bypassing, tampering, or unauthorized metering is proven to exist, caused or had knowledge of such bypassing, tampering, or unauthorized metering if the customer controlled access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering was proven to exist.

The remedies provided by this section shall be deemed to be supplemental and additional to powers conferred by existing laws, and the remedies provided in this section are in addition to, and not in limitation of, any other civil or criminal statutory or common law remedies. (*Ref. 86-331.01 through 86-331.04 RS Neb.*)

§3-1103.01 UTILITIES GENERALLY; DIVERSION OF SERVICES, METER TAMPERING, UNAUTHORIZED RECONNECTION, PROHIBITED; EVIDENCE.

(1) Any person who connects any instrument, device, or contrivance with any wire supplying or intended to supply electricity or electric current or connects any pipe or conduit supplying gas or water, without the knowledge and consent of the Municipality, in such manner that any portion thereof may be supplied to any instrument by or at which electricity, electric current, gas, or water may be consumed without passing through the meter provided for measuring or registering the amount or quantity passing through it, and any person who knowingly uses or knowingly permits

the use of electricity , electric current, gas, or water obtained in the above mentioned unauthorized ways, shall be deemed guilty of an offense.

(2) Any person who willfully injures, alters, or by any instrument, device, or contrivance in any manner interferes with or obstructs the action or operation of any meter made or provided for measuring or registering the amount or quantity of electricity, gas, or water passing through it, without the knowledge and consent of the Municipality shall be deemed guilty of an offense.

(3) When electrical, gas, or water service has been disconnected pursuant to *Sections 70-1601 to 70-1615 RS Neb.*, or section 3-1202 of this Code, any person who reconnects such service without the knowledge and consent of the Municipality shall be deemed guilty of an offense.

(4) Proof of the existence of any wire, pipe, or conduit connection or reconnection or of any injury, alteration, or obstruction of a meter, as provided in this section, shall be taken as prima facie evidence of the guilt of the person in possession of the premises where such connection, reconnection, injury, alteration, or obstruction is proven to exist. (*Ref 86-329 through 86-331 RS Neb.*) (*Ord. No. 551, 9/2/97*)

§3-1104 UTILITIES GENERALLY; LIEN. In addition to all other remedies, if a customer shall for any reason remain indebted to the Municipality for utilities service furnished, and such bill remains unpaid at the expiration of sixty (60) days after billing date specified on the utilities charge statement, together with any additions thereto, such delinquent charges shall then be a lien upon the property served; such delinquent service charge and addition aforesaid shall be levied and assessed against the premises served in the same manner prescribed by law for the assessment and levy of special taxes and assessments, and shall be collected or returned in the same manner as other Municipal special taxes and assessment are certified assessed, collected and returned. The Municipal Clerk shall notify in writing, or cause to be notified in writing, all owners of premises or their agents whenever their tenants or lessees are thirty (30) days or more delinquent in the payment of the utilities rent. Such assessment shall be certified to the Municipal Treasurer for collection as prescribed by law; and such assessments shall bear interest at the rate of seven percent (7%) per annum from the effective date of levy thereof as a special assessment. (*Ref. 17-538, 17-925.01, 18-503 RS Neb.*) (*Ord. No. 523, 4/4/95*)

§3-1105 PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS. (A) Except as provided in division (B) of this section, the Municipality shall not engage in the construction of any public works involving architecture or engineering unless the plans, specifications, and estimates have been prepared and the construction has been observed by an architect, a professional engineer, or a person under the direct supervision of an architect, a professional engineer, or those under the direct supervision of an architect or professional engineer.

(B) Division (A) of this section shall not apply to the following activities:

- (1) Any public works project with contemplated expenditures for the completed project that do not exceed \$86,000;
- (2) Any alterations, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building;
- (3) Performance by the Municipality of professional services for itself if the Municipality appoints a municipal engineer or employs a full-time person licensed under the Engineers and Architects Regulation Act who is in responsible charge of architectural or engineering work;
- (4) The practice of any other certified trade or legally recognized profession;
- (5) Earthmoving and related work associated with soil and water conservation practices performed on any land owned by the Municipality that is not subject to a permit from the Department of Natural Resources;
- (6) The work of employees and agents of the Municipality performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land use regulations and their customary duties in utility and public works construction, operation, and maintenance.
- (7) Those services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, marine operating engineers, power plant operating engineers, or manufacturers who supervise the operation of or operate machinery or equipment or who supervise construction within their own plant;
- (8) The construction of water wells as defined in *Neb. RS 46-1212*, the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells, unless such construction, installation, or decommissioning is required by the Municipality to be designed or supervised by an engineer or unless legal requirements are imposed upon the Municipality as a part of a public water supply; and
- (9) Any other activities described in *Neb. RS 81-3449 to 81-3453*. (*Neb. RS 81-3423, 81-3445, 81-3449, and 81-3453*)

§3-1106 VOLUNTARY DISCONNECT AND RECONNECT FEE

When a customer of the Municipal Utilities requests that the customer's meter be disconnected or reconnected, the customer shall pay the following fee:

<u>Residential Customers</u>		<u>All Other Customers</u>		(business, commercial, school, Industrial, grain dryers)
<u>Disconnect</u>	<u>Reconnect</u>	<u>Disconnect</u>	<u>Reconnect</u>	
\$ 25.00	\$ 25.00	\$ 350.00	\$ 350.00	

(Ord. No. 693, 07/05/2011)

Article 12. Natural Gas Regulations

§3-1201 MUNICIPAL NATURAL GAS REGULATIONS; DEFINITIONS. As used in this Article, unless the context otherwise requires:

1. Area rate shall mean the rate charged for natural gas service to a class of customers located within a Municipality as determined from the cost of service for the rate area;
2. Base year shall consist of either the most recent calendar year or a consecutive twelve (12) month period ending not more than six (6) months prior to the date of filing;
3. Countable days shall mean those calendar days not subject to suspension as provided for in the Municipal Natural Gas Regulation Act;
4. Customer shall mean any noninterruptable purchaser of natural gas within a Municipality with requirements of less than one hundred thousand cubic feet of natural gas per day;
5. Date of filing shall mean the first day of the month following the date the rate filing is received by the office of the Clerk of each Municipality in the rate area;
6. Date of final action shall be the date upon which the last Municipality in a rate area adopts or fails to adopt a rate ordinance under a rate filing or the one hundred eightieth (180th) day, counted as provided in Section 3-1306 of this Article, whichever comes first;
7. District court shall mean the district court of Burt County;
8. Judicial review shall mean, but shall not be limited to, injunctive relief and other equitable relief;
9. Interim rates shall mean the newly filed rates charged by a utility for natural gas after the ninetieth (90th) countable day following the date of filing, but prior to final action by the Municipality on the rate filing;
10. Municipality shall mean any City of the Primary Class, City of the First Class, City of the Second Class, or Village in Nebraska, or when the context requires any combination of the same acting in concert in a properly created rate area;
11. Natural gas shall mean either unmixed natural gas or any mixture of natural gas with one (1) or more artificial gases and other hydrocarbons;
12. Rate shall mean every compensation, charge, fare, toll, tariff, rental, late payment charge, or classification which is demanded, observed, charged, or collected by a utility for natural gas and any rules affecting any such compensation, charge, fare, toll, tariff, rental, late payment charge, or classification;
13. Rate area shall mean the Municipalities within a geographic area within the State which is properly established under Section 3-1305 of this Article for the purpose of determining an area rate applicable to the customers within the Municipalities within the rate area. A rate area shall be served by a single utility through a common pipeline system from the same natural gas supply source within the common system for which the utility has similar costs for serving customers;

14. Rate filing shall mean the formal application by a utility for a change in rates together with the information required by Section 3-1310 of this Article;

15. Test year shall mean either a consecutive twelve-month (12) period commencing on the proposed effective date of the rate increased or a base year adjusted for known and measurable changes; and

16. Utility shall mean any investor-owned utility maintaining and operating a natural gas distribution system within a Municipality in this State. (*Ref. 19-4602 RS Neb.*)

§3-1202 NATURAL GAS; MUNICIPAL AUTHORITY AND POWER. A utility shall be subject to (1) all rights, powers, and authority now or hereafter possessed by a Municipality to regulate rates charged by the utility for natural gas service to customers within the Municipality, (2) all provisions of this Article, and (3) when not inconsistent with subdivision (1) or (2) of this Section, the provisions of any validly executed franchise agreement. (*Ref. 19-4603 RS Neb.*)

§3-1203 NATURAL GAS; RATES: REASONABLE.

1. Every rate made, demanded, or received by any utility shall be just and reasonable. Rates shall not be unreasonably preferential or discriminatory and shall be reasonably consistent in application to a class of customers and to a rate area. Rates negotiated under Subsection 3 of this Section shall not be considered discriminatory .

2. No utility shall, as to rates or service, make or grant any unreasonable preference or advantage to any person, or subject any person to any unreasonable prejudice or disadvantage.

3. A utility may negotiate price and other contract terms with customers whose natural gas requirements exceed fifty thousand cubic feet per day. (*Ref. 19-4604 RS Neb.*)

§3-1204 NATURAL GAS; RATE SCHEDULES. A utility shall provide to each Municipality it serves, for informational purposes, copies of rate schedules for all rates charged customers and the requirements for service under such schedules within the Municipality. The schedules shall also show the natural gas supply costs and natural gas supply cost adjustments included in the total end rate. (*Ref. 19-4605 RS Neb.*)

§3-1205 NATURAL GAS; RATE AREA; NOTICE. 1. Except as provided in Subsection 5 of this Section, each utility providing service to customers within a Municipality in this State which intends to include a Municipality within a rate area shall file notice of proposed area boundaries with the office of the Clerk of each affected Municipality. There shall be no filing fee charged for filing the notice. The notice shall include an explanation of how the boundaries of the rate area were determined and a map showing the boundaries of the rate area. Each time a new rate area is established or the boundaries of rate area are changed, all Municipalities in the rate area shall receive notice.

2. A Municipality shall have sixty (60) days after the notice of proposed area boundaries is filed to accept or reject its inclusion within the rate area. Failure of the Municipality to accept or reject its inclusion within the boundaries of the proposed rate area, within the sixty-day (60) period, shall be deemed acceptance. Rejection of the boundaries may be appealed by the utility to the District Court. The court shall determine the reasonableness of the inclusion of the Municipality within the rate area or the reasonableness of the boundaries. If more than one (1) Municipality within a rate area rejects the boundaries, all appeals by the utility shall be joined in a single action; except upon good cause shown by a Municipality to have its rejection heard separately. The court may accept or reject the boundaries but may not draft boundaries of its own.

3. After a rate area has been accepted, (a) all rate filings shall be initiated simultaneously in each Municipality within the rate area and (b) area rates shall be deemed appropriate for each Municipality within the rate area.

4. If area rates are applied to Municipalities in a rate area which do not have uniform rates for customers on the effective date of this Article, the rates in each Municipality shall be adjusted in a manner which equalizes the rates in all Municipalities in the rate area. Such equalization of rates shall be established by January 1, 1992, or in the first rate case filed after such date by the utility under Section 3-1309 of this Article.

5. Any utility proposing to increase rates on any area wide basis within ninety (90) days of the effective date of this Article shall be permitted to make a rate filing based on proposed area boundaries before a final determination of area boundaries is made as provided in this Section. The requirements of this Article shall be complied with fully, except that the time periods provided for proposed rate area boundary determinations in this Section and the time periods provided for area rate filing shall run concurrently and not consecutively. In the event that the rate area boundaries are ultimately determined to be other than those that formed the basis for the rate filing, the Municipality may request that an amended rate filing based on the final rate area boundaries be provided. In no event shall the filing of the notice of proposed area boundaries provided for in Subsection 1 of this Section be made later than the date of filing of the rate filing. Nothing in this Subsection shall suspend the time periods provided for in Section 3-1306 of this Article from the date of the rate filing. Rate filings under this Subsection shall not be subject to Section 3-1307 of this Article, except that a utility shall provide as much prior notice of a proposed rate filing as it reasonably can. (*Ref. 19-4606 RS Neb.*)

§3-1206 NATURAL GAS; INTERIM RATES. 1. No utility shall impose, charge, or collect any rate upon its customers until such time as any proposed rate has been finally determined; except that a utility shall have the right to collect interim rates, subject to refund, if the Municipality has not taken final action to allow the rate increase within ninety (90) countable days of the date of filing for the increase. The rates requested in the rate filing shall become final and no longer subject to refund if the Municipality has

not taken final action within one hundred eighty (180) countable days of the date of filing.

2. If the utility takes timely action to initiate judicial review of the rates adopted by a Municipality as provided in Section 3-1315 of this Article, the utility shall be permitted to continue to collect interim rates from the date the rates are adopted by the Municipality until a rate ordinance adopted by the Municipality is affirmed by the district court or accepted by the utility, subject to refund as provided in this Section.

3. Upon final order of the district court when no further appeal to the Supreme Court is pursued, or upon acceptance by the utility of a lower rate than that being collected, a utility shall, within sixty (60) days of such final order or acceptance, refund the difference between the rate found proper or agreed to and the rate collected, plus interest on such amount as provided in Subsection 4 of this Section.

4. Any amounts refunded pursuant to this Section shall bear interest fixed at a rate equal to one and one half percentage points above the rate calculated pursuant to Section 45-103 RS Neb., in effect on the date of final determination of the rates by the Municipality.

5. Upon final determination of rates following the exhaustion of all appeals, the utility shall be permitted to recover the amount of revenue which would have been produced had the finally determined rates been in effect throughout the period following the decision by the district court until the final rates were adopted by the Municipality. In the event that the revenue actually collected by the utility through interim rates is less than that which would have been collected, had the final rates been effective throughout such period, the utility shall be permitted to recover the deficiency plus interest at the rate provided in this Section through a surcharge on customer billings over a reasonable period not to exceed twelve (12) months. In the event that the revenue actually collected by the utility through interim rates exceeds that which would have been collected had the final rates been effective throughout such period, the utility shall refund the excess with interest as provided in this Section. (*Ref. 19-4607 RS Neb.*)

§3-1207 NATURAL GAS; FILING; NOTICE. The utility shall notify the Municipality of its intent to change the rates charged to customers in the Municipality under the provisions of this Article by filing a notice of proposed filing with the office of the Clerk of the Municipality at least sixty (60) days prior to the date of filing of any request for change. (*Ref. 19-4608 RS Neb.*)

§3-1208 NATURAL GAS; SUPPLY-COST-ADJUSTMENT; REVIEW. 1. A utility shall be permitted to file and implement natural gas supply-cost-adjustment rate schedules which provide for adjustment and collection of rates to reflect changes in natural gas supply costs for natural gas sold in the Municipality.

2. The Municipality may review natural gas supply-cost-adjustment rate schedules. The Municipality shall initiate such review by resolution of the Governing Body and shall provide a copy of the resolution to the utility at least thirty (30) days prior to the hearing on the issue. The Municipality may request and the utility shall

provide all documents and work papers supporting the actually purchased natural gas adjustment amounts charged customers. The Municipality shall give the utility at least thirty (30) days' prior notice of the time and place of the hearing and a copy of the proposed findings of fact. If, after review and hearing, the Municipality concludes that the utility is charging more than the amount allowed by the natural gas supply-cost-adjustment rate schedule, the Municipality shall order the utility to refund excess amounts collected from customers plus interest at the rate provided for in Section 3-1305 of this Article. The utility may initiate judicial review of such an order by a Municipality, and if it does so, the order of the Municipality shall not take effect during the pendency of such review. The provisions of Subsection 5 of Section 3-1306 of this Article shall be applicable to this Section.

3. Any refund, including interest thereon if any, received by the utility with respect to natural gas purchased under a Federal Energy Regulatory Commission natural gas tariff at the border station of a Municipality related to increased rates paid by the utility, subject to refund and applicable to natural gas purchased for resale within the Municipality, shall be passed on to presently served customers by an appropriate adjustment shown as a credit on subsequent bills during a period selected by the utility not to exceed twelve (12) months or by a cash refund at the option of the utility. Refunds unpaid after sixty (60) days from the date of receipt by the utility shall bear interest at the rate set in *Section 45-103 RS Neb.*

4. Nothing contained in this Section shall change or modify existing natural gas supply-cost-adjustment rate provisions in an ordinance or franchise agreement without the review specified in Subsection 2 of this Section. The Municipality may initiate an action to change the purchased natural gas supply-cost-adjustment rate schedules under Section 3-1317 of this Article. (*Ref. 19-4609 RS Neb.*)

§3-1209 NATURAL GAS; RATE FILING; FEE; APPEAL. 1. If a utility desires to change its rates for natural gas service within a Municipality, other than to reflect an adjustment for natural gas supply costs, the utility shall present to the Municipality copies of present and proposed rate schedules and information supporting the proposed rates for natural gas service within the Municipality as required by Section 3-1310 of this Article.

2. The Municipality may charge and collect a filing fee for a rate filing. Such fee shall not exceed: For a City of the Second Class, three hundred (\$300.00) dollars.

3. Within forty-five (45) days after the date of filing, a Municipality may reject a rate filing only on the grounds that the information required by Section 3-1310 of this Article has not been filed with the Municipality. The utility shall be given at least seven (7) days' prior written notice of any meeting to consider rejection of the utility's rate filing. Rejection shall be made by resolution of the Municipality and shall state the reasons upon which the rejection is based. In the event of any such rejection, a copy of the written resolution shall be delivered to the utility within seven (7) days after final action by the Municipality. After receipt of the resolution, the utility shall have fifteen (15) days to remedy the deficiencies stated in such resolution, and the time periods

under Section 3-1306 of this Article shall not be suspended during such fifteen (15) day period. If the Municipality has not received the information to cure the deficiencies within the fifteen (15) day period, or within such additional period of time as may be agreed to by the utility and the Municipality, the filing shall be deemed to be rejected and the utility shall be required to initiate a new rate filing.

4. The utility may appeal from the decision of the Municipality rejecting a rate filing. The appeal shall be to the district court.

5. If a rate filing is rejected and the rejection is appealed, the utility may place the interim rates into effect pursuant to the time periods specified in Section 3-1306 of this Article, subject to refund, pending district court determination. If the utility appeals the rejection of the filing, and if the court rules that the rejection was unreasonable, the times specified in Section 3-1306 of this Article shall run from the date of filing. (*Ref. 19-4610 RS Neb.*)

§3-1210 NATURAL GAS; RATE FILING; INFORMATION REQUIRED. When making a rate filing, the utility shall provide to the Municipality three (3) copies of the most recent annual report to the stockholder, and three (3) copies of the following information, verified by a statement under oath by an officer of the utility:

1. A description of the base year and test year;
2. A financial summary showing aggregate amounts for rate base, operating revenue, operating expenses, and rate of return for the base year and test year:
 - a. Using natural gas rates currently in effect; and
 - b. Using proposed natural gas rates.
3. Except as provided in Subsection 2 of Section 3-1312 of this Article, rate-base schedules showing beginning and ending balances for the base year and test year of:
 - a. Utility plant and accumulated depreciation and amortization showing the balances by functional account totals;
 - b. Working capital, showing the manner in which it is calculated;
 - c. Other rate-base components; and
 - d. Allocated rate-base components showing the manner in which the components are calculated.
4. Operating expense schedules for the base year and test year;
5. Rate-of-return and cost-of-capital schedules showing:
 - a. Long-term debt, preferred stock, and common equity amounts, ratios, and percentage cost rates for the base year and test year; and
 - b. Long-term debt, preferred stock, and common equity amounts at the beginning and end of the base year and test year;
6. Operating revenue schedules showing:
 - a. Number and classification of customers, volume of sales, and operating revenue by customer classes for the base year on an unadjusted basis; and

b. Number and classification of customers, volume of sales, and operating revenue by customer classes for the base year on a normalized basis:

- (i) Using current rates; and
- (ii) Using proposed rates. (*Ref. 19-4611 RS Neb.*)

§3-1211 NATURAL GAS; COST OF SERVICE; DETERMINATION. 1. The Municipality, in the exercise of its power under this Article to determine just and reasonable rates for public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable natural gas service and to the need of the utility for revenue sufficient to enable it to meet the cost of furnishing the service; including adequate provisions for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property.

2. Cost of service shall include operating expenses and a fair and reasonable return on rate base, less appropriate credits.

3. In determining a fair and reasonable return on the rate base of a utility, a rate of return percentage shall be employed that is representative of the utility's weighted average cost of capital, including but not limited to, long-term debt, preferred stock, and common equity capital.

4. The rate base of the utility shall consist of the utility's property, used and useful in providing utility service, including the applicable investment in utility plant, less accumulated depreciation and amortization allowance for working capital, such other items as may be reasonably included, and reasonable allocations of common property, less such investment as may be reasonably attributed to other than investor-supplied capital, unless such deduction is otherwise prohibited by law.

5. Operating expenses shall consist of expenses prudently incurred to provide natural gas service, including a reasonable allocation of common expenses.

6. In determining the cost of service, the Municipality shall give effect to all costs and allocations upstream of the town border station of the utility as reflected in the rate schedules approved by the Federal Energy Regulatory Commission or its successor. (*Ref. 19-4612 RS Neb.*)

§3-1212 NATURAL GAS; BASE YEAR; REJECTION. 1. For utilities using a base year adjusted for known and measurable changes, the utility shall provide, at the time of filing, explanations of the adjustments used to arrive at known and measurable changes. For utilities using a projected test year, the utility shall provide, at the time of filing, the assumptions underlying its projected test year.

2. A Municipality may not reject a utility's rate filing for failing to provide beginning balances for the rate base of the base year and test year under Subdivision 3 of Section 3-1310 of this Article; if the utility states at the time of filing that the rate base which it proposes to use for ratemaking purposes properly matches the number of

customers, sales volume, expenses, and any other relevant factors and provides supporting explanations and data. (*Ref. 19-4613 RS Neb.*)

§3-1213 NATURAL GAS; SUPPLEMENTAL INFORMATION. 1. After a rate filing has been filed with a Municipality, the Municipality may request supplemental information from the utility relevant to the rate filing. As used in this Section, relevant or relevance shall relate only to the limitations on information requests that are authorized by this Section. Relevant supplemental information shall relate to factors involved in setting appropriate rates. The utility shall not be required to perform analyses or analytical studies of information in responding to requests for supplemental information. Historical data more than one (1) calendar year older than the date of the last general rate filing shall be presumed to be irrelevant, except to the extent that such data was utilized by the utility in the rate filing. Requests for data related to the management, operations, and profitability of affiliated businesses or operations of the utility shall be presumed irrelevant; except to the extent such requests relate to the question of whether the Municipal customer is subsidizing the cost of the affiliate. Data from any report or records, or data required by the Federal Energy Regulatory Commission to be kept by the utility are presumed to be relevant. Any records of the utility used in filings or in the preparation of filings to the Federal Energy Regulatory Commission shall be open for inspection by the Municipality or its agents at the utility's principal place of business during regular business hours.

2. All supplemental information requests shall be made as soon as reasonably possible after the filing. The utility shall respond completely and faithfully to any relevant request for supplemental information, and shall make a good faith effort to respond within twenty (20) days of receipt of such requests. Except as provided in Subsection 3 of this Section, failure to so respond shall suspend the running of the one hundred eighty (180) day time period provided for in Section 3-1306 of this Article until the supplemental information is provided. Such suspension shall not affect the calculation of time for the imposition of interim rates.

3. Request for supplemental information made by a Municipality shall be subject to appeal to the district court. The court shall review the request and enter an order requiring the utility to respond or rejecting the request based on the standards set forth in this Section. Any appeal from a supplemental information request shall suspend the running of the one hundred eighty (180) day time period provided for in Section 3-1306 of this Article during the pendency of such appeal, unless the Court rules that the request was irrelevant. Such suspension shall not affect the calculation of the time for the imposition of interim rates. (*Ref. 19-4614 RS Neb.*)

§3-1214 NATURAL GAS; RATE INCREASE; NOTICE TO PUBLIC. Notice of filings for any rate increase under this Article shall be given within thirty (30) days of filing by publication by placing a notice to the public of the proposed change in a newspaper having general circulation in the Municipality, except that a utility may provide notice to the public by mailing such notice by United States mail, postage prepaid, to the

billing address of each directly affected customer, or by including the notice in such customer's bill in a conspicuous form. An affidavit signed by an official of a utility and describing the method of publication of the notice shall be filed with the office of the Clerk of the Municipality. The notice shall contain:

1. The name and address of the utility;
2. The dollar amount of the increase as it pertains to the typical residential customer;
3. The percentage amount of the increase; and
4. The name and address of the Clerk of the Municipality. (*Ref. 19-4615 RS Neb.*)

§3-1215 NATURAL GAS; REPORT; REBUTTAL; HEARING; JUDICIAL REVIEW.

1. A report specifying the reasons supporting any action recommended to the Municipality by the Municipal staff or any agent or employee employed by or on behalf of the Municipality to assist it in rate regulation shall be provided to the Municipality and the utility within one hundred twenty (120) countable days of the date of the rate filing. Relevant information requests regarding the report may be made by the utility to the Municipality and shall be responded to as soon as reasonably possible prior to the date for the ruing of the rebuttal.

2. Within seven (7) countable days after receipt of the report, the utility and the Municipality identified in Section 3-1316 of this Article may mutually agree to discuss resolution of the rate filing issues, and may mutually agree to suspend the date of final action and time periods set forth in this Article for a period not to exceed thirty (30) days.

3. Within fourteen (14) countable days after receipt of the report, the utility shall file its rebuttal. Relevant information requests regarding the rebuttal may be made by the Municipality to the utility and shall be responded to as soon as reasonably possible prior to the area rate hearing provided for in this Section.

4. No sooner than seven (7) days after the utility files its rebuttal, an area rate hearing shall be held in the Municipality having the largest number of customers in the rate area. Such hearing shall be conducted by a Hearing Officer appointed by the Municipality identified in Section 3-1316 of this Article. Such Hearing Officer shall have experience in the conduct of hearings so as to insure the fair, impartial, and expeditious conduct of the proceedings and the creation of a record of the proceedings. The utility shall be given written notice of such rate hearing and the name of the Hearing Officer by the end of the one hundred twenty-eighth (128th) countable day after the date of filing. The Municipalities and the utility shall be granted the opportunity at such hearing to call witnesses, present evidence, cross-examine witnesses, and argue the evidence. Prior to such hearing, the Hearing Officer shall establish procedures for the conduct of the hearing to comply with this provision. The utility shall present as evidence at the hearing all the information which it desires to have considered by the Municipality in its consideration of the rates to be adopted. Following the hearing, the utility and the Municipalities shall provide to the Hearing Officer their proposed

findings of fact and conclusions of law. A Certified Court Reporter shall be present at the hearing and shall prepare a transcript of the proceedings.

5. The official record of the hearing shall consist of the rate filing, all reports, all evidence presented by the utility and the Municipalities, all documents and information presented at the hearing, the transcript of the proceedings, and the proposed findings of fact and conclusions of law presented to the Hearing Officer by the Municipalities and the utility. A copy of the official record shall be transmitted by the Hearing Officer to each Municipality in the rate area.

6. Following the hearing and within one hundred eighty (180) countable days of the date of filing, each Municipality within the rate area shall take final action on the rate filing by adopting findings of fact and conclusions of law and a rate ordinance based on such findings and conclusions. If the Municipality does not take action within that one hundred eighty (180) countable day period, the rates filed by the utility in its rate filing shall become final and no longer subject to refund. Notwithstanding any other provisions of State law or any local ordinance, the adoption of a rate ordinance shall require no more than a vote of a majority of the elected members of any Governing Body of a Municipality made at one (1) public meeting after compliance with public notice requirements and a public hearing on the proposed ordinance.

7. Within thirty (30) days of the date of final action by the Municipalities within a rate area, a utility may initiate proceedings for judicial review of the decision of any Municipality in the rate area to the district court. At the time the utility initiates action for judicial review, it shall join in such action as parties all Municipalities in the rate area whose actions are being challenged.

8. In no event shall the district court render a decision upon a judicial review of Municipal action later than one hundred eighty (180) days after the filing of the action.

9. The utility shall, within thirty (30) days of the date of final action, unless it takes timely action to initiate judicial review, implement the rates established by the action of the Municipality and shall, within sixty (60) days of such action, make refunds, if any, with interest as provided In Section 3-1306 of this Article. (*Ref. 19-4616 RS Neb.*)

§3-1216 NATURAL GAS; LOAN FUND; APPLICANTS. 1. The Municipal Natural Gas Regulation Revolving Loan Fund shall be used to make loans to Municipalities for rate regulation and to pay the costs of administration. The fund shall consist of money appropriated from the Nebraska Energy Resource Fund and money from repayment of loans. The fund shall be administered by the Policy Research Office which shall adopt and promulgate rules and regulations to carry out this Subsection. The rules and regulations shall include:

- a. Loan application procedures and forms; and
- b. Fund-use monitoring and quarterly accounting of fund use.

Applicants for a loan from the fund shall provide a budget statement which specifies the proposed use of the loan proceeds. Such proceeds may only be used for the costs and expenses incurred by the Municipality to analyze rate filings and establish area

wide rates, and to finance litigation costs of any appeals. Such costs and expenses may include the cost of rate consultants, attorneys, hearing officers, preparation of transcripts, and hearing records provided for by this Article, expert witnesses, and any other necessary costs related to the conduct and administration of the hearing provided for in Subsection 4 of Section 3-1315 of this Article. One (1) loan may be made under this Subsection to each rate area, and such loan shall be made to the applicant representing the largest number of customers. All loans made under this Subsection shall be paid by the utility to the Policy Research Office within thirty (30) days of being billed by the office. The utility may recover the amount paid on a loan through a special surcharge on customers which may be billed on the monthly statements for up to a twelve (12) month period, to be shown on the statements as a charge for rate regulation expense.

2. The Municipal Natural Gas Regulation Revolving Loan Fund shall be audited as part of the regular audit of the Policy Research Office budget and copies of the audit shall be available to all Municipalities and any utility supplying natural gas in this State.

3. Any money in the Municipal Natural Gas Regulation Revolving Loan Fund available for investment shall be invested by the State Investment Officer pursuant to Sections 72-1237 to 72-1269 RS Neb. If the fund balance exceeds four hundred thousand (\$400,000.00) dollars, the income on the money in the fund shall be credited to the permanent school fund until the balance of the Municipal Natural Gas Regulation Revolving Loan Fund falls below such amount.

4. A Municipality which receives a loan under this Section shall be responsible to provide for the opportunity for all other Municipalities to participate in all rate area activities. Such Municipality shall not exclude any other Municipality in the rate area from the information or benefits accruing from the use of the loan funds. (*Ref. 19-4617 RS Neb.*)

§3-1217 NATURAL GAS; REVIEW AND ADJUSTMENT. 1. Once in any thirty-six (36) month period, one (1) or more Municipalities in each rate area may initiate a proceeding for a review and possible adjustment in rates to conform such rates to the standards of Section 3-1311 of this Article by the Introduction of a resolution for such purpose. The Municipality shall provide to the utility seven (7) days' prior written notice of the meeting at which such resolution is to be considered and a copy of the proposed resolution. Following adoption of the resolution, the Municipal Clerk shall send a copy of the resolution by certified mail to the utility. The Municipality may request the Information required by Section 3-1310 of this Article to be provided by the utility within one hundred twenty (120) days of the receipt of the notice unless otherwise agreed. Following filing of the information required In Section 3-1310 of this Article, the Municipality may make additional requests as provided in Section 3-1313 of this Article. The utility shall be provided with a copy of any reports and analyses prepared for the Municipality in its consideration of a rate adjustment. To the fullest extent possible, the general procedures provided for in Subsection 1 to 6 of Section 3-1315 of this Article shall be followed by the Municipality and the utility; except that

calculations of time periods shall be from the date on which the Municipality receives the information specified in Section 3-1310 of this Article and not from the date of filing. Nothing in this Subsection shall require the participation in the proceedings of every Municipality in the rate area. During the pendency of all proceedings under this Section, and through the period of judicial review of those proceedings, the rate in effect prior to the time the Municipality adopts the resolution provided for in this Section shall remain in effect. The provisions of Subsection 5 of Section 3-1306 of this Article shall be applicable to this Section.

2. Except as provided in this Article, no Municipality shall be entitled to any filing fees or assessments against the utility when the Municipality initiates a rate adjustment, nor shall the Municipality receive a loan under Section 3-1316 of this Article for such purposes. If the utility initiates judicial review of the decision of a Municipality under this Section and the court upholds the decision of the Municipality, the court may award the Municipality litigation expenses to include attorney's fees, expert witness fees, consultant fees, and such other related expenses as the court finds to be properly related to the judicial review. Any action for judicial review shall be initiated in the district court. If appropriate resolutions are adopted by Municipalities representing seventy (70%) percent or more of the customers in the rate area initiating a proceeding for review and possible adjustment of natural gas rates, the applicant representing the largest number of customers shall be given a loan for such purposes upon the terms of Section 3-1316 of this Article. *(Ref. 19-4618 RS Neb.)*

§3-1218 NATURAL GAS; CIVIL PROCEDURE. To the extent not inconsistent with the provisions of this Article, the rules of civil procedure and discovery shall apply. Review of the decisions of the district court under the Article shall be by appeal to the Supreme Court. *(Ref. 19-4619 RS Neb.)*

§3-1219 NATURAL GAS; PRIORITY OF ARTICLE. All actions and proceedings under this Article which are heard by the District Court or the Supreme Court shall be expedited for hearing and decision by the appropriate court as soon as the issues and parties are properly before such court. Such proceedings and actions shall be preferred over all other civil cases irrespective of position on the calendar. *(Ref. 19-4620 RS Neb.)*

§3-1220 NATURAL GAS; RECORDS; ACCURATE. 1. Every utility shall be required to keep and render its books, accounts, papers, and records accurately and truthfully in accordance with the systems of accounts prescribed by the Federal Energy Regulatory Commission or its successor.

2. All accounting information provided by utilities to Municipalities shall be presented in accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission. *(Ref. 19-4621 RS Neb.)*

§3-1221 NATURAL GAS; CUSTOMERS; RIGHT TO APPEAR AT HEARING. Customers of the utility in a rate area shall have the right to appear, participate and

present testimony at the hearing provided for in Section 3-1315 of this Article, and shall have such evidence considered by the Municipalities in the rate determination. When the interests of any customers are substantially similar, the Hearing Officer may provide that such class of customers join in presentation of the evidence at the hearing so as to expedite the proceedings. Customers who desire to present testimony and participate at the hearing shall follow the requirements for Municipal staff or agents as provided in Subsection 1 of Section 3-1315 of this Article. All customers shall be provided with notice of these rights, which notice shall be provided by the utility in the notice required by Section 3-1314 of this Article. *(Ref. 19-4622 RS Neb.)*

§3-1222 NATURAL GAS; RETROACTIVE APPLICATION; PROHIBITED. The provisions of this Article shall not be enforced retroactively from the effective date of this Article. Any rate filing made prior to such date shall be governed by the law existing on the date the rate filing was made. *(Ref. 19-4623 RS Neb.)*

§3-1223 NATURAL GAS REGULATIONS; RATE FILING FEE. The Municipality shall charge and collect a filing fee from Natural Gas Companies for a rating. The fee shall be three hundred (\$300.00) dollars. *(Ord. No.438. 10/6/87)*

Article 13. Penal Provision

§3-1301 VIOLATION; PENALTY.

(A) Any person, or any person's agent or servant, who violates any of the provisions of this municipal code, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500.00. A new violation shall be deemed to have been committed every twenty- four (24) hours of such failure to comply.

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

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (*Ref. Neb. RS 17-505, 18-1720*)

Chapter 4

HEALTH AND SANITATION

Article 1. Board of Health

§4-101 HEALTH; REGULATIONS. For the purpose of promoting the health and safety of the residents of the Municipality, the Board of Health shall, from time to time, adopt such rules and regulations relative thereto, and shall make such inspections, prescribe such penalties, and make such reports as may be necessary toward that purpose. *(Ref. 17 -121 RS Neb.)*

§4-102 HEALTH; ENFORCEMENT OFFICIAL. The Municipal Police Chief, as the Quarantine Officer, shall be the chief health officer of the Municipality. It shall be his duty to notify the Governing Body and the Board of Health of health nuisances within the Municipality and its zoning jurisdiction. *(Ref. 17-121 RS Neb.)*

Article 2. Nuisances

§4-201 NUISANCES; GENERALLY DEFINED. A nuisance consists in doing any unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist which act, omission, condition or thing either:

1. Injures or endangers the comfort, repose, health, or safety of others;
2. Offends decency;
3. Is offensive to the senses;
4. Unlawfully interferes with, obstructs, tends to obstruct or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the Municipality;
5. In any way renders other persons insecure in life or the use of property; or
6. Essentially interferes with the comfortable enjoyment of life and property tends to depreciate the value of the property of others. (*Ref. 18-1720 RS Neb.*)

§4-202 NUISANCES; SPECIFICALLY DEFINED. The maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, contusions, places, conditions, and things are hereby declared to be nuisances:

1. Any odorous, putrid, unsound or unwholesome grain, meat, hides, skins, feathers, vegetable matter, or the whole or any part of any dead animal, fish, or fowl;
2. Privies, vaults, cesspools, dumps, pits or like places which are not securely protected from flies or rats, or which are foul or malodorous;
3. Filthy, littered or trash-covered cellars, house yards, barnyards, stable-yards, factory-yards, mill yards, vacant areas in rear of stores, granaries, vacant lots, houses, buildings, or premises;
4. Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any ordinance of the Municipality;
5. Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish or any waste vegetable or animal matter in any quantity; provided, nothing herein contained shall prevent the temporary retention of waste in receptacles in a manner provided by the health officer of the Municipality, nor the dumping of non-putrefying waste in a place and manner approved by the health officer;
6. Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, and all trash or abandoned material, unless the same be kept in covered bins or galvanized iron receptacles;
7. Trash, litter, rags, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber, scrap iron, tin or other metal, automobiles or parts thereof, or any other waste materials when any of said articles or materials create a condition in which flies or rats may breed

or multiply, or which may be a fire danger or which are so unsightly as to depreciate property values in the vicinity thereof;

8. Any unsightly building, billboard, or other structure, or any old, abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished, which said buildings, billboards or other structures are either a fire hazard, a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity thereof;

9. All places used or maintained as junk yards, or dumping grounds, or for the wrecking and disassembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of automobiles or worn-out, wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which said places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof;

10. Stagnant water permitted or maintained on any lot or piece of ground;

11. Stockyards, granaries, mills, pig pens, cattle pens, chicken pens, or any other place, building or enclosure in which animals or fowls of any kind are confined or on which are stored tankage or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when said places in which said animals are confined, or said premises on which said vegetable or animal matter is located, are maintained and kept in such a manner that foul and noxious odors are permitted to emanate therefrom to the annoyance of inhabitants of the Municipality, or are maintained and kept in such a manner as to be injurious to the public health; and

12. All other things specifically designated as nuisances elsewhere in this Code. (*Ref. 18-1720 RS Neb.*)(*Amended by Ord.No.707, 10/08/2013*)

§4-203 NUISANCES; ABATEMENT PROCEDURE. It shall be the duty of every owner, occupant, lessee, or mortgagee of real estate in the Municipality to keep such real estate free of public nuisances. Upon determination by the Board of Health that said owner, occupant, lessee, or mortgagee has failed to keep such real estate free of public nuisances; the Governing Body shall thereupon cause written notice to be served upon the owner, occupant, lessee, mortgagee or agent thereof, by publication and by registered mail or by personal service. Such notice shall describe the condition as found by the Board of Health, and state that said condition has been declared a public nuisance, and that the condition must be remedied at once. A return of service shall be required by the Governing Body. If the person receiving the notice has not complied therewith or taken an appeal from the determination of the Board of Health within ten (10) days from the time when this notice is served upon such person, the Board of Health shall notify the Governing Body of such noncompliance and the Governing Body shall, upon receipt of such notice, cause a hearing date to be fixed and notice thereof to be served upon the owner, occupant, lessee, or mortgagee, or agent of the real estate. Such notice of hearing shall be by personal service or registered mail and require

such party or parties to appear before the Governing Body to show cause why such condition should not be found to be a public nuisance and remedied. A return of service shall be required by the Governing Body. Such notice shall be given not less than five (5) days prior to the time of hearing; provided that whenever the owner, lessee, occupant, or mortgagee of such real estate is a non-resident or cannot be found in the State, then the Municipal Clerk shall publish in a newspaper of general circulation in the Municipality such notice of hearing for two (2) consecutive weeks, the last publication to be at least one (1) week prior to the date set for the hearing. Upon the date fixed for the hearing and pursuant to notice, the Governing Body shall hear all objections made by interested parties and shall hear evidence submitted by the Board of Health. If, after consideration of all of the evidence, the Governing Body shall find that the said condition is a public nuisance, it shall, by resolution, order and direct the owner, occupant, lessee, or mortgagee to remedy the said public nuisance at once; provided, the party or parties may appeal such decision to the appropriate court for adjudication, during which proceedings the decision of the Governing Body shall be stayed. Should the owner or occupant refuse or neglect to promptly comply with the order of the Governing Body, the Governing Body shall proceed to cause the abatement of the described public nuisance.

In case any owner of any building or structure shall fail, neglect or refuse to comply with notice by or on behalf of the City to repair, rehabilitate, or demolish and remove a building or structure which is an unsafe building or structure, or to abate a public nuisance, the City may proceed with the work specified in the notice to the property owner. A statement of the cost of such work shall be transmitted to the Governing Body, which is authorized to and which shall levy the cost as a special assessment against the land. Such special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments. (*Ref. 18-1720, 18-1722 RS Neb.*) (*Amended by Ord. No. 401, 4/2/85*)

§4-204 NUISANCES; JURISDICTION. The Mayor and Chief of Police of the Municipality are directed to enforce this Municipal Code against all nuisances. The jurisdiction of the Mayor, Chief of Police, and court shall extend to, and the territorial application of this Chapter shall include, all territory adjacent to the limits of the Municipality within two (2) miles thereof and all territory within the corporate limits. (*Ref. 18-1720 RS Neb.*)

§4-205 NUISANCES; ADJOINING LAND OWNERS; INTERVENTION BEFORE TRIAL. In cases of appeal from an action of the Governing Body condemning real property as a nuisance or as dangerous under the police powers of the Municipality, the owners of the adjoining property may intervene in the action at any time before trial. (*Ref. 19-710 RS Neb.*) (*Ord. No.411, 11/5/85*)

Article 3. Penal Provisions

§4-301 VIOLATION; PENALTY. (A) Any person, or any person's agent or servant, who violates any of the provisions of this municipal code, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500.00. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

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

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (*Ref. Neb. RS 17-505, 18-1720*)

Chapter 5

TRAFFIC

Article 1. Municipal Traffic Regulations

§5-101 DEFINITIONS. The words and phrases used in this Chapter pertaining to motor vehicles and traffic regulations shall be construed as defined in Chapter 39 of the Reissued Revised Statutes of Nebraska, 1943, as now existing or hereafter amended. If not defined in the designated statute, the word or phrase shall have its common meaning. *(Ref. 39-602 RS Neb.)*

§5-102 TRUCK ROUTES. The Governing Body may, by resolution, designate certain streets in the Municipality that trucks shall travel upon, and it shall be unlawful for persons operating such trucks to travel on other streets than those designated for trucks; unless to pick up or deliver goods, wares, or merchandise, and in that event, the operator of such truck shall return to such truck routes as soon as possible in traveling through or about the Municipality. The Governing Body shall cause notices to be posted, or shall erect signs indicating the streets so designated as truck routes. *(Ref. 39-6,189 RS Neb.)*

§5-103 ONE-WAY TRAFFIC. The Governing Body may, by resolution, provide for one-way travel in any street or alley located in the Municipality and shall provide for appropriate signs and markings when said streets have been so designated by resolution. *(Ref. 39-697 RS Neb.)*

§3-104 TRAFFIC LANES; DESIGNATION. The Governing Body may, by resolution, mark lanes for traffic on street pavements at such places as it may deem advisable. *(Ref. 39- 697 RS Neb.)*

§5-105 ARTERIAL STREETS; DESIGNATION. The Governing Body may, by resolution, designate any street or portion thereof as an arterial street and shall provide for appropriate signs or markings when such street has been so designated. *(Ref. 39-697 RS Neb.)*

§5-106 TURNING; "U" TURNS. No vehicle shall be turned so as to proceed in the opposite direction except at a street intersection. No vehicle shall be turned so as to proceed in the opposite direction at any intersection where an automatic signal is in operation or where a sign is posted indicating that U-turns are prohibited. *(Ref. 39-651. 39-697 RS Neb.)*

§5-107 TURNING; GENERALLY. Vehicles turning to the right into an intersecting street shall approach such intersection in the lane of traffic nearest to the right hand side

of the highway, and must turn the corner as near the right hand curb as possible to keep between the curb to the right and the center of the intersection of the two (2) streets. The driver of a vehicle intending to turn to the left shall approach such center line of the highway, and in turning, shall pass as near as possible to the center of the intersection, passing as closely as practicable to the right thereof before turning such vehicle to the left. For the purposes of this Section, the center of the intersection shall mean the meeting point of the medial lines of the highways intersecting one another. (Ref. 39-650 RS Neb.)

§5-108 POSITION OF VEHICLE ON HIGHWAY; GENERALLY. Upon all highways of sufficient width, one-way streets excepted, the driver of a vehicle shall drive the same on the right half of the roadway. In passing or meeting other vehicles, drivers shall give each other at least one half (1/2) of the main traveled portion of the roadway. (Ref. 39-620 RS Neb.)

§5-109 CROSSWALKS. The Governing Body may, by resolution, establish and maintain, by appropriate devices, markers, or lines upon the street, crosswalks, at intersections where there is particular danger to pedestrians crossing the street, and at such other places as they may deem necessary. (Ref. 39-697 RS Neb.)

§5-110 SIGNS, SIGNALS. The Governing Body may, by resolution, provide for the placing of stop signs or other signs, signals, standards, or mechanical devices in any street or alley under the Municipality's jurisdiction for the purpose of regulating or prohibiting traffic thereon. Such resolution shall describe the portion of the street or alley wherein traffic is to be regulated or prohibited, the regulation or prohibition, the location where such sign, signal, standard or mechanical device shall be placed, and the hours when such regulation or prohibition shall be effective. It shall be unlawful for any person to fail, neglect, or refuse to comply with such regulation or prohibition. (Ref. 39-609 thru 39-611, 39-697 RS Neb.)

§5-111 STOP SIGNS. Every person operating any vehicle shall, upon approaching any stop sign erected in accordance with the resolution prescribed heretofore, cause such vehicle to come to a complete stop before entering or crossing any street, highway, or railroad crossing. The vehicle operator shall stop at a marked stop line, or, if there is no stop line, before entering the crosswalk; but if neither is indicated, then as near the right-of-way line of the intersecting roadway as possible. (Ref. 39-609 thru 39-611, 39-697 RS Neb.)

§5-112 SCHOOL CROSSING ZONES; DESIGNATION. (1) *Section 60-682.01 RS Neb.* provides fines for operating a motor vehicle in violation of authorized speed limits and states that the fines are doubled if the violation occurs within a school crossing zone.

(2) *Section 60-6,134.01 RS Neb.* makes it unlawful for a person operating a motor vehicle to overtake and pass another vehicle in a school crossing zone in which

the roadway has only one lane of traffic in each direction and provides fines for violation of that prohibition.

(3) The Governing Body may, by resolution, designate to the public any area of a roadway, other than a freeway, as a school crossing zone through the use of a sign or traffic control device as specified by the Governing Body in conformity with the Manual on Uniform Traffic Control Devices. Any school crossing zone so designated starts at the location of the first sign or traffic control device identifying the school crossing zone and continues until a sign or traffic control device indicates that the school crossing zone has ended. (*Ref. 60-658.01 RS Neb.*)

Article 2. Prohibitions and Enforcement

§5-201 LITTERING. It shall be unlawful for any person to drop or cause to be left upon any municipal highway, street, or alley, except at places designated by the Governing Body, any rubbish, debris, or waste; and any person so doing shall be guilty of littering. *(Ref. 39-683 RS Neb.)*

§5-202 SIGNS; DEFACING OR INTERFERING WITH. It shall be unlawful for any person to willfully deface, injure, remove, obstruct or interfere with any official traffic sign or signal. *(Ref. 39-619 RS Neb.)*

§5-203 SIGNS; UNAUTHORIZED DISPLAY. It shall be unlawful for any person to maintain or display upon or in view of any street, any unofficial sign, signal, or device which purports to be, is an imitation of, or resembles an official traffic sign or signal which attempts to direct the movement of traffic or which hides from view or interferes with the effectiveness of any official sign or signal. Every such prohibited sign, signal, or device is hereby declared to be a public nuisance, and any police officer is hereby empowered to remove the same or cause it to be removed without notice. *(Ref. 39-618 RS Neb.)*

§5-204 SPEED LIMITS; GENERALLY. No person shall operate a motor vehicle on any street, alley, or other place at a rate of speed greater than twenty-five (25) miles per hour within the residential district and twenty (20) miles per hour within the business district, unless a different rate of speed is specifically permitted by ordinance. In no instance shall a person drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions. Where a different maximum speed is set by ordinance, appropriate signs shall be posted. *(Ref. 39-662, 39-663 RS Neb.)*

§5-205 SPEED LIMITS; SPECIFICALLY. The following speed limits have been set by ordinance and appropriate signs have been posted. It shall be unlawful to operate motor vehicle at speeds greater than posted on the following streets: Main Street from Eighth (8th) Street west to Sixth (6th) Street shall be 25 MPH, and from Sixth (6th) Street west to the western-most gate of the Lyons City Park, located on the west edge of the City of Lyons, 20 MPH, and from Burlington Northern Railway to U.S. Highway No.77, 35 MPH.

Diamond Street from Second (2nd) Street to U.S. Highway 77, 25 MPH.

First (1st) Street from Main Street to Pearl Street, 15 MPH.

Fifth (5th) Street and Sixth (6th) Street from Lincoln Street to Diamond Street, between the hours of eight (8:00) o'clock a.m. to five (5:00) o'clock p.m. during the school year, 15 MPH. *(Amended by Ord. Nos. 361, 3/2/76; 393, 8/1/83; 426,7/7/87; 621, 5/7/2002)*

§5-206 DRIVING UNDER THE INFLUENCE.

(A) It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:

(1) While under the influence of alcoholic liquor or any drug;

(2) When such person has a concentration of 0.08 of one gram or more by weight of alcohol per 100 milliliters of his or her blood; or

(3) When such person has a concentration of 0.08 of one gram or more by weight of alcohol per 210 liters of his or her breath. (*Neb. RS 60-6,196(1)*)

(B) Any person who operates or has in his or her actual physical control a motor vehicle in this Municipality shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine. (*Neb. RS 60-6,197(1)*)

(C) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of the Municipality may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this Municipality while under the influence of alcoholic liquor or drugs in violation of division (A) of this section. (*Neb. RS 60-6, 197 (2)*)

(D) Any peace officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of this Municipality may require any person who operates or has in his or her actual physical control a motor vehicle in this Municipality to submit to a preliminary test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that such person has alcohol in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of division (A) of this section shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of an offense. (*Neb. RS 60-6, 197 (3)*)

(E) Any person arrested as provided in this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of division (A) of this section, or if any person refuses to submit to such test or tests required pursuant to this section, the person shall be subject to the administrative revocation procedures provided in *Neb. RS 60-6,205 to 60-6,208* and shall be guilty of an offense. (*Neb. RS 60-6, 197 (4)*)

(F) Upon the conviction of any person for violation of this section, there shall be assessed as part of the court costs the fee charged by any physician or any agency administering tests pursuant to a permit issued in accordance with *Neb. RS 60-6, 201* for the test administered and the analysis thereof if such test was actually made. (*Neb. RS 60-6, 203*)

§5-207 RECKLESS DRIVING. Any person who drives a 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, and as such, shall be punished as provided by statute. (*Ref. 39-669.01, 39-669.02, 39-669.26 RS Neb.*)

§5-208 RECKLESS DRIVING; WILLFUL. Any person who drives a motor vehicle in such a manner as to indicate a willful disregard for the safety of persons or property shall be deemed to be guilty of willful, reckless driving and shall be punished as provided by statute. (*Ref. 39-669.03 thru 39-669.06 RS Neb.*)

§5-209 CARELESS DRIVING. Any person who operates a vehicle in a manner so as to endanger or be likely to endanger any person or property shall be guilty of careless driving and shall be punished as provided by Statute. (*Ref. 39-669, 39-7, 128 RS Neb.*)

§5-210 NEGLIGENT DRIVING. Any person who operates a motor vehicle in such a manner as to indicate lack of ordinary care and caution that a person of ordinary prudence would use under like circumstances shall be deemed guilty of negligent driving. (*Ref. 39-669.26 RS Neb.*)

§5-211 BACKING. It shall be unlawful for any person to back a motor vehicle on the Municipal streets except to park in or to remove the vehicle from a permitted parking position, to move the vehicle from a driveway, or to back to the curb for unloading where such unloading is permitted; provided, a vehicle shall be backed only when such movement can be made in safety and in no case shall the distance of the backing exceed one and one half (1-1/2) lengths of the vehicle.

§5--212 UNNECESSARY STOPPING. It shall be unlawful for any person to stop any vehicle on any public street or alley other than in permitted parking areas, except when such a stop is necessary for emergency situations to comply with traffic control devices and regulations, or to yield the right-of-way to pedestrians or to other vehicles; provided, vehicles shall be allowed to stop to load or unload property or passengers if said vehicle is stopped at the curb or as close as possible so as not to impede traffic.

§5-213 RADAR DEVICE; PROHIBITED. It shall be unlawful for any person to operate or possess any radar transmission device while operating a motor vehicle on any road, street, highway, or interstate highway in this Municipality; except that this Section shall not apply to any such device which has been lawfully licensed by the Federal

Communications Commission or is being used by law enforcement officials in their official duties.

For purposes of this Section unless the context otherwise requires:

1. Radar transmission device shall mean any mechanism designed to interfere with the reception of radio microwaves in the electromagnetic spectrum, which microwaves, commonly referred to as radar, are employed by law enforcement officials to measure the speed of motor vehicles:

2. Possession shall mean to have a device defined above in a motor vehicle if such device is not:

(a) Disconnected from all power sources; and

(b) In the rear trunk, which shall include the spare tire compartment or any other compartment which is not accessible to the driver or any other person in the vehicle while such vehicle is in operation. If no such compartment exists in a vehicle, then such device must be disconnected from all power sources and be placed in a position not readily accessible to the driver or any other person in the vehicle.

3. Transceiver shall mean an apparatus contained in a single housing, functioning alternately as a radio transmitter and receiver. (*Ref. 39-6.205 thru 39-6.207 RS Neb.*)

§5-214 SPEED; ELECTRONIC DETECTION. Determinations made regarding the speed of any motor vehicle, based upon the visual observation of any law enforcement officer, may be corroborated by the use of radio microwaves or other electronic device. The results of such radio microwave or other electronic speed measurement may be accepted as competent evidence of the speed of such motor vehicle in any court or legal proceeding when the speed of the vehicle is at issue. Before the Municipality may offer in evidence the results of such radio microwave or other electronic speed measurement for the purpose of establishing the speed of any motor vehicle, the Municipality shall prove the following:

1. The measuring device was in proper working order at the time of conducting the measurement;

2. The measuring device was being operated in such a manner and under such conditions so as to allow a minimum possibility of distortion or outside interference;

3. The person operating such device and interpreting such measurement was qualified by training and experience to properly test and operate the device; and

4. The operator conducted external tests of accuracy upon the measuring device within a reasonable time, both prior to and subsequent to an arrest being made, and the measuring device was found to be in proper working order.

The driver of any such motor vehicle may be arrested without a warrant under the authority herein granted if the arresting officer is in uniform or displays his or her badge of authority; provided, that such officer shall have observed the recording of the speed of such motor vehicle by the radio microwaves or other electronic device, or had

received a radio message from the officer who observed the speed of the motor vehicle recorded by the radio microwaves or other electronic device. In the event of an arrest based on such a message, such radio message must have been dispatched immediately after the speed of the motor vehicle had been recorded, and must include a description of the vehicle and the recorded speed. (*Ref. 39-664 RS Neb.*)

§5-215 CHILD PASSENGER RESTRAINT SYSTEM. 1. Any person driving any motor vehicle which has or is required to have seat safety belts, shall ensure that all children under the age of four (4) or weighing less than forty (40) pounds being transported in such vehicle, use a child restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the Highway Safety Administration as of the effective date of this act and which is correctly installed in such vehicle; and all children weighing forty (40) pounds or more or at least four (4) years of age and younger than five (5) years of age being transported in such vehicle, use a seat safety belt. Provided, however, this section does not apply to taxicabs, mopeds, motorcycles, and any other vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with a seat safety belt.

2. Whenever any physician licensed to practice medicine in Nebraska, determines through accepted medical procedures that use of a child passenger restraint system by a particular child would be harmful by reason of the child's weight, physical condition or other medical reason, the provisions of subsection 1 of this section shall be waived. The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.

3. The drivers of authorized emergency vehicles as defined in *39-602 RS Neb.* shall not be subject to the requirements of subsection 1 of this section when operating such authorized emergency vehicles pursuant to their employment.

4. The Department of Motor Vehicles shall develop and implement an ongoing public information and education program regarding the use of child passenger restraint systems and seat safety belts. (*Ref. 39-6,103.01 RS Neb.*) (*Ord. No.410. 11/5/85*)(*Amended by Ord. No. 465, 2/5/91*)

§5-216 SCHOOL CROSSING ZONES; OVERTAKING AND PASSING. A person operating a motor vehicle may not overtake and pass another vehicle in any school crossing zone designated by the Governing Body in which the roadway has only one lane of traffic in each direction. (*Ref. 60-6, 134.01 RS Neb.*)

§5-217 ACCIDENT; DRIVER'S DUTIES. (A) (1) Except as provided in subsection (2) of this division, the driver of any vehicle involved in an accident either upon a public highway, private road, or private drive, resulting in damage to property, shall:

- (a) Immediately stop such vehicle at the scene of such accident;
- and

(b) Give his or her name, address, telephone number, and operator's license number to the owner of the property struck or the driver or occupants of any other vehicle involved in the collision.

(2) The driver of any vehicle involved in an accident either upon a public highway, private road, or private drive, resulting in damage to an unattended vehicle or property, shall immediately stop such vehicle and leave in a conspicuous place in or on the unattended vehicle or property a written notice containing the information required by subsection (1) of this division. In addition, such driver shall, without unnecessary delay, report the collision, by telephone or otherwise, to an appropriate peace officer. (*Neb. RS 60-696*)

(B) The driver of any vehicle involved in an accident upon either a public highway, private road, or private drive, resulting in injury or death to any person, shall:

(1) Immediately stop such vehicle at the scene of such accident;

(2) Give his or her name and address and the registration number of the vehicle and exhibit his or her operator's license to the person struck or the driver or occupants of any vehicle collided with; and

(3) Render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person. (*Neb. RS 60-697*)

Article 3. Operator and Vehicle Qualifications

§5-301 REGISTRATION; OPERATOR AND VEHICLE LICENSE. 1. No person shall operate a motor vehicle upon any street, alley, or public highway without having first registered the same in accordance with *Chapter 60, Article 3, RS Neb.*, except as provided in this section. A person may operate a motor vehicle without registration for a period not to exceed thirty (30) days from the date of purchase. Upon registration, such vehicle shall have the required number plates displayed upon said vehicle in the manner and places provided for by section *60-323 RS Neb.*

2. No person shall operate a motor vehicle upon any street, alley, or public highway without having obtained a motor vehicle operator's license in accordance with *chapter 60, Article 4, RS Neb.* It shall be unlawful for any person to operate a motor vehicle upon any street, alley, or public highway during the period that his or her operator's license has been revoked or canceled. (*Ref. 60-4, 186, 60-302, 60-320, 60-32.01, 60-323 RS Neb.*) (*Amended by Ord. No. 486, 8/24/93*)

§5-302 VEHICLE; MUFFLER. Every motor vehicle operated within this Municipality shall be provided with a muffler in good working order to prevent excessive or unusual noise or smoke. It shall be unlawful to use a "muffler cut-out" on any motor vehicle upon any streets; provided, the provisions of this section shall not apply to authorized emergency vehicles. (*Ref. 60-6, 137 RS Neb.*)

§5-303 LOADS; PROJECTING. When any vehicle shall be loaded in such a manner that any portion of the load extends more than four (4) feet beyond the rear of the bed or the body of such vehicle, a red flag shall be carried by day, and red light after sunset at the extreme rear end of such load. (*Ref 60-6.243 RS Neb.*)

Article 4. Recreational Vehicles and Horses

§5-401 BICYCLE; OPERATION. Every person riding or propelling a bicycle upon any street or other public highway shall observe all traffic rules and regulations applicable thereto; and shall turn only at intersections, signal for all turns, ride at the right-hand side of the street or highway, pass to the left when passing overtaken vehicles and individuals that are slower moving, and shall pass vehicles to the right when meeting. No person shall ride a bicycle on the sidewalks bordering Main Street from First (1st) Street to Fourth (4th) Street. (*Ref 60-6.315.60-6.317, 60-6.318 RS Neb.*)

§5-402 MINIBIKES; UNLAWFUL OPERATION. It shall be unlawful for any person to operate a minibike upon any street or highway within the corporate limits of the Municipality. For purposes of this Article, "minibike" shall mean a two-wheel motor vehicle which has a total wheel and tire diameter of less than fourteen (14") inches, or an engine rated capacity of less than forty-five (45) cubic centimeters displacement, or any other two-wheel motor vehicle primarily designed by the manufacturer for off-road use only. (*Ref. 60-2101.01, 60-2107 RS Neb.*)

§5-403 MOTORCYCLES AND MINIBIKES; PROHIBITED ON PUBLIC AREAS. It shall be unlawful to operate any minibike, as defined in this Article, or motorcycle on any public sidewalks, parks or playgrounds, or baseball diamonds within the Municipality: and it shall be unlawful to operate any minibike or motorcycle on any street or path in any park, playground, or baseball diamond within the Municipality between the hours of eleven (11:00) o'clock p.m. and eight (8:00) o'clock a.m. of the following day. Any person violating this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred (\$100.00) dollars for each offense. (*Amended by Ord. No.377, 7/10/79*)

§5-404 SNOWMOBILES; UNLAWFUL ACTS. It shall be deemed a misdemeanor for any person to allow a snowmobile, either owned or operated by him, to be operated:

1. Within the congested area of the Municipality unless weather conditions are such that it provides the only practicable method of safe vehicular travel, or said snowmobile is engaged in responding to an emergency; provided, snowmobiles may be ridden on established trails within the Municipality, if said trails have first been approved by the Governing Body;
2. At a rate of speed greater than reasonable or proper under the surrounding circumstances;
3. In a careless, reckless or negligent manner so as to endanger person or property;
4. Without a lighted headlight and taillight when such would be required by conditions;
5. In any tree nursery or planting in a manner which damages or destroys growing stock; or

6. Upon any private lands without first having obtained permission of the owner, lessee or operator of such lands. (*Ref. 60-2013, 60-2015 RS Neb.*)

§5-405 HORSES; PROHIBITED ON PUBLIC AREAS. It shall be unlawful for any person to ride horses upon the public sidewalks, parks, playgrounds, or baseball diamonds within the Municipality; provided, that horses may be ridden in such areas on trails if said trails have first been approved by the Governing Body.

§5-406 MOTORIZED WHEELCHAIRS AND GOLF CARTS. It shall be lawful for anyone to operate a motorized wheelchair on the sidewalks of the City of Lyons providing they do not exceed a speed of two (2) MPH while being operated on the sidewalks. It shall also be lawful for any person to operate a motorized golf cart on the streets of the City of Lyons during daylight hours. Operators of motorized golf carts shall be subject to all the rules and regulations applicable to any other motorized vehicle. (*Ord. No 622, 5/7/02*)

Article 5. Parking

§5-501 PARKING; GENERALLY. No person shall park any vehicle, or approach the curb with a vehicle, except when headed in the direction of the traffic. Vehicles, when parked, shall stand parallel with and adjacent to the curb or edge of the roadway, in such manner as to have both right wheels within twelve (12") inches of the curb or edge of the roadway, and so as to leave at least four (4') feet between the vehicle so parked and any other parked vehicles, except where the Governing Body designates that vehicles shall be parked at an angle so as to have the front right wheel at the curb or edge of the roadway. Where stalls are designated either on the curb or pavement, vehicles must all be parked within such stalls. *(Ref. 39-673, 39-697 RS Neb.)*

§5-502 PARKING; DESIGNATION. The Governing Body may, by resolution, designate any street, or portion thereof, where vehicles shall be parked parallel with and adjacent to the curb or edge of roadway or at an angle so as to have the right front wheel at the curb. *(Ref. 39-673, 39-697 RS Neb.)*

§5-503 PARKING; AREAS. The Governing Body may, by resolution, set aside any street, alley, public way, or portion thereof where the parking of a particular kind or class of vehicle shall be prohibited, or where the parking of any vehicle shall be prohibited. No vehicle prohibited from parking thereon shall stand or be parked adjacent to the curb of said street, alley, public way, or portion thereof, longer than a period of time necessary to load and unload freight or passengers. *(Ref. 39-697 RS Neb.)*

§5-504 PARKING; OBSTRUCTING ALLEY. No vehicle while parked shall have any portion thereof projecting into any alley entrance. *(Ref. 39-697 RS Neb.)*

§5-505 PARKING; ALLEYS. No vehicle shall be parked in any alley, except for the purpose of loading or unloading during the time necessary to load or unload, which shall not exceed the maximum limit of one half (1/2) hour. Every vehicle, while loading or unloading in any alley, shall be parked in such manner as will cause the least obstruction possible to traffic in such alley. *(Ref. 39-697 RS Neb.)*

§5-506 PARKING; TRUCKS. It shall be unlawful for any person to park a truck upon any street in the Municipality for a period longer than one (1) hour at one time, or for more than four (4) hours in any twenty-four (24) hours; provided, that cars with a pick-up body with capacity not to exceed three quarter ton or whose length does not exceed twenty (20') feet are exempted.

§5-507 PARKING; TRUCKS ON MAIN STREET. It shall be unlawful for any person to park a truck with three quarter ton or more capacity anywhere upon Main Street for a longer period than fifteen (15) minutes at one time, or more than sixty (60) minutes in any twenty-four (24) hours, to load or unload, expeditiously, their contents; provided,

that cars with a pick-up body weight capacity not to exceed three quarter ton or whose length does not exceed twenty (20') feet are exempted.

§5-508 PARKING; MACHINERY. It shall be unlawful for any person to park any machinery, whether motor-propelled or not, on the streets of the Municipality for a period longer than thirty (30) minutes at one time and any twenty-four (24) hour period; provided, machinery shall not mean trucks and automobiles.

§5-509 PARKING; MAXIMUM LIMIT. It shall be unlawful for any person to park and leave unattended any automobile upon the streets or alleys of the Municipality for four (4) consecutive days. The police officers and street employees are hereby empowered to remove the same, if the operator or owner fails promptly to remove the same upon being notified to do so, and the expense of such owner or operator of ten (\$10.00) dollars, together with any additional storage charges thereon, which shall be paid by such operator or owner before the automobile or truck shall be delivered and returned to such owner or operator. The police officers and street employees are hereby empowered to remove an abandoned vehicle found upon the streets or alleys of said Municipality.

§5-510 PARKING; CURBS PAINTED. No person, firm, or corporation shall paint the curb of any street, or in any manner set aside, or attempt to prevent the parking of vehicles in any street, or part thereof, except at such places where the parking of vehicles is prohibited by the provisions of this Article. The marking or designating of portions of streets or alleys where the parking of vehicles is prohibited or limited shall be done only by the Municipality through its proper officers, at the direction of the Governing Body. *(Ref. 39-697 RS Neb.)*

§5-511 PARKING; REPAIR. No person shall adjust or repair any automobile or motorcycle, or race the motor of same, while standing on the public streets or alleys of this Municipality, excepting in case of breakdown or other emergency requiring same. No person or employee connected with a garage or repair shop shall use sidewalks, streets, or alleys in the vicinity of such garage or shop for the purpose of working on automobiles or vehicles of any description. *(Ref. 39-697 RS Neb.)*

§5-512 PARKING; TIME LIMIT. The Governing Body may, by resolution, entirely prohibit or fix a time limit for the parking and stopping of vehicles on any street, streets, or district designated by such resolution, and the parking or stopping of any vehicle in any such street, streets, or district for a period of time longer than fixed in such resolution, shall constitute a violation of this Article. *(Ref. 39-697 RS Neb.)*

§5-513 PARKING; SNOW REMOVAL AND MAINTENANCE. The Municipal Clerk may order any street or alley, or portion thereof, vacated for weather emergencies or street maintenance. Notice shall be given by personally notifying the owner or operator

of a vehicle parked on such street or alley or by posting appropriate signs along such streets or alleys. Such signs shall be posted not less than four (4) hours prior to the time that the vacation order is to be effective. Any person parking a vehicle in violation of this section shall be subject to the penalties provided in this Chapter, and such vehicle may be removed and parked, under the supervision of the Municipal Police, to a suitable nearby location without further notice to the owner or operator of such vehicle. (*Ref 17-557 RS Neb.*)

§5-514 PARKING; PRIVATE LOTS. Any person parking a motor vehicle in a properly posted, restricted parking lot without the consent of the owner or tenant authorized to give permission shall be guilty of an infraction and the vehicle shall be subject to being towed away at the request of such lot owner or tenant. Any person found guilty under this section shall be subject to the penalties provided for infractions. If the identity of the operator of a motor vehicle in violation of this section cannot be determined, the owner or person in whose name such vehicle is registered shall be held prima facie responsible for such infraction. When any law enforcement officer observes or is advised that a motor vehicle may be in violation of this section, he or she shall make a determination as to whether a violation has in fact occurred, and if so, shall personally serve or attach to such motor vehicle a citation directed to the owner or operator of such vehicle, which shall set forth the nature of the violation. Any person who refuses to sign the citation or otherwise comply with the command of the citation shall be punished as provided by *Section 29-426 RS Neb.*

Signs designating a restricted parking lot shall be readily visible and shall state the purpose or purposes for parking on the restricted parking lot, state the hours for restricted parking, and state who to contact for information regarding a towed vehicle. (*Ref 60-2401, 60-2402 RS Neb.*)

§5-515 PARKING; REMOVAL OF ILLEGALLY PARKED VEHICLES. Whenever any Police Officer shall find a vehicle standing upon a street or alley in violation of any of the provisions of this Article, such individual may remove or have such vehicle removed, or require the driver or other person in charge of the vehicle to move such vehicle to a position off the roadway of such street or alley or from such street or alley.

The owner or other person lawfully entitled to the possession of such vehicle may be charged with the reasonable cost for such removal and storage, payable before such vehicle is released. Any such towing or storage fee shall become a security interest in the vehicle prior to all other claims. This fee shall be in addition to any other fees or penalties owed the Municipality for such vehicle. (*Ref 39-671, 39-697 RS Neb.*)

§5-516 PARKING; "NO PARKING" ZONES DESIGNATED.

(1) There shall be no parking of vehicles allowed on either side of 5th Street between Main Street and Diamond Street.

(2) There shall be no parking of vehicles allowed on the South side of Lincoln Street between 2nd Street and 3rd Street.

(3) There shall be no parking of vehicles allowed on either side of 2nd Street from State Street to Diamond Street.

(4) There shall be no parking of vehicles allowed on either side of Diamond Street.

(5) There shall be no parking of vehicles allowed on either side of 6th Street from Main Street to Diamond Street.

(6) There shall be no parking of vehicles allowed on the South side of Crystal Street.

(7) There shall be no parking of vehicles allowed on the South side of Custer Street between 3rd Street and 5th Street and 7th Street and 8th Street.

(8) There shall be no parking of vehicles allowed on the South side of Everett Street.

(9) There shall be no parking of vehicles allowed on the South side of State Street.

(10) There shall be no parking of semi-trailer trucks allowed on either side of 2nd Street and 3rd Street between Main Street and State Street.

(11) There shall be no parking of vehicles allowed on west side of South 3rd Street from State Street to Diamond Street.

(Amended by Ord. No. 616, 11/6/01; Ord. No. 617, 1/8/02; Ord. No. 628, 3/4/03)(Amended by Ord.No.676, 05/05/2009)

§5-517 PARKING; HANDICAPPED OR DISABLED PERSONS; DESIGNATION OF ON-STREET PARKING SPACES; DISPLAY OF PERMITS.

(A) The Governing Body may designate parking spaces, including access aisles, for the exclusive use of (1) handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to handicapped or disabled person pursuant to *Neb. RS 60-311.14*, (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 Municipality, whose motor vehicles display the permit specified in *Neb. RS 18-1739*, and (4) such other motor vehicles, as certified by the Municipality, which display such permit. All such permits shall be displayed by hanging the permit from the motor vehicle's rearview mirror so as to be clearly visible through the front windshield. The permit shall be displayed on the dashboard only when there is no rearview mirror.

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

§5-518 PARKING; HANDICAPPED OR DISABLED PERSONS; DEFINITIONS.

For the purposes of this Article:

(A) Access aisle means a space adjacent to a handicapped parking space or passenger loading zone which is constructed and designed in compliance with the federal Americans with Disabilities Act of 1990 and the federal rules and regulations adopted and promulgated in response to the act. (*Neb. RS 18-1736*)

(B) (1) Handicapped or disabled person means any individual with a severe visual or physical impairment which limits personal mobility and results in an inability to travel unassisted more than 200 feet without the use of a wheelchair, crutch, walker, or prosthetic, orthotic, or other assistant device, any individual whose personal mobility is limited as a result of respiratory problems, any individual who has a cardiac condition to the extent that his or her functional limitations are classified in severity as being Class III or Class IV, according to standards set by the American Heart Association, and any individual who has lost all or substantially all the use of one or more limbs;

(2) Temporarily handicapped or disabled person means any handicapped or disabled person whose personal mobility is expected to be limited in such manner for no longer than one year. (*Neb. RS 18-1738*)

(C) Handicapped parking infraction means the violation of any section of this Article regulating:

(1) The use of parking spaces, including access aisles, designated for use by handicapped or disabled persons;

(2) The unauthorized possession, use, or display of handicapped or disabled parking permits; or

(3) The obstruction of any wheelchair ramps constructed or created in accordance and in conformity with the federal Americans with Disabilities Act of 1990. (*Neb. RS 18-1741.01*)

§5-519 SEMI TRACTORS; PROHIBITED NOISES. It shall be unlawful for any person in any part of said Municipality to make, or cause to be made, loud or disturbing noises with any mechanical devices operated by compressed air and used for purposes of assisting braking on any semi-tractor, commonly referred to as jakebraking. The Governing Body shall cause notices to be posted, or erect signs indicating such prohibition. (*Ref. 60-680 RS Neb.*)

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this chapter, set forth at full length herein or incorporated by reference, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars for each offense. A new violation shall be deemed to have been committed every twenty-four hours of such failure to comply. (*Ord. No. 651, 3/1/2005*)

§5-520 PARKING; VIOLATIONS BUREAU. There is hereby created the Bureau of Violations within the powers and duties of the Office of the City Clerk. A copy of each citation issued for non-moving traffic violations shall be deposited with the City Clerk, whose duty it shall be to collect all fines and to maintain appropriate and accurate records of all such fines paid to him or her. Fines shall be payable at the Office of the City Clerk. Such fines shall be in the amount of ten dollars (\$10.00) for each violation if paid within thirty (30) days from the date of issuance. Should any such fine not be paid within the thirty (30) day period, the City Clerk shall ask the City Attorney, or such other attorney the City has designated to prosecute City offenses, to file a complaint in a court of competent jurisdiction. The fine for any such violations after thirty (30) days or after judgment is entered against the violator shall be fifty dollars (\$ 50.00) plus costs.
(Ord.No.687; 08/04/2009)

Article 6. All-Terrain Vehicles

§5-601 ALL-TERRAIN VEHICLES; DEFINED. As used in this Article unless the context otherwise requires, all-terrain vehicle shall mean any motorized off-highway vehicle which:

- (1) Is fifty (50") inches or less in width;
- (2) Has a dry weight of six hundred (600) pounds or less;
- (3) Travels on three (3) or more low pressure tires;
- (4) Is designed for operator use only with no passengers;
- (5) Has a seat or saddle designed to be straddled by the operator; and
- (6) Has handlebars or any other steering assembly for steering control.

All-terrain vehicles which have been modified to include additional equipment not required by Sections 5-603 and 5-604 of this Article shall not be registered under Chapter 60, Article 3. (*Ref. 60-2801 RS Neb.*)

§5-602 ALL-TERRAIN AND UTILITY-TYPE VEHICLES; OPERATION WITHIN THE CITY LIMITS PERMITTED; RESTRICTIONS.

1) For purposes of this section:

- a) All-terrain vehicle means any motorized off-highway vehicle with (i) is fifty inches or less in width, (ii) has a dry weight of nine hundred pounds or less, (iii) travels on three or more low-pressure tires, (iv) is designed for operator use, only, with no passengers, or is specifically designed by the original manufacturer for the operator and one passenger, (v) has a seat or saddle designed to be straddled by the operator; and (vi) has handlebars or any other steering assembly for steering control. (Neb. Rev. Stat. 60-6,355)
- b) Street or highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. (Neb. Rev. Stat. 60-624)
- c) (i) Utility-type vehicle means any motorized off-highway vehicle which (A) is not less than forty-eight inches, nor more than seventy-four inches in width, (B) is not more than one hundred thirty-five inches, including the bumper, in length, (C) has a dry weight of not less than nine hundred pounds, nor more than two thousand pounds, (D) travels on four or more low pressure tires, and (E) is equipped with a steering wheel and bench or bucket-type seating designed for at least two people to sit side-by-side.
(ii) Utility-type vehicle does not include golf carts or low-speed vehicles. (Neb. Rev. Stat. 60-6,355)

2) An all-terrain and a utility-type vehicle may be operated on streets and highways within the corporate limits of the city, only if the operator and the vehicle comply with the provisions of this section.

3) An all-terrain or a utility-type vehicle may be operated only between the hours of sunrise and sunset and shall not be operated at a speed in excess of thirty miles per hour, or the posted speed limit, whichever is lower. When operating an all-terrain or a utility-type vehicle, as authorized in subsection (2) of this section, the headlight and taillight of the vehicle shall be on and the vehicle shall be equipped with a bicycle safety flag which extends not less than five feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches and shall be day-glow in color.

4) Any person operating an all-terrain or a utility-type vehicle, as authorized in subsection (2) of this section shall:

- a) Be at least 18 years of age and possess a valid Class O operator's license or a farm permit as provided in Neb. Rev. Stat. 60-4,126; and,
- b) Have liability insurance coverage for the all-terrain vehicle or utility-type vehicle, while operating the all-terrain vehicle or utility-type vehicle on a street or highway with such coverage to be at least the minimum amount required to license a motor vehicle. The person operating the all-terrain vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof, within five days of such a request.
- c) No passenger may be less than seven years of age.

5) All-terrain vehicles and utility-type vehicles may be operated without complying with subsections (3) and (4) of this section, on streets and highways in parades which have been authorized by the State of Nebraska or any department, board, commission, or political subdivision of the state.

6) An all-terrain vehicle or a utility-type vehicle shall not be operated on any controlled-access highway with more than two marked traffic lanes, and the crossing of any controlled-access highway with more than two marked traffic lanes shall not be permitted. Subsections (2) through (4) and (7) of this section authorize and apply to operation of an all-terrain vehicle or a utility-type vehicle only on a street or highway other than a controlled access highway with more than two marked traffic lanes.

(7) Subject to subsection (6) of this section, the crossing of a street or highway shall be permitted in an all-terrain vehicle or a utility-type vehicle without complying with the subsections (3) and (4) of this section, only if:

- (a) The crossing is made at an angle of approximately ninety degrees to the direction of the street or highway and at a place where no obstruction prevents a quick and safe crossing;
- (b) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the street or highway;
- (c) The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;
- (d) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and,

- (e) Both the headlight and taillight of the vehicle are on when the crossing is made. (Neb. Rev. Stat. 60-6,356)
- (8) The City of Lyons requires that all all-terrain vehicles or utility-type vehicles shall display a permit issued by the City Clerk of the City of Lyons, before operating on city streets.
 - (a) The fee for such permit shall be (\$ 25.00). After the initial permit, Renewals shall be payable annually, by the 1st day of May;
 - (b) An identifying sticker shall be provided by the City annually, after payment of the fee and shall be displayed prominently on the all-terrain or utility-type vehicle, as proof of this permit;
 - (c) Said sticker will be obtained at the City Office after annual inspection of the vehicle and the owner's proof of insurance is reviewed, annually, by Lyons Police Department;
 - (d) This permit must be acquired by ALL all-terrain or utility-type vehicles operated on Lyons city streets, regardless of the jurisdiction in which the owner resides, be it Burt County or another jurisdiction.
 - (e) A fine for failure to acquire such permit will be \$ 25.00, in addition to any penalty for any other infraction.
 - (f) Proof of insurance and valid Class O license must be carried by the operator at all times of operation of the vehicle. A fine for failure to provide this documentation during operation will be \$ 25.00, in addition to any penalty for any other infraction. *(Amended by Ord.No.683; 03/04/2010; Amended by Ord.No.697; 10/02/2012)(Amended by Ord.No. 722; 10/06/2015)*

§5-603 ALL-TERRAIN VEHICLES; HEADLIGHTS. *(Repealed by Ord.No.683; 03/04/2010)*

§5-604 ALL-TERRAIN VEHICLES; EQUIPMENT, REQUIREMENT. Every all-terrain vehicle shall be equipped with:

1. A brake system maintained in good operating condition;
2. An adequate muffler system in good working condition; and
3. A United States Forest Service qualified spark arrester.

(Ref. 60-2804 RS Neb.)

§5-605 ALL-TERRAIN VEHICLES; PROMOTIONS. No person shall:

1. Equip the exhaust system of an all-terrain vehicle with a cutout, bypass, or similar device;
2. Operate an all-terrain vehicle with an exhaust system so modified; or
3. Operate an all-terrain vehicle with the spark arrester removed or modified except for use in closed-course competition events. *(Ref. 60-2805 RS Neb.)*

§5-606 ALL-TERRAIN VEHICLES; COMPETITION. All-terrain vehicles participating in competitive events may be exempted from Sections 5-603 to 5-605 of this Article at the discretion of the Director of Motor Vehicles. *(Ref. 60-2806 RS Neb.)*

§5-607 ALL-TERRAIN VEHICLES; ACCIDENT REPORT. If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle involved in the accident shall give notice of the accident in the same manner as provided in Section 60-505. (*Ref. 60-2807 RS Neb.*)

§5-608 ALL-TERRAIN VEHICLES; PENALTY. Any violation of Sections 5-602 to 5-607 of this Article which is also a violation under *Chapter 39 or Chapter 60 of RS Neb.* may be punished under the penalty provisions of such Chapter. (*Ref. 60-2808 RS Neb.*)

§5-609 ALL-TERRAIN VEHICLES; ENFORCEMENT. Any peace officer of the State or of any political subdivision, including conservation officers of the Game and Parks Commission, shall be charged with the enforcement of the provisions of Sections 5-602 to 5-607 of this Article.

Article 7. Penal Provision

§5-701 VIOLATION; PENALTY.

(A) Any person, or any person's agent or servant, who violates any of the provisions of this municipal code, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500.00. A new violation shall be deemed to have been committed every twenty- four (24) hours of such failure to comply.

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

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (*Ref. Neb. RS 17-505, 18-1720*)

Chapter 6

POLICE REGULATIONS

Article 1. Dogs

§6-101 DOGS; LICENSE. Any person who shall own, keep, or harbor a dog over the age of six (6) months within the Municipality shall, within thirty (30) days after acquisition of the said dog, acquire a license for each such dog annually by or before the first (1st) day of May of each year. The said tax shall be delinquent from and after May first (1st); provided, the possessor of any dog brought into or harbored within the corporate limits subsequent to May first (1st) of any year, shall be liable for the payment of the dog tax levied herein and such tax shall be delinquent if not paid within ten (10) days thereafter. Licenses shall be issued by the Municipal Clerk upon the payment of a license fee of three (\$3.00) dollars for each dog. Said license shall not be transferable and no refund will be allowed in case of death, sale, or other disposition of the licensed dog. The owner shall state at the time the application is made and upon printed forms provided for such purpose, his name and address and the name, breed, color, and sex of each dog owned and kept by him. A certificate that the dog has had a rabies shot, effective for the ensuing year of the license, shall be presented when the license is applied for and no license or tag shall be issued until the certificate is shown. (*Ref 17-526, 54-603, 71-4412 RS Neb.*)

§6-102 DOGS, LICENSE TAGS. Upon the payment of the license fee, the Municipal Clerk shall issue to the owner of a dog a license certificate and a metallic tag for each dog so licensed. The metallic tags shall be properly attached to the collar or harness of all dogs so licensed and shall entitle the owner to keep or harbor the said dog until the thirtieth (30th) day of April following such licensing. In the event that a license tag is lost and upon satisfactory evidence that the original plate or tag was issued in accordance with the provisions herein, the Municipal Clerk shall issue a duplicate or new tag for the balance of the year for which the license tax has been paid. All license fees and collections shall be immediately credited to the General Fund. It shall be the duty of the Municipal Clerk to issue tags of a suitable design that are different in appearance each year.

§6-103 DOGS; WRONGFUL LICENSING. It shall be unlawful for the owner, keeper, or harbinger of any dog to permit or allow such dog to wear any license, metallic tag or other Municipal identification than that issued by the Municipal Clerk for dogs.

§6-104 DOGS; OWNER DEFINED. Any person who shall harbor or permit any dog to be for ten (10) days or more in or about his or her house, store, or enclosure, or to remain to be fed, shall be deemed the owner and possessor of such dog and shall be deemed to be liable for all penalties herein prescribed. (*Ref. 54-606, 71-4401 RS Neb.*)

§6-105 DOGS; UNCOLLARED. All dogs found running at large upon the streets and public grounds of the Municipality without a collar or harness are hereby declared a public nuisance. Uncollared dogs found running at large shall be killed or impounded by the Municipal Police. (*Ref. 71-4408 RS Neb.*)

§6-106 DOGS; RUNNING AT LARGE. It shall be unlawful for the owner of any dog to allow such dog to run at large at any time within the corporate limits of the Municipality. "Running at Large" shall mean any dog found off the premise of the owner, and not under control of the owner or a responsible person, either by leash, cord, chain, wire, rope, cage or other suitable means of physical restraint.

Whenever any dog is seen and identified as running at large, and when said dog cannot be caught, the owner of any such dog shall be fined in accordance with the following schedule: first (1st) offense, five (\$5.00) dollars; second (2nd) offense, ten (\$10.00) dollars; third (3rd) and all subsequent offenses, fifteen (\$15.00) dollars.

§6-107 DOGS; IMPOUNDING. It shall be the duty of the Municipal Police to capture, secure, and remove in a humane manner to the Municipal Animal Shelter any dog violating any of the provisions of this Article. The dogs so impounded shall be treated in a humane manner and shall be provided with a sufficient supply of food and fresh water each day. Each impounded dog shall be kept and maintained at the pound for a period of not less than five (5) days after public notice has been given unless reclaimed earlier by the owner. Notice of impoundment of all animals, including any significant marks or identifications, shall be posted at the office of the Municipal Clerk within twenty-four (24) hours after impoundment as public notification of such impoundment. Any dog may be reclaimed by its owner during the period of impoundment by payment of a general impoundment fee and daily board fee as set by resolution of the Governing Body and on file in the office of the Municipal Clerk. The owner shall then be required to comply with the licensing and rabies vaccination requirements within seventy-two (72) hours after release. If the dog is not claimed at the end of required waiting period after public notice has been given, the Municipal Police may dispose of the dog in accordance with the applicable rules and regulations pertaining to the same; provided, that if , in the judgment of the Municipal Police, a suitable home can be found for any such dog within the Municipality, the said dog shall be turned over to that person and the new owner shall then be required to pay all fees and meet all licensing and vaccinating requirements provided in this Article. The Municipality shall acquire legal title to any unlicensed dog impounded in the Animal Shelter for a period longer than the required waiting period after giving notice. All dogs shall be destroyed and buried in the summary and humane manner as prescribed by the Board of Health unless a suitable home can be found for such dog. (*Ref. 17-548, 71-4408 RS Neb.*)

§6-108 DOGS; CAPTURE IMPOSSIBLE. The Municipal Police shall have the authority to kill any animals showing vicious tendencies, or characteristics of rabies which makes capture impossible because of the danger involved. *(Ref. 17-526 RS Neb.)*

§6-109 DOGS; VICIOUS. It shall be unlawful for any person to own, keep, or harbor any dog of a dangerous or ferocious disposition that habitually snaps or manifests a disposition to bite, without the said dog being securely held by a chain not over six (6') feet long. If any vicious or dangerous dog is otherwise held, confined, or allowed to run at large, the Municipal Police shall have the authority to put the dog to death. *(Ref. 17-526 RS Neb.)*

§6-110 DOGS; KILLING AND POISONING. It shall be unlawful to kill, or to administer, or cause to be administered, poison of any sort to a dog, or in any manner to injure, maim, or destroy, or in any manner attempt to injure, maim, or destroy any dog that is the property of another person, or to place any poison, or poisoned food where the same is accessible to a dog; provided, that this Section shall not apply to Municipal Policemen acting within their power and duty. *(Ref. 28-1002 RS Neb.)*

§6-111 DOGS; BARKING AND OFENSIVE. It shall be unlawful for any person to own, keep, or harbor any dog which by loud, continued, or frequent barking, howling, or yelping shall annoy or disturb any neighborhood, or person, or which habitually barks at or chases pedestrians, drivers, or owners of horses or vehicles while they are on any public sidewalks, streets, or alleys in the Municipality.

§6-112 DOGS; LIABILITY OF OWNER. It shall be unlawful for any person to allow a dog owned, kept, or harbored by him, or under his charge or control, to injure or destroy any real or personal property of any description belonging to another person. The owner or possessor of any such dog, in addition to the usual judgment upon conviction, may be made to be liable to the persons so injured in an amount equal to the value of the damage so sustained. *(Ref. 54-601, 54-602 RS Neb.)*

§6-113 DOGS; REMOVAL OF TAGS. It shall be unlawful for a person to remove or cause to be removed, the collar, harness, or metallic tag from any licensed dog without the consent of the owner, keeper, or possessor thereof. *(Ref. 17-526 RS Neb.)*

§6-114 DOGS; RABIES SUSPECTED. Any dog suspected of being afflicted with rabies, or any dog not vaccinated in accordance with the provisions of this Article which has bitten any person and caused an abrasion of the skin, shall be seized and impounded under the supervision of the Board of Health for a period of not less than ten (10) days . If upon examination by a veterinarian, the dog 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 dog, it shall be disposed of in accordance with the provisions herein. If the owner of the said dog has proof of vaccination, it shall be confined by the owner or some other

responsible person for a period of at least ten (10) days, at which time the dog shall be examined by a licensed veterinarian. If no signs of rabies are observed, the dog may be released from confinement. (Ref. 71-4406 RS Neb.)

§6-115 DOGS; PIT BULL PROHIBITION AND REGULATION.

A. Definitions.

1. "Owner," for purposes of this chapter, is defined as any person who owns, possesses, keeps, exercises control over, maintains, harbors, transports or sells a pit bull dog.
2. "Pit bull dog" shall mean:
 - a. The bull terrier breed of dogs;
 - b. The Staffordshire bull terrier breed of dogs;
 - c. The American pit bull terrier breed of dogs;
 - d. The American Staffordshire terrier breed of dogs;
 - e. Any dog which has the appearance and characteristics of being predominantly of the breeds of bull terrier, Staffordshire bull terrier, American pit bull terrier, American Staffordshire terrier, or any other breed commonly known as pit bulls, pit bull dogs or pit bull terriers, or a combination of any of these breeds.

B. Pit bull ownership prohibited. Subject to the following provisions pertaining to present ownership rights, it is hereby determined to be a nuisance and unlawful for any person to acquire by any means and thereafter own, keep, harbor, or in any way possess a pit bull dog within the jurisdiction of the City.

C. Restrictions on current ownership or possession of pit bull dogs. Any person who shall have owned, kept, harbored, or in any way possessed a pit bull dog within the jurisdiction of the City prior to November 1, 2008, shall be required to properly register the said pit bull dog with the City, and such person shall be subject to and abide by the requirements of this article while such pit bull dog remains within the jurisdiction of the City. Any such owner, keeper, harbinger, or possessor of a pit bull dog within the City shall comply with the following standards and requirements:

1. *Leash and muzzle.* No person shall permit a registered pit bull dog to go outside its kennel or pen unless such dog is securely leashed with a leash no longer than six feet in length. No person shall permit a pit bull dog to be kept on a chain, rope, or other type of leash outside its kennel or pen unless a person is in physical control of the said chain, rope or leash. Such dog shall not be leashed to inanimate objects such as trees, posts, buildings, etc. All pit bull dogs on a tether outside the animal's kennel must be muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals.
2. *Confinement.* Every registered pit bull dog shall be securely confined indoors or in a securely enclosed and locked pen or kennel, except when leashed and muzzled as provided herein. Such pen, kennel, or structure

must have (a) secure sides and a secure top attached to the sides; (b) a secure bottom or floor attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet. Each structure used to confine a registered pit bull dog must be locked with a key or combination lock when such animal is inside. All structures that are erected to house pit bull dogs must comply with all zoning and building regulations of the City. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition.

3. *Confinement indoors.* No pit bull dog may be kept on a porch, patio, or in any part of a house or structure that would allow the dog to exit such building of its own volition. In addition, no animal may be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the dog from exiting the structure.
4. *Signs.* All owners of registered pit bull dogs within the City shall display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog - Pit Bull." In addition, a similar sign shall be posted on the kennel or pen of such animal.
5. *Insurance.* All owners of registered pit bull dogs shall provide proof to the City of possession of liability insurance in a single-incident amount of \$ 500,000.00 for bodily injury or death of any person which may result from the ownership of such animal. Such insurance policy shall provide that no cancellation of the written policy may be made unless ten days' written notice is first given to the City.
6. *Identification photograph.* Every owner of a registered pit bull dog shall provide the City two color photographs of the registered animal in two different poses, showing its color and approximate size.
7. *Reporting and disposal requirements.* Every owner of a registered pit bull dog shall, within ten days of any of the following incidents, report in writing to the City as follows: removal of dog from the City; death of said dog; birth of offspring, and thereafter the offspring shall be disposed of or removed from the jurisdiction of the City within 45 days of their birth; new address if owner moves with the City.
8. *Sale or transfer of ownership prohibited.* No person shall sell, barter, or in any other way dispose of a pit bull dog registered with the City to any other person, provided that the owner of the registered pit bull dog may sell or otherwise dispose of it or its offspring to persons who do not reside within the City and do not permit such pit bull dog or offspring to be kept within the jurisdiction of the City. (Ord. 679; 09/01/2009)

Police Regulations

Article 2. Animals Generally

§6-201 ANIMALS; RUNNING AT LARGE. (A) It shall be unlawful for the owner, keeper, or harbinger of any animal, or any person having the charge, custody, or control thereof, to permit a horse, mule, cow, sheep, goat, swine, or other animal to be driven or run at large on any of the public ways and property, or upon the property of another, or to be tethered or staked out in such a manner so as to allow such animal to reach or pass into any public way. (*Ref. 17-547 RS Neb.*)

(B) It shall be unlawful for any person to keep or maintain within the corporate limits any poultry, chickens, turkeys, geese, or other fowl. (*Neb. RS 17-547*)

(C) No wild animals may be kept within the corporate limits except those animals kept for exhibition purposes by circuses and educational institutions.

§6-202 ANIMALS; CONTROLLED WITHIN MUNICIPALITY. It shall be unlawful for any person to keep or maintain within the corporate limits any horse, mule, sheep, cow, goat, swine or other livestock, or any poultry, chicken, turkeys, geese, or other fowl within one hundred fifty (150') feet of any dwelling unit within the corporate limits. (*Ref. 17-54 7RS Neb.*)

§6-203 ANIMALS; CRUELTY. No person shall cruelly or unnecessarily beat, overwork, or insufficiently shelter or feed any animal within the Municipal1ty. (*Ref. 28-552, 28-553 RS Neb.*)

§6-204 ANIMALS; KILLING AND INJURING. No person shall kill or injure any animal by the use of firearms, stones, clubs, poisons, or any other manner unless the animal is vicious or dangerous and cannot be captured without danger to the persons attempting to affect a capture of the said animal. (*Ref. 28-552, 28-553 RS Neb.*)

§6-205 ANIMALS; ENCLOSURES. All pens, cages, sheds, yards, or any other area or enclosure for the confinement or animals and fowls not specifically barred within the corporate limits shall be kept in a clean and orderly manner so as not to become a menace or nuisance to the neighborhood in which the said enclosure is located.

§6-206 ANIMALS; ABANDONMENT, NEGLECT, AND CRUELTY; DEFINITIONS.

A. ABANDON shall mean to leave any animal for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health;

B. ANIMAL shall mean any vertebrate member of the animal kingdom except man. The term shall not include an uncaptured wild creature;

C. CRUELLY MISTREAT shall mean to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise set upon any animal;

D. CRUELLY NEGLECT shall mean to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health;

E. HUMANE KILLING shall mean the destruction of an animal by a method which causes the animal a minimum of pain and suffering; and

F. LAW ENFORCEMENT OFFICER shall mean any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances. (*Ref. 28-1008 RS Neb.*) (*Ord. No. 464, 2/5/91*)

§6-207 ANIMALS; ABANDONMENT, NEGLECT, AND CRUELTY; LAW ENFORCEMENT OFFICER; POWERS; IMMUNITY.

A. Any law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the animal.

B. Any law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner as prescribed by law.

C. Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence. (*Ref. 28-1012 RS Neb.*) (*Ord. No. 464, 2/5/91*)

§6-208 ANIMALS; ABANDONMENT, NEGLECT, AND CRUELTY; PENALTY. A person commits cruelty to animals if he or she abandons, cruelly mistreats, or cruelly neglects an animal. (*Ref. 28-1009 RS Neb.*) (*Ord. No.464, 2/5/91*)

§6-209 ANIMALS; PITTING; DEFINITIONS. Bearbaiting shall mean the pitting of any animal against a bear. Cock-fighting shall mean the pitting of a fowl against another fowl. Dog fighting shall mean the pitting of a dog against another dog. Pitting shall mean bringing animals together in combat. (*Ref. 28-1004 RS Neb.*) (*Ord. No. 463, 2/5/91*)

§6-210 ANIMALS; PITTING; PROHIBITED. No person shall knowingly promote, engage in, or be employed at dog fighting, cockfighting, bearbaiting, or pitting an animal against another. Nor shall any person knowingly receive money for the admission of another person to a place kept for such purpose. Nor shall any person knowingly own, use, train, sell, or possess an animal for the purpose of animal pitting. Nor shall any person knowingly permit any act as described in this section to occur on any premises owned or controlled by him or her. (*Ref. 28-1005 RS Neb.*)(*Ord. No. 463, 2/5/91*)

§6-211 ANIMALS; PITTING; SPECTATORS PROHIBITED. No person shall knowingly and willingly be present at and witness as a spectator dog fighting, cockfighting, bearbaiting, or the pitting of an animal against another as prohibited in this section. *(Ref. 28-1005 RS Neb.) (Ord No. 463, 2/5/91)*

Article 3. Miscellaneous Misdemeanors

§6-301 MISDEMEANORS; REFUSING TO ASSIST OFFICER. It shall be unlawful for any person to refuse to assist a Municipal Police Officer when lawfully requested to do so by him. *(Ref. 28- 728 RS Neb.)*

§6-302 MISDEMEANORS; RESISTING OFFICER. It shall be unlawful for any person to resist any Municipal Policeman when such officer is in the lawful performance of his duties. *(Ref. 28- 729 RS Neb.)*

§6-303 MISDEMEANORS; ABUSING OFFICER. It shall be unlawful for any person to abuse a police officer or Municipal official in the execution of the office. *(Ref. 28-72.9 RS Neb.)*

§6-304 MISDEMEANORS; TRESPASSING. It shall be unlawful for any person to trespass upon any private grounds within the Municipality; or to break, cut, or injure any tree, shrub, plant, flower, or grass growing thereon; or without the consent of the owner or occupant to enter upon an improved lot or grounds occupied for residence purposes and to loiter about the same. *(Ref. 28-588.01 RS Neb.)* .

§6-305 MISDEMEANORS; MALICIOUS DESTRUCTION OF PROPERTY. It shall be unlawful for any person within the corporate limits to purposely, willfully, or maliciously injure in any manner, or destroy any real or personal property of any description belonging to another. *(Ref. 28-573 RS Neb.)*

§6-306 MISDEMEANORS; LARCENY. It shall be unlawful for any person within the corporate limits to steal any money, goods, or chattels of any kind whatever. Any person who shall steal property of any kind, whether the same is entirely in money or entirely property of the value of less than three hundred (\$300.00) dollars, shall be deemed to be guilty of a misdemeanor. *(Ref. 28-512, 28-514 RS Neb.)*

§6-307 MISDEMEANORS; TRASH. It shall be unlawful for any person to willfully, maliciously, or negligently place or throw upon the premise of another, any filth, garbage, leaves, papers, or other matter to the annoyance of the owner or occupant thereon. *(Ref, 28-591 RS Neb.)*

§6-308 MISDEMEANORS; DRUNKENNESS. Any person found in a state of intoxication, or under the influence of intoxicating liquor, within the Municipality shall be deemed to be guilty of a misdemeanor and punished in accord with State law. *(Ref. 53-196 RS Neb.)*

§6-309 GENERAL OFFENSES; DRINKING ON PUBLIC PROPERTY; POSSESSION OF OPEN ALCOHOLIC BEVERAGE CONTAINER.

(A) Except when the Nebraska Liquor Control Commission has issued a license as provided in *Neb. RS 53-186(2)*, it is unlawful for any person to consume alcoholic liquor upon property owned or controlled by the state or any governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property. (*Neb. RS 53-186*)

(B) (1) It is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this Municipality.

(2) Except as provided in *Neb. RS 53-186*, it is unlawful for any person to consume an alcoholic beverage (a) in a public parking area or on any highway in this Municipality or (b) inside a motor vehicle while in a public parking area or on any highway in this Municipality.

(3) For purposes of this division:

(a) Alcoholic beverage means (i) beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, or any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefore, (ii) wine of not less than one-half of one percent of alcohol by volume, or (iii) distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Alcoholic beverage does not include trace amounts not readily consumable as a beverage;

(b) Highway means a road or street including the entire area within the right-of-way;

(c) Open alcoholic beverage container means any bottle, can, or other receptacle:

(i) That contains any amount of alcoholic beverage; and

(ii) A. That is open or has a broken seal;

B. The contents of which are partially removed; and

(d) Passenger area means the area designated to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk. (*Neb. RS 60-6,211.08*)

§6-310 MISDEMEANORS; DISCHARGE OF FIREARMS. It shall be unlawful for any person, except an officer of the law in the discharge of his official duty, to fire or discharge any gun, pistol, or other fowling piece within the Municipality; provided,

nothing herein shall be construed to apply to officially sanctioned public celebrations if the persons so discharging firearms have written permission from the Governing Body. (Ref. 17-556 RS Neb.)

§6-311 MISDEMEANORS; CONCEALED WEAPONS. It shall be unlawful for any person or persons to carry about their person any concealed pistol, revolver, knife, billy club, slingshot, metal knuckles, or other dangerous weapon of any kind. Nothing herein shall be construed to apply to the Municipal Police. (Ref. 28-1001 RS Neb.)

§6-312 MISDEMEANORS; SLINGSHOTS, AIR GUNS, BB GUNS. It shall be unlawful for any person to discharge a slingshot, air gun, BB gun, or the like loaded with rock or other dangerous missiles at any time or under any circumstances within the Municipality. (Ref. 17-207 RS Neb.)

§6-313 MISDEMEANORS; FIREWORKS. It shall be unlawful for any person to sell or dispense or ignite or cause to be exploded fireworks or firecrackers of any description whatsoever; except sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charges, for the purpose of making a noise, color wheels, lady fingers, not exceeding seven-eighths (7/8") inch in length or one-eighth (1/8") inch in diameter, and which do not contain more than one half (1/2) gram each in weight of explosive material; provided, fireworks excepted from the prohibition included in this section shall only be ignited or exploded between June twenty-fifth (25th) and July fifth (5th) inclusive of any year. (Amended by Ord. No. 646, 7/6/2004)

§6-314 MISDEMEANORS; FIREWORKS; SALE.

(A) It shall be unlawful for any person to sell, hold for sale, or offer for sale as distributor, jobber, or retailer any fireworks without first obtaining a license from the State Fire Marshal for the calendar year. (Neb. RS 28-1246)

(B) Licensees shall only sell fireworks that have been approved by the State Fire Marshal. (Neb. RS 28-1247)

(C) Permissible fireworks may be sold at retail only between June 24 and July 5 of each year. (Neb. RS 28-1249)

§6-315 MISDEMEANORS; ASSAULT AND BATTERY. It shall be unlawful for any person to assault, threaten, strike, or injure any other person or persons. Any person who assaults or batters another person or persons shall be deemed to be guilty of a misdemeanor. (Ref 28-411 RS Neb.)

§6-316 MISDEMEANORS; DISTURBING THE PEACE. It shall be unlawful for any person or persons to assemble or gather within the Municipality with the intent to do an unlawful or disorderly act or acts, by force or violence against the Municipality, or residents therein, or who shall disturb the public peace, quiet, security, repose, or sense

of morality. Any person or persons so assembled or gathered shall be deemed to be guilty of a misdemeanor. (*Ref. 28-818 RS Neb.*)

§6-317 MISDEMEANORS; MALICIOUS MISCHIEF. It shall be deemed a misdemeanor for any person to willfully destroy, mutilate, deface, injure, or remove any tomb, monument, gravestone, structure, or thing of value which is located upon any government property, cemetery, or property of historic value. Conviction of such misdemeanor shall be punishable by a fine not less than five (\$5.00) dollars, nor more than one hundred (\$100.00) dollars.

Any such offender shall also be liable, in an action for trespass in the name of the beneficial holder of said property, for all damages which arise from the commission of such unlawful act. (*Ref 12-519 RS Neb.*)

§6-318 MISDEMEANORS; LITTERING. (1) Any person who deposits, throws, discards, or otherwise disposes of any litter on any public or private property or in any waters commits the offense of littering unless:

(a) Such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property; or

(b) The litter is placed in a receptacle or container installed on such property for such purpose.

(2) The word litter as used in this section shall mean all waste material susceptible of being dropped, deposited, discarded or otherwise disposed of by any person upon any property in the state but does not include wastes of primary processes of farming or manufacturing. Waste material as used in this section shall mean any material appearing in a place or in a context not associated with that material's function or origin.

(3) Whenever litter is thrown, deposited, dropped, or dumped from any motor vehicle or watercraft in violation of this section, the operator of such motor vehicle or watercraft commits the offense of littering. (*Ref. 28-523 RS Neb.*) (*Amended by Ord. No.556, 11/4/97*)

§6-319 MISDEMEANORS; APPLIANCES IN YARD. It shall be unlawful for any person to permit a refrigerator, icebox, freezer, or any other dangerous appliance to be in the open and accessible to children, whether on private or public property, unless he shall first remove all doors and make the same reasonably safe. (*Ref. 18-1720 RS Neb.*)

§6-320 MISDEMEANORS; OBSTRUCTION OF PUBLIC WAYS. It shall be unlawful for any person to erect, maintain, or suffer to remain on any street or public sidewalk a stand, wagon, display, or other obstruction inconvenient to, or inconsistent with, the public use of the same.

§6-321 MISDEMEANORS; OBSTRUCTING WATERFLOW. It shall be unlawful for any person to stop or obstruct the passage of water in a street gutter, culvert, water pipe, or hydrant.

§6-322 MISDEMEANORS; WEEDS, LITTER, STAGNANT WATER.

(A) Lots or pieces of ground within the Municipality shall be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon.

(B) The owner or occupant of any lot or piece of ground within the city shall keep the lot or piece of ground and the adjoining street and alleys right-of-ways free of any growth of six inches (6") or more in height of weeds, grasses, or worthless vegetation.

(C) The throwing, depositing, or accumulation of litter on any lot or piece of ground within the city is prohibited; except that grass, leaves, and worthless vegetation may be used as a ground mulch or in a compost pile.

(D) It is hereby prohibited to permit or maintain any growth of six inches (6") or more in height of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles.

(E) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating this section, be guilty of an offense.

(F) (1) For any owner or occupant in violation of this ordinance, the City may elect to give to each owner or owner's duly authorized agent, and to the occupant, if any, by personal service, U.S. mail to the last known address, or by conspicuously posting the notice on the lot or ground upon which the violation has occurred, to bring the lot back into compliance with this ordinance. Within five days after notice is sent or posted, whichever is applicable, if the owner or occupant of the lot or piece of ground has not brought the lot or piece of ground into compliance with this ordinance, the City may have such work done, to bring it into compliance. The costs and expenses of any such work shall be paid by the owner.

(2) If unpaid for two months after such work is done, the city may either;

(a) Levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed; or,

(b) Recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(G) For purposes of this section:

(1) Litter shall include, but not be limited to:

(a) Trash, rubbish, refuse, garbage, paper, rags, and ashes;

(b) Wood, plaster, cement, brick, or stone building rubble;

(c) Grass, leaves, and worthless vegetation;

(d) Offal and dead animals; and,

(e) Any machine or machines, and,

(2) Weeds shall include, but not be limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus sp.*) (tourn), hemp plant (*Canabis sativa*), and ragweed (*Ambrosiaceae*). (*Ref. 17-563*) (*Amended by Ord. No. 647*)(*Ord. No. 647*)(7/6/04) (*Amended by Ord.No.705; 10/08/2013*)

§6-323 GENERAL OFFENSES; ABANDONED AUTOMOBILES.

(A) (1) No person shall cause any vehicle to be an abandoned vehicle as described in division (B) (1), (2), (3), or (4) of this section. (*Neb. RS 60-1907*)

(2) No person other than one authorized by the Municipality or appropriate state agency shall destroy, deface, or remove any part of a vehicle which is left unattended on a highway or other public place without license plates affixed or which is abandoned. (*Neb. RS 60-1908*)

(B) A motor vehicle is an abandoned vehicle:

(1) If left unattended, with no license plates or valid In Transit decals issued pursuant to *Neb. RS 60-320* affixed thereto, for more than six hours on any public property;

(2) If left unattended for more than 48 hours after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(3) If left unattended for more than two days on private property if left initially without permission of the owner, or after permission of the owner is terminated; or,

(4) If 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 division (E) of this section.

No motor vehicle subject to forfeiture under *Neb. RS 28-431* shall be an abandoned vehicle under this division. (*Neb. RS 60-1901*)

(C) If an abandoned vehicle, at the time of abandonment, has no license plates of the current year or valid In Transit decals issued pursuant to *Neb. RS 60320* affixed and is of a wholesale value, taking into consideration the condition of the vehicle, of \$250.00 or less, title shall immediately vest in the Municipality. (*Neb. RS 60-1902*)

(D) (1) Except for vehicles governed by division (C) of this section, the Municipality shall make an inquiry concerning the last-registered owner of an abandoned vehicle as follows:

(a) Abandoned vehicle with license plates affixed, to the jurisdiction which issued such license plates; or

(b) Abandoned vehicle with no license plates affixed, to the Department of Motor Vehicles.

(2) The Municipality shall notify the last-registered owner, if any, that the vehicle in question has been determined to be an abandoned vehicle and that, if unclaimed, either:

(a) It will be sold or will be offered at public auction after five days from the date such notice was mailed; or

(b) Title will vest in the Municipality 30 days after the date such notice was mailed.

(3) If the Municipality is notified that a lien or mortgage exists, the notice described in division (D)(2) of this section shall also be sent to the lien holder or mortgagee. Any person claiming such vehicle shall be required to pay the cost of removal and storage of such vehicle.

(4) Title to an abandoned vehicle, if unclaimed, shall vest in the Municipality:

(a) Five days after the date the notice is mailed if the vehicle will be sold or offered at public auction under division (D)(2)(a) of this section;

(b) Thirty days after the date the notice is mailed if the Municipality will retain the vehicle; or,

(c) If the last-registered owner cannot be ascertained, when notice of such fact is received.

(5) After title to the abandoned vehicle vests pursuant to division (D)(4) of this section, the Municipality may retain for use, sell, or auction the abandoned vehicle. If the Municipality has determined that the vehicle should be retained for use, the Municipality shall, at the same time that the notice, if any, is mailed, publish in a newspaper of general circulation in the jurisdiction an announcement that the Municipality intends to retain the abandoned vehicle for its use and that title will vest in the Municipality 30 days after publication. (*Neb. RS 60-1903*)

(E) (1) If the municipal law enforcement agency has custody of a motor vehicle for investigatory purposes and has no further need to keep it in custody, it shall send a certified letter to each of the last-registered owners stating that the vehicle is in the custody of the agency, that the vehicle is no longer needed for law enforcement purposes, and that after 30 days the agency will dispose of the vehicle.

(2) This division shall not apply to motor vehicles subject to forfeiture under *Neb. RS 28-431*.

(3) No storage fees shall be assessed against the registered owner of a motor vehicle held in custody for investigatory purposes under this division unless the registered owner or the person in possession of the vehicle when it is taken into custody is charged with a felony or misdemeanor related to the offense for which the law enforcement agency took the vehicle into custody. If a registered owner or the person in possession of the vehicle when it is taken into custody is charged with a felony or misdemeanor but is not convicted, the

registered owner shall be entitled to a refund of the storage fees. (*Neb. RS 60-1903.01*)

(F) Any proceeds from the sale of an abandoned vehicle, less any expenses incurred by the Municipality, shall be held by the Municipality without interest, for the benefit of the owner or lien holders of such vehicle for a period of two years. If not claimed within such two-year period, the proceeds shall be paid into the general fund of the Municipality. (*Neb. RS 60-1906*)

(G) Neither the owner, lessee, nor occupant of the premises from which any abandoned vehicle is removed, nor the Municipality, shall be liable for any loss or damage to such vehicle which occurs during its removal or while in the possession of the Municipality or its contractual agent or as a result of any subsequent disposition. (*Neb. RS 60-1906*)

(H) The last registered owner of an abandoned vehicle shall be liable to the Municipality for the costs of removal and storage of such vehicle. (*Neb. RS 60-1909*)

(I) For purposes of this section, **PUBLIC PROPERTY** means any public right-of-way, street, highway, alley or park or other state, county, or municipally owned property; **PRIVATE PROPERTY** means any privately owned property which is not included within the definition of public property.

(J) Any person who violates the provisions of this section is guilty of an offense. *Statutory reference: Additional regulations, Neb. RS 60-1901 through 60-1911 (Amended by Ord.No.708; 10/08/2013)*

§6-324 MISDEMEANORS: UNLICENSED OR INOPERABLE VEHICLES. No person in charge or control of any property within the Municipality, other than Municipal property, whether as owner, tenant, occupant, lessee, or otherwise, shall allow any partially dismantled, inoperable, wrecked, junked, or discarded vehicle to remain on such property longer than thirty (30) days or for any length of time any vehicle has been unlicensed for a period in excess of four (4) months; provided, this section shall not apply to a vehicle in an enclosed building; to a vehicle on the premises of a business enterprise, operated in a lawful place and manner, when such vehicle is necessary to the lawful operation of the business; or to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the Municipality. Any vehicle allowed to remain on property in violation of this section shall constitute a nuisance and shall be abated, and any person violating this section shall be guilty of a misdemeanor.

§6-325 MISDEMEANORS; CURFEW. It shall be unlawful for any minor under the age of eighteen (18) years to ride in or operate any vehicle in or upon any street, alley, or other public place, or to loiter, wander, stroll, loaf, or play in or upon any of the streets, alleys, or other public places between the hours of eleven (11:00) o'clock p.m. on Monday through Thursday and five (5:00) o'clock a.m. of the following day or between the hours of twelve (12:00) o'clock midnight on Friday through Sunday and five (5:00) o'clock a.m. of the following day unless accompanied by a parent, guardian or other

adult person having the care, custody or control of said minor or the minor is engaged in lawful employment or is on an emergency errand; provided, when an activity of the kind normally attended by minors under eighteen (18) years terminates after, or less than one (1) hour prior to the normal curfew time, the curfew shall commence one half (1/2) hour after the termination of such activity. If any minor violates the provisions of this section, the Municipal Police may take the minor into custody and shall notify the parents or guardian of such violation.

§6-326 MISDEMEANORS; PARENTS RESPONSIBLE FOR CURFEW VIOLATIONS.

It shall be unlawful for the parents, guardian, or any person having the care, custody, or control of any minor under the age of eighteen (18) years to permit such minor to violate the provisions of section 6-325. Any person permitting such activity as prohibited in section 6-325 shall be deemed guilty of a misdemeanor.

§6-327 MISDEMEANORS; FALSE REPORTING.

It shall be unlawful for any person to:

A. Furnish information he or she knows to be false to any peace officer or other official with the intent to instigate an investigation of an alleged criminal matter or impede the investigation of an actual criminal matter; or

B. Furnish information he or she knows to be false, alleging the existence of an emergency in which human life or property are in jeopardy to any hospital, ambulance company, or other person or governmental agency which deals with emergencies involving danger to life or property; or

C. Furnish any information, or cause such information to be furnished or conveyed by electric, electronic, telephonic, or mechanical means, knowing the same to be false, concerning the need for assistance of a Fire Department or any personnel or equipment of such Department; or

D. Furnish any information he or she knows to be false concerning the location of any explosive in any building or other property to any person.

(Ref 28-907 RS Neb.)(Class 1)

§6-328 MISDEMEANORS; SHOPLIFTING. A person commits the crime of theft by shoplifting when he or she, with the intent of appropriating merchandise to his or her own use without paying for the same or to deprive the owner of possession of such property or its retail value, in whole or in part, does any of the following:

A. Conceals or takes possession of the goods or merchandise of any store or retail establishment;

B. Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;

C. Transfers the goods or merchandise of any store or retail establishment from one container to another;

- D. Interchanges the label or price tag from one item of merchandise with a label or price tag from another item of merchandise; or
- E. Causes the cash register or other sales recording device to reflect less than the retail price of the merchandise.

In any prosecution for theft by shoplifting, in order to allow the owner or owners of shoplifted property the use of such property pending criminal prosecutions, photographs of the shoplifted property may be accepted as prima facie evidence as to the identity of the property. Such photograph shall be accompanied by a written statement containing the following:

- A. A description of the property;
- B. The name of the owner or owners of the property;
- C. The time, date, and location where the shoplifting occurred;
- D. The time and date the photograph was taken;
- E. The name of the photographer; and
- F. Verification by the arresting officer.

Prior to allowing the use of shoplifted property as provided in this section, legal counsel for the alleged shoplifter shall have a reasonable opportunity to inspect and appraise the property and may file a motion for retention of the property, which motion shall be granted if there is any reasonable basis for believing that the photographs and accompanying affidavit may be misleading. (*Ref. 28-511.01 RS Neb.*)

§6-329 MISDEMEANORS; DISORDERLY CONDUCT. It shall be unlawful for any person within the corporate limits to create a public inconvenience, disturbance, annoyance, or alarm by participating in any of the following; fighting, using threatening or abusive language, violent or tumultuous behavior, making unreasonable noise, using abusive language or gestures to any person. (*Ord. No.498, 5/3/94*)

6-330 MISDEMEANORS; HUFFING. It shall be unlawful for any person to inhale or ingest in any manner, paint, glue, nitrous oxide, or any other element or substance with the intent to become impaired, intoxicated, or under the influence of such. A person who violates this section commits the offense of huffing.

§6331 MISDEMEANORS; EXCESSIVE NOISE. It shall be unlawful for any person within the City to operate any radio, tape player, compact disc player, stereophonic sound system, or similar device, which reproduces or amplifies radio broadcasts or musical recordings, in or upon any street, alley or other public place in such a manner as to be audible to any person at any point or place, more than seventy-five (75) feet from the source. The prohibition set forth herein shall not apply to such activity:

- (1) when conducted in connection with an activity or event sponsored by a school, church or governmental entity;
- (2) when conducted in connection with an activity open to the public, such as a carnival, circus or athletic event; and,

- (3) if a permit for same has been issued by the Lyons City Council, or its designee, which permit may include such conditions as the City Council, or its designee, shall deem necessary and appropriate; provided, however, such conditions shall be reasonably related to preserving the public peace; and shall not infringe upon the applicant's right to free speech.
(*Ord.No.600; 11/02/1999*)

§6-332 RESTRICTIONS FOR DISPOSAL OF GARBAGE, RUBBISH, TRASH, WASTE, AND YARD WASTE.

1. Definitions:

GARBAGE. The term "garbage," as used herein, shall be defined to mean kitchen refuse, decayed waster, or anything that may decompose and become offensive to the public health.

RUBBISH/TRASH. The terms "rubbish" and "trash," as used herein, shall be defined as discarded machinery, chips, pieces of wood, sticks, dead trees, branches, bottles, broken glass, crockery, tin cans, boxes, papers, rags, or any other litter or debris that is not an immediate hazard to the health of the residents of the Municipality.

WASTE. The term "waste," as used herein, shall be defined to mean cinders, ashes, plaster, brick, stone, sawdust, or sand.

YARD WASTE. The term "yard waste," as used herein, shall be defined to mean grass, leaves and worthless vegetation.

2. Restrictions. It shall be unlawful to throw, blow, or sweep into the streets, alleys, parks, or other public grounds, any dirt, paper, nails, pieces of glass, refuse, waste, yard waste, garbage, rubbish or trash of any kind. (*Ord. No. 666; 07/01/2008*); (*Amended Ord. No. 710; 03/04/2014*)

§6-333 SEXUAL PREDATOR RESIDENCY RESTRICTIONS

A) Findings and Intent.

1) The Nebraska Legislature has found certain sex offenders present a high risk to commit repeat offenses and has enabled municipalities to restrict such persons' place of residency, as provided in the Sexual Predator Residency Restriction Act.

2) Sex offenders who prey on children and who are at high risk to repeat such acts present an extreme threat to public safety. The cost of sex offender victimization to these children and society, at large, while incalculable, is exorbitant.

3) It is the intent of this subchapter to serve the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of

the City by creating certain areas around locations where children regularly congregate in concentrated numbers, where certain sexual predators cannot reside.

B) Definitions. For purposes of this subchapter:

1) "Child care facility" means a facility licensed, pursuant to the Child Care Licensing Act;

2) "School" means a public, private, denominational, or parochial school which meets the requirements for state accreditation or approval prescribed in Chapter 79 of the Revised Statutes of Nebraska;

3) "Reside" means to sleep, live, or dwell at a place, which may include more than one location, and may be mobile or transitory;

4) "Residence" means a place where an individual sleeps, lives, or dwells, which may include more than one location, and may be mobile or transitory;

5) "Sex offender" means an individual who has been convicted of a crime listed in Neb. Rev. Stat. §29-4003, and who is required to register as a sex offender pursuant to the Sex Offender Registration Act; and,

6) "Sexual predator" means an individual who is required to register under the Sex Offender Registration Act, who has committed an aggravated offense as defined in Neb. Rev. Stat. §29-4001.01, and who has victimized a person eighteen (18) years of age or younger.

C) Sexual Predator Residency Restrictions; Penalties; Exceptions.

1) Prohibited Location of Residence. It is unlawful for any sexual predator to reside within five hundred (500) feet from a school or child care facility.

2) 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.

3) Penalties. A person who violates this section shall be punished as provided in Article 6-401 of this chapter.

4) Exceptions. This section shall not apply to a sexual predator who:

- a) Resides within a prison or correctional or treatment facility operated by the State of Nebraska or a political subdivision thereof;
- b) Established a residence before July 1, 2006, and has not moved from that residence; or,
- c) Established a residence after July 1, 2006, and the school or child care facility triggering the residency restriction was established after the initial date of the sexual predator's residence at that location.

(Ord. No. 727; 09/06/2016)

Article 4. Penal Provisions

§6-401 VIOLATION; PENALTY. (A) Any person, or any person's agent or servant, who violates any of the provisions of this municipal code, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500.00. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

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

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (*Ref. Neb. RS 17-505, 18-1720*)

Chapter 7

FIRE REGULATIONS

Article 1. Fire Prevention

§7-101 FIRE PREVENTION; FIRE PREVENTION CODE. Incorporated by reference into this Code are the standards recommended by the American Insurance Association, known as the Fire Prevention Code, 1970 Edition, and all subsequent amendments. This Code shall have the same force and effect as if set out verbatim herein. Three (3) copies of the Fire Prevention Code are on file with the Municipal Clerk and shall be available for public inspection at any reasonable time. (*Ref. 18-132, 81-502RSNeb.*)

§7-102 FIRE PREVENTION; FIRE CODE ENFORCEMENT. It shall be the duty of all Municipal officials to enforce the incorporated fire code provisions and all infractions shall be immediately brought to the attention of the Chief of Police.

§7-103 FIRE PREVENTION; FIRE LIMITS DEFINED. The following described territory in the Municipality shall be and constitute the fire limits: The incorporated city limits of the City of Lyons according to the duly recorded plat thereof.

§7-104 FIRE PREVENTION; FIRE LIMITS BUILDING PERMIT. Prior to the moving or construction of any building in the fire limits, application must be made to the Governing Body. Construction shall include the enlarging or alteration of any building in the fire limits. Such application shall be furnished by the Municipal Clerk and shall require such information as the Governing Body deems necessary to determine whether or not to grant a building permit. (*Ref. 17-550 RS Neb.*)

§7-105 FIRE PREVENTION; FIRE LIMITS MATERIALS. Within the aforesaid fire limits, no structure shall be built, altered, moved, or enlarged unless such structure will be enclosed with walls constructed wholly of stone, well-burned brick, terra cotta, concrete, or other such noncombustible material as will satisfy the Governing Body that the said structure will be reasonably fire proof. (*Ref. 17-550 RS Neb.*)

§7-106 FIRE PREVENTION; PERMITTED REPAIRS. It shall be unlawful for any person to repair, alter, or add to any building in the fire limits where the repair is less than fifty (50%) per cent of the building unless the said person shall first submit an application to make such repairs, alterations, or to add to any building and shall state on the application that the material used will be noncombustible and approved by the Governing Body. Repairs in the form of patching and other minor repairs shall not require a permit. (*Ref. 17-550 RS Neb.*)

§7-107 FIRE PREVENTION; IRONCLADS PROHIBITED. All buildings, sheds, and structures known as ironclads which are constructed of wood and covered with sheet iron or tin attached to the frame shall be considered and deemed to be constructed of combustible materials. Any future construction of an ironclad building shall hereafter be prohibited; provided, ironclad buildings with floor area of sixty-four (64) square feet or less may be permitted if built at the rear of the lot, and if a building permit is first granted by the Governing Body. *(Ref. 17-550 RS Neb.)*

§7-108 FIRE PREVENTION; REMOVAL REQUIRED. In the event that any wooden or combustible building or structure, or any noncombustible building which stands within the fire limits is damaged to the extent of fifty (50%) per cent or more of its value, exclusive of the foundation, it shall not be repaired or rebuilt, but shall be taken down and removed within sixty (60) days from the date of such fire or other casualty. *(Ref. 17-550 RS Neb.)*

§7-109 FIRE PREVENTION; FIRE PROHIBITED. It shall be unlawful for any person to set out a fire on the pavement, or near any curb, now built or hereafter to be built, within the Municipality. *(Ref. 17-556 RS Neb.)*

§7-110 FIRE PREVENTION; FIRES REGULATED. (1) It shall be lawful to build or set out certain fires in the City of Lyons except those fires which are built and maintained at the times and in the manner prescribed by the Lyons Rural Fire District.

(2) The City Council shall promulgate rules and regulations for the time, place and manner of the starting, maintaining and extinguishing of all fires within the City limits of the City of Lyons. A copy of said rules and regulations shall be kept at the City Clerk's office and shall be made available to the public during office hours. *(Ref. 17-549, 17-556, 81-520.01 RS Neb.) (Amended by Ord. No. 526, 10/3/95)*

§7-111 FIRE PREVENTION; OPEN BURNING BAN, WAIVER. (1) There shall be a statewide open burning ban on all bonfires, outdoor rubbish fires, and fires for the purpose of clearing land.

(2) The Lyons Rural Fire District or its designee may waive an open burning ban under subsection (1) of this section for an area under its jurisdiction by issuing an open burning permit to a person requesting permission to conduct open burning. The permit issued by the Lyons Rural Fire District or its designee shall be in writing, signed by the Lyons Rural Fire District or its designee, and on a form provided by the State Fire Marshal.

(3) The Lyons Rural Fire District or its designee may waive the open burning ban in its district when conditions are acceptable to the Lyons Rural Fire District or its designee. Anyone burning in such jurisdiction when the open burning ban has been waived shall notify the Lyons Rural Fire District of his or her intention to burn.

(4) The Lyons Rural Fire District may adopt and promulgate rules and regulations listing the conditions acceptable for issuing a permit to conduct open burning under subsection (2) of this section.

(5) The Lyons Rural Fire District may charge a fee, not to exceed ten dollars (\$10.00) for each such permit issued. No such fee shall be collected from any state or political subdivision to which such a permit is issued to conduct open burning under subsection (2) of this section in the course of such state's or political subdivision's official duties. (*Ref. 81-520.01 RS Neb.*) (*Amended by Ord. No. 548, 9/2/97*)

Article 2. Poisonous and Flammable Gases

§7-201 POISONOUS AND FLAMMABLE LIQUIDS AND GASES. Any person, firm, or corporation desiring to store or keep in the Municipality for any period of time any form of poisonous or flammable gas or liquefied petroleum gas or add to, enlarge, or replace any facility used for the storage of such gases, must first get permission from the Governing Body. The Governing Body shall require the name of the gas, the place of storage, and the amount of gas stored. If permission is granted, the Governing Body shall prescribe such rules, regulations, and precautionary actions as they may deem necessary. Permit requirements for the initial construction or location of storage facilities shall not apply to those facilities in existence on the effective date of this ordinance; provided, any such present use that is discontinued for a period of sixty (60) days shall not be revived without a permit. Permit requirements shall also not apply to the storage of a maximum of five (5) gallons of kerosene or a maximum of two (2) gallons of gasoline when stored in residential buildings. Any flammable gas or liquid in excess of these amounts shall be stored only after permission has been granted by the Governing Body. *(Ref. 17-549 RS Neb.)*

Article 3. Penal Provision

§7-301 VIOLATION; PENALTY.

(A) Any person, or any person's agent or servant, who violates any of the provisions of this municipal code, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500.00. A new violation shall be deemed to have been committed every twenty- four (24) hours of such failure to comply.

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

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (*Ref. Neb. RS 17-505, 18-1720*)

Chapter 8

PUBLIC WAYS AND PROPERTY

Article 1. Municipal Property

§8-101 DEFINITIONS. The following definitions shall be applied throughout this Chapter. When no definition is specified, the normal dictionary usage of the word shall apply.

SIDEWALK SPACE. The term "sidewalk space," as used herein, shall mean that portion of a street between curb lines and adjacent property lines.

§8-102 MUNICIPAL PROPERTY; MAINTENANCE AND CONTROL. The Governing Body shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the Municipality, and shall cause the same to be kept open and in repair, and free from nuisances. (*Ref. 17-567 RS Neb.*)

§8-103 SALE AND CONVEYANCE; REAL PROPERTY. (A) Except as provided in division (G) of this section, the power of the city to convey any real property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution, directing the sale at public auction or by sealed bid of the property and the manner and terms thereof, except that such property shall not be sold at public auction or by sealed bid when:

- (1) The property is being sold in compliance with the requirements of federal or state grants or programs;
- (2) The property is being conveyed to another public agency; or
- (3) The property consists of streets and alleys.

(B) The City Council establish a minimum price for such real property at which bidding shall begin or shall serve as a minimum for a sealed bid.

(C) After the passage of the resolution directing the sale, notice of all proposed sales of property described in division (A) of this section and the terms thereof, shall be published once each week for 3 consecutive weeks in a legal newspaper published in or of general circulation in the city.

- (D) (1) If, within 30 days after the third publication of the notice a remonstrance against the sale is signed by registered voters thereof equal in number to 30% of the registered voters of the city voting at the last municipal election held therein, and is filed with the City Council, that property shall not then, nor within 1 year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the 30-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

(2) Upon receipt of the remonstrance, the City Council, with the aid and assistance of the Election Commissioner or County Clerk, shall determine the validity and sufficiency of signatures on the remonstrance. The City Council shall deliver the remonstrance to the Election Commissioner or County Clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested.

(3) Upon receipt of the remonstrance, the Election Commissioner or County Clerk shall issue to the City Council a written receipt that the remonstrance is in the custody of the Election Commissioner or County Clerk. The Election Commissioner or County Clerk shall compare the signature of each person signing the remonstrance with the voter registration records to determine if each signer was a registered voter on or before the date on which the remonstrance was filed with the City Council. The Election Commissioner or County Clerk shall also compare the signer's printed name, street and number or voting precinct, and city or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the Election Commissioner or County Clerk determines that the printed name, street and number or voting precinct, and city or post office address match the registration records and that the registration was received on or before the date on which the remonstrance was filed with the City Council. The determinations of the Election Commissioner or County Clerk may be rebutted by any credible evidence which the City Council finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the remonstrance, the sufficiency of the remonstrance, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the remonstrance process.

(4) Upon completion of the comparison of names and addresses with the voter registration records, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and the line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the Election Commissioner or County clerk shall set forth the reason for the invalidity of the signature. If the Election Commissioner or County Clerk determines that a signer has affixed his or her signature more than once to the remonstrance and that only 1 person is registered by that name, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall county only the earliest dated signature.

(5) The Election Commissioner or County Clerk shall certify to the City Council the number of valid signatures necessary to constitute a valid remonstrance. The Election Commissioner or County Clerk shall deliver the

remonstrance and the certifications to the City Council with 40 days after receipt of the remonstrance from the City Council. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than 20 signatures on 1 signature page shall be counted.

(6) The City Council shall, within 30 days after the receipt of the remonstrance and certifications from the Election commissioner or County Clerk, hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. The City Council shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

(E) Real estate now owned or hereafter owned by the city may be conveyed without consideration to the state for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of *Neb. RS 18-1001 through 18-1006*.

(F) Following passage of the resolution directing a sale, publishing of the notice of the proposed sale, and passing of the 30-day right-of-remonstrance period, the property shall then be sold. The sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. (*Neb. RS 17-503*)

(G) Divisions (A) through (F) of this section shall not apply to the sale of real property if the authorizing resolution directs the sale of real property, the total fair market value of which is less than \$5,000. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in 3 prominent places within the city for a period of not less than 7 days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required. (*Neb. RS 17-503.01*)

§8-104 MUNICIPAL PROPERTY; OBSTRUCTIONS. Trees and shrubs, growing upon or near the lot line, or upon public ground, and interfering with the use or construction of any public improvements shall be deemed an obstruction under this Article. Said roots may be removed by the Municipality at the expense of the owner of the property upon which the tree is located should the owner fail or neglect, after notice, to do so. It shall be unlawful for any person, persons, firm, or corporation to obstruct or encumber, by fences, gates, buildings, structures, or otherwise, any of the streets, alleys, or sidewalks. (*Ref 17-557.01 RS Neb.*)

§8-105 MUNICIPAL PROPERTY; WEEDS. It is hereby the duty of the Building Inspector, or his duly authorized agent, to view and inspect the sidewalk space within the corporate limits for growing weeds during the growing season, and if weeds and worthless vegetation that are noxious, obstruct travel on public ways, or create a fire or health hazard, are found growing thereon, he shall notify the owner or occupant thereof to cut down such weeds as close to the ground as can be practicably done and keep the

weeds cut thereon in like manner during the growing season for weeds. In the event that the owner of any lot or parcel of land within the Municipality is a non-resident of the Municipality or cannot be found therein, the notice may be given to any person having the care, custody, or control of such lot or parcel of land. In the event that there can be found no one within the Municipality to whom notice can be given, it shall be the duty of the Building Inspector or his agent to post a copy of the notice on the premise and then to cut or cause the weeds thereon to be cut as therein provided and report the cost thereof in writing to the Governing Body. The cost shall then be audited and paid by the Municipality, and the amount thereof shall be assessed against the lot or parcel of land as a special tax thereon and shall be collected as are other taxes of the Municipality; or may be recovered by civil suit brought by the Municipality against the owner of the parcel of land. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

§8-106 MUNICIPAL PROPERTY; ACQUISITION OF PROPERTY; CONSTRUCTION; ELECTIONS, WHEN REQUIRED.

(1) The Municipality is authorized and empowered to (a) purchase, (b) accept by gift or devise, (c) purchase real estate upon which to erect, and (d) erect a building or buildings for an auditorium, fire station, municipal building, or community house for housing municipal enterprises and social and recreation purposes, and other public buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of the Municipality.

(2) Except as provided in subsection (3) of this section, before any such purchase can be made or building erected, the question shall be submitted to the electors of the Municipality at a general municipal election or at an election duly called for that purpose, or as set forth in *Section 17-954 RS Neb.*, and be adopted by a majority of the electors voting on such question.

(3) If the funds to be used to finance the purchase or construction of a building pursuant to this section are available other than through a bond issue, then either: (a) Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the Municipality and no election shall be required to approve the purchase or construction unless within thirty (30) days after the publication of the notice, a remonstrance against the purchase or construction is signed by registered voters of the Municipality equal in number to fifteen percent (15%) of the registered voters of the Municipality voting at the last regular Municipal election held therein and is filed with the Governing Body. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be considered timely if filed or postmarked on or before the next business day. If a remonstrance with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the Municipality at a general Municipal election or a special election

duly called for that purpose. If the purchase or construction is not approved, the property involved shall not then, nor within one (1) year following the election, be purchased or constructed; or (b) The Governing Body may proceed without providing the notice and right of remonstrance required in subdivision (a) of this subsection if the property can be purchased below the fair market value as determined by an appraisal, there is a willing seller, and the purchase price is less than twenty-five thousand dollars (\$25,000.00). The purchase shall be approved by the Governing Body after notice and public hearing as provided in *Section 18-1755 RS Neb. (Ref 17-953, 17-953.01 RS Neb.) (Amended by Ord. No. 545, 5/6/97)*

§8-107 MUNICIPAL PROPERTY; SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCEDURE. The Municipality's Governing Body may, by ordinance, create a special improvement district for the purpose of replacing, reconstructing, or repairing an existing street, alley, water line, sewer line, or any other such improvement.

Except as provided in *Sections 19-2428 to 19-2431 RS Neb.*, the Governing Body shall have power to assess, to the extent of such benefits, the costs of such improvements upon the properties found especially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the Governing Body shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law. (*Ref 18-1751 RS Neb.) (Ord. No. 429, 9/15/87)*

§8-108 MUNICIPAL PROPERTY; IMPROVEMENT DISTRICT; LAND ADJACENT. Supplemental to any existing law on the subject, a Municipality may include land adjacent to such Municipality when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The Governing Body shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby, except as provided in Section 8-310. (*Ref. 19-2427 RS Neb.) (Ord. No. 431, 9/15/87)*

§8-109 MUNICIPAL PROPERTY; EXCAVATION PROHIBITED WITHOUT PERMIT. Permit Required for Excavation. It shall be unlawful for any person or persons, corporation or corporations, partnerships or associations, or other entities, to excavate in any manner or remove or disturb any city sidewalk, curb, or service in any city street, alley, sidewalk, public park, or other property of the city, including public areas which have no such sidewalks, curbs or other hard surface, and city easements unless such person or persons, corporation or corporations, partnership or association, or other business entity shall first have obtained a permit from the city authorizing such excavation.

Compliance with Other Chapters. In no event shall any excavation be made for sanitary sewer installation, repair or maintenance except in compliance with Chapter 3, Article 2, Lyons Municipal Code; nor shall any excavation be made for Lyons municipal

water system connections, installation, repair or maintenance except in compliance with Chapter 3, Article 1 of the Lyons Municipal Code; nor shall any excavation be made for municipal natural gas installation, repair, or maintenance except in compliance with Chapter 3, Article 13 of the Lyons Municipal Code.

Application for Permit. Anyone desiring to make application for a permit under the provisions of this ordinance shall submit a written application to the city clerk on a form provided by the city clerk and shall include written proof that all public utilities having cables, pipes, and lines within the city, including city municipal utilities, have been adequately informed of any proposed excavation.

Surety Bond. No permit shall be issued for any excavation as provided herein until there has been filed with the clerk of the city a bond with sureties acceptable to the city in the sum of one thousand (\$1,000.00) dollars, conditioned upon the full observance of city ordinances applicable to such excavation and that said applicant will indemnify the city for all losses and damages sustained by reason of any negligence on the part of the permitted, his agents, or employees while engaged in excavating or any costs sustained in enforcing the terms of the bond.

Restoration of Excavated Area. Whenever such excavation or removal is completed, such person shall forthwith restore any street, alley, sidewalk, curb, public park, or public place to the same condition in which it was prior to the excavation.

Protection of Excavated Area. No person shall excavate or leave any such excavation without properly barricading the same and maintaining at night warning lights thereon, upon any pile of earth, plant, stone, or building materials placed nearby. Such person shall also indemnify the city for any and all liability for damages arising out of such excavation removal.

Request for Location. Any person planning excavation activities of any type not affecting public property or easements shall request pipeline location services of the utility. The request shall be made in person at the City Office Building, 335 Main Street, or by phone (402/687-2485). Excavation shall not commence until verification of the presence or absence of pipelines in the work area has been received and gas, water or sewer facilities are marked.

Information Needed at Time of Application or Request. A person applying for a permit or requesting pipeline locations should be prepared to provide the following information:

- A. The name, address, and phone number of the individual responsible for excavation;
- B. An accurate location of the proposed work site;
- C. The date and time planned for commencement and expected duration of operations;
- D. The method of excavation, including information concerning any use of explosives;
- E. In cases not covered by the permit process, a reasonable convenience arrangement by which the utility can notify the caller of the presence or absence of underground facilities in the excavation area. Such arrangement may be a

phone call from the utility, an on-site meeting, a meeting at the utility office, or a subsequent call (by the person) to the utility.

Utility Response to Application or Request. The utility's response to a permit application or request for pipeline location shall include: recording pertinent information, verification of the presence or absence of underground facilities; temporary marking of utility lines near the work site; and, notifying the applicant or caller of the presence of utility lines and the marking system used to identify their location(s).

When possible, the utility shall notify the person requesting line location within forty-eight (48) hours of his or her application or request. Notice may be by acknowledgement on the permit application, by telephone, or in person and shall be given whether or not utility lines are in the work area. Where lines are present, notice will also include information about the method of marking. The utility shall determine the presence of pipelines in the work area and provide tempo marking where necessary. Whenever possible, marking shall be completed within twenty-four (24) hours of the receipt of necessary information.

Pipelines shall be marked with flags, paint or stakes using the following color code: Yellow-Natural Gas; Blue-Water; Green-Sewer. Lyons Municipal Utilities is not responsible for location of other utility facilities as part of a pipeline locating request. Temporary markings or markers shall be made or placed as necessary to show the location of pipelines and cables. On gas pipelines, markers shall be placed above the pipeline at not less than twenty-five (25') foot intervals (where physically possible) for a distance of one thousand five hundred fifty (1,550') feet either side of the proposed work area. Gas pipeline markers shall indicate the diameter of the pipeline, though excavators should not use line markers as absolute guides for close proximity digging the power equipment. (*Ord. No. 452, 12/5/89*) (*Amended by Ord. No.470, 5/7/91*)

§8-110 MUNICIPAL PROPERTY; PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS.

(A) Except as provided in division (B) of this section, the Municipality shall not engage in the construction of any public works involving architecture or engineering unless the plans, specifications, and estimates have been prepared and the construction has been observed by an architect, a professional engineer, or a person under the direct supervision of an architect, professional engineer, or those under the direct supervision of an architect or professional engineer.

(B) Division (A) of this section shall not apply to the following activities:

(1) Any public works project with contemplated expenditures for the completed project that do not exceed eighty-thousand dollars (\$80,000); (*Neb. RS 81-3445, 81-3449(3) and 81-3453(3)*)

(2) Any alteration, renovation, or remodeling of a building, if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building; (*Neb. RS 81-3449(4), and 81-3453(4)*)

(3) Performance of professional services for itself if the Municipality appoints a municipal engineer or employs a full-time person licensed under the Engineers and Architects Regulation Act who is in responsible charge of architectural or engineering work; (*Neb. RS 81-3423, 81-3449(9), and 81-3453(6)*)

(4) The practice of any other certified trade or legally recognized profession; (*Neb. RS 81-3449(11) and 81-3453(7)*)

(5) Earthmoving and related work associated with soil and water conservation practices performed on any land owned by the Municipality that is not subject to a permit from the Department of Natural Resources; (*Neb. RS 81-3449(13) and 81-3453(12)*)

(6) The work of employees and agents of the Municipality performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land use regulations and their customary duties in utility and public works construction, operation, and maintenance; (*Neb. RS 81-3449(14) and 81-3453(13)*)

(7) Those services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, marine operating engineers, power plant operating engineers, or manufacturers who supervise the operation of or operate machinery or equipment or who supervise construction within their own plant; (*Neb. RS 81-3453(10)*)

(8) The construction of municipal water wells as defined in *Neb. RS 46-1212*, the installation of pumps and pumping equipment into municipal water wells, and the decommissioning of municipal water wells, unless such construction, installation, or decommissioning is required by the Municipality to be designed or supervised by an engineer or unless legal requirements are imposed upon the Municipality as a part of a public water supply; and (*Neb. RS 81-3453(15)*)

(9) Any other activities described in *Neb. RS 81-3449 to 81-3453*.

§8-111 MUNICIPAL PROPERTY; ACQUISITION OF REAL PROPERTY. When acquiring an interest in real property by purchase or eminent domain, the Municipality shall do so only after the Governing Body has authorized the acquisition by action taken in a public meeting after notice and public hearing. (*Ref 18-1755 RS Neb.*) (*Ord. No. 555, 11/4/97*)

Article 2. Sidewalks

§8-201 SIDEWALKS; OVERHANGING BRANCHES. The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any street or sidewalk over which there extends the branches of trees, shall at all times keep the branches or limbs thereof trimmed to the height of at least eight (8') feet above the surface of said walk. Whenever the limbs or branches of any tree or trees extend over sidewalks contrary to the provisions herein so as to interfere with the lighting of the street from street lights, or with the convenience of the public using said sidewalk, the Governing Body at any regular or special meeting may pass a resolution ordering the owner or occupant to cut or remove said obstructions within five (5) days after having received a copy thereof from the Building Inspector stating that the Municipality will remove said branches and charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided, if said resolution is not complied with. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. *(Ref. 17-557.01 RS Neb.)*

§8-202 SIDEWALK; KEPT CLEAN. It shall be unlawful for the occupant of any lot or lots or the owner of any vacant lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substance to accumulate on the sidewalks or to permit any snow, sleet, ice, mud, or other substance to remain upon said sidewalk. All sidewalks within the business district shall be cleaned within six (6) hours after the cessation of a storm, unless the storm or fall of snow shall have taken place during the night, in which case the sidewalk shall be cleaned before nine (9:00) o'clock a.m. the following day; provided, sidewalks within the residential areas of the Municipality shall be cleaned within twenty-four (24) hours after the cessation of the storm. *(Ref. 17-557 RS Neb.)*

§8-203 SIDEWALKS; REPAIR. (A) The Governing Body may, by resolution, order the repair of a sidewalk on any lot or piece of ground within the Municipality and may assess the expense thereof on the property in front of which such repairs are made, after having given notice of its intention to do so:

(1) By publication in one issue of a legal newspaper of general circulation in the Municipality; and

(2) By either causing a written notice to be served upon the occupant in possession of the property involved or to be posted upon such premises ten days prior to the commencement of such repair. *(Neb. RS 17-522)*

(B) The notice shall:

(1) State that the Governing body has ordered repair of the sidewalk;

(2) Contain the Municipality's estimate of the cost of the repair;

(3) Notify the property owner that he or she may, within 10 days after the date of publication of the notice, notify the Municipality that he or she will repair the sidewalk within 30 days after such date of publication;

(4) Notify the property owner that if he or she fails to so notify the Municipality within the 10 days or, having so notified the Municipality, fails to repair the sidewalk within the 30 days, the Municipality will cause the sidewalk to be repaired and the expense thereof to be assessed against the property.

(C) (1) Before the Municipality imposes any special assessments for sidewalk repair, a copy of the notice that is required to be published shall be mailed to the last-known address of the nonresident property owners as shown on the current tax rolls at the time such notice is first published. (*Neb. RS 13-310*)

(2) The Municipal Clerk shall mail the notice by certified mail with return receipt requested. (*Neb. RS 13-312*)

(3) For purposes of this division, nonresident property owner means any person or corporation whose residence and mailing address as shown on the current tax rolls is outside the boundaries of the county in which the property subject to assessment is located and who is a record owner of the property. (*Neb. RS 13-314*)

(D) All sidewalks shall be repaired in conformity with such plans and specifications as may be approved by the Governing Body.

(E) Assessments made under this section shall be made and assessed in the manner provided in *Neb. RS-524*.

§8-204 SIDEWALKS; CONSTRUCTION BY OWNER. Any person desiring to construct or cause to be constructed, repair, or remove any sidewalk shall do so only as herein provided. It shall be unlawful for any person to construct, repair or remove any sidewalk without first having obtained a permit.

Said owner shall make application in writing for a permit and file such application in the office of the Municipal Clerk. The permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed, repaired or removed. The Governing Body shall issue the desired permit unless good cause shall appear why said permit should be denied. It shall be unlawful for any person to construct or cause to be constructed said sidewalk at any other location, grade, or elevation than so designated by the Municipality. All sidewalks shall be built and constructed on the established grade or elevation, and if there is no established grade, then on the grade or elevation indicated by the Governing Body.

§8-205 SIDEWALKS; MUNICIPAL CONSTRUCTION. The Governing Body may, by resolution, order the construction of a sidewalk on any lot or piece of ground within the Municipality. Notice of the Governing Body's intention to construct said sidewalk shall be given by the Municipal Clerk by publication of notice one (1) time in a legal newspaper of general circulation in the Municipality.

A copy of said notice shall be personally served upon the occupant in possession of such property, or, when personal service is not possible, said notice shall be posted upon such premise ten (10) days prior to the commencement of construction. The notice required in this Section shall be prepared by the Municipal Attorney in accordance with the provisions of this Section. Such service shall include a form of return evidencing personal service or posting as herein required.

Said notice shall notify the owner of the premise of the passage of the resolution ordering him to construct or cause to be constructed a sidewalk within thirty (30) days after the date of publication and further that if he falls to construct the sidewalk or cause the same to be done within the time allowed, the Municipality will cause the sidewalk to be constructed and the cost thereof shall be levied and assessed as a special tax against the premises; provided, the notice shall contain the official estimate of the cost of said construction and no special assessment in excess of this estimate shall be assessed against the property. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

(Ref. 17 -522, 17 -523 RS Neb.)

§8-206 SIDEWALKS; CONSTRUCTION BY PETITION. If the owners of the record title representing more than sixty (60%) per cent of the front footage of the directly abutting property, subject to assessment for sidewalk improvements, petition the Governing Body to make the same, the Governing Body shall proceed in all things as though such construction had been ordered by it. Upon the petition of any freeholder who is an abutting owner in fee simple of property subject to assessment for sidewalk improvements, the Governing Body may order permanent sidewalks built in accordance with this Article upon the freeholder making, executing, and delivering to the Municipality an agreement to the effect that the petitioning freeholder will pay the engineering service fee and all other incidental construction costs until paid shall be a perpetual lien upon the real estate along which the freeholder desires such sidewalk to be constructed and that the petitioner gives and grants to the Municipality the right to assess and levy the costs of such construction against the freeholder's real estate abutting the sidewalk improvement and promises to pay such costs with interest. The total cost of such improvement shall be levied, allocated, financed, and specially assessed as provided by law. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

Article 3. Streets

§8-301 STREETS AND ALLEYS; OPENING, WIDENING, IMPROVING, OR VACATING.

(A) The Municipality shall have power to open, widen, or otherwise improve or vacate any street, avenue, alley, or lane within the limits of the Municipality and also to create, open, and improve any new street, avenue, alley, or lane. All damages sustained by the citizens of the Municipality, or by the owners of the property therein, shall be ascertained in such manner as shall be provided by ordinance. Whenever any street or alley is vacated, the same shall revert to the owners of the abutting real estate, one-half on each side thereof and become a part of such property. When a portion of a street, avenue, alley, or lane is vacated only on one side of the center thereof, the title to such land shall vest in the owner of the abutting property and become a part of such property. When the Municipality vacates all or any portion of a street, avenue, alley, or lane, the Municipality shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance with the Register of Deeds for the county in which the vacated property is located to be indexed against all affected lots. (*Neb. RS 17-558*)

(B) The Municipality shall have power to create, open, widen, or extend any street, avenue, alley, off-street parking area, or other public way, or annul, vacate, or discontinue the same. (*Neb. RS 17-559*)

§8-302 SREETS; EXCAVATION. It shall be unlawful for any person to make an excavation in any street or streets for any purpose whatsoever unless a written permit is issued by the Chief Municipal Street Official authorizing such excavations.

§8-303 STREETS; MIXING CONCRETE. It shall be unlawful for any person to mix any concrete or plastering material directly on the street pavement for any reason whatsoever.

§8-304 STREETS; HARMFUL LIQUIDS. It shall be unlawful for any person to place or permit to leak in the gutter of any street, waste gasoline, kerosene, or high lubricating oils. which damage or act as a solvent upon said streets.

§8-305 STREETS; HEAVY EQUIPMENT. It shall hereafter be unlawful for any person or person to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing on any unpaved street without first having protected such curb, gutter, bridge, culvert, sidewalks, crosswalk, or crossing with heavy plank sufficient in strength to warrant against the breaking or damaging of such curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing. Hereafter, it shall be unlawful to run, drive, move, operate, or convey over or across any paved street a vehicle, machine, or implement with sharp discs or sharp wheels that bear upon said pavement, with wheels having cutting edges, with wheels having lugs, any protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent or otherwise injure or

damage any pavement, gutter, or curb; provided, where heavy vehicles, structures, and machines move along paved or unpaved streets the Municipal Police are hereby authorized and empowered to choose the route over which the moving of such vehicles, structures, or machines will be permitted and allowed. Nothing in this Section shall be construed to apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths (5/16) of an inch in diameter inclusive of the stud-casting with an average protrusion beyond the tread surface of not more than seven sixty-fourths (7/64) of an inch between October 1 and April 15; provided, that school buses and emergency vehicles shall be permitted to use metal or metal-type studs all year; it shall be permissible to use farm machinery with tires having protuberances which will not injure the streets: and it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide or skid. (*Ref. 39-771 RS Neb.*)

§8-306 STREETS; CONSTRUCTION NOTICE. The chief street official shall notify the owners in fee simple of real estate abutting a street, alley, or a part thereof which is to be put under contract for paving or repaving. Notice shall also be given to all gas, electric service, and telephone companies. Notice shall also be given to all consumers of gas, water, and sewer services which will be discontinued during such construction. Said notice shall be published one (1) time in a legal newspaper at least twenty (20) days prior to the beginning of such construction by the party undertaking such construction and said notice shall state at what date connections must be made and excavation completed. All gas, water, sewer, and underground connections must be made prior to the paving or repaving of the street under construction. After expiration of such time, permits for excavation will not be issued, nor will excavation be allowed, until after the completion of the pavement in said street or alley and the formal final acceptance thereof by the proper officials of the Municipality.

§8-307 STREETS; CONSTRUCTION ASSESSMENT. To defray the costs and expenses of street improvements as may be authorized by law, the Governing Body shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, abutting upon, or especially benefiting from, the street, avenue, alley, or sidewalk in whole or in part opened, widened, curbed, curbed and guttered, graded, paved, repaired, graveled, macadamized, parked, extended, constructed, or otherwise improved or repaired. The Governing Body sitting as the Board of Equalization shall review all such improvements in accordance with the procedure provided by law. All special assessments shall be made by the Governing Body at a regular or special meeting by resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements and the amount charged against same. The vote shall be recorded in the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in some legal newspaper, published or of general circulation in the Municipality, at least four (4) weeks before the same shall be held. In lieu of such aforementioned notice,

personal service may be had upon the persons owning or occupying the property to be assessed. Such assessments shall be known as "special assessments for improvements" and with the cost of notice shall be levied and collected as a special tax, in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other Municipal taxes, and shall be certified to the County Clerk by the Municipal Clerk forthwith after the date of levy for collection by the Treasurer of said County unless otherwise specified. After it shall become delinquent, said assessment shall draw interest at the legal interest rate per annum. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (*Ref. 17-511. 17-524 RS Neb.*)

§8-308 CURB AND GUTTER; CUTTING CURB. It shall be unlawful for any person to cut into any paving, curb, or sidewalk for the purpose of constructing a driveway or any other purpose whatsoever without first having obtained a written permit from the Governing Body therefore. Before any person shall obtain a permit, he shall inform the Municipal Clerk of the place where such cutting is to be done, and it shall be the Utilities Superintendent's duty to inspect the place of entry into the paving, sidewalk, or curb, before the same is cut. When cutting into any paving, it shall be the duty of the party to cut the paving under such rules and regulations as may be prescribed by the Governing Body. When the applicant is ready to close the opening made, he shall inform the Utilities Superintendent, who shall supervise and inspect the materials used and the work done in closing the opening. It shall be discretionary with the Governing Body to order the Utilities Superintendent to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit. The Governing Body may consent to the work of cutting and closing the paving to be done by the party holding such permit. Before any permit is issued by the Governing Body, the applicant for such permit shall deposit with the Municipal Treasurer a sum set by resolution of the Governing Body for all paving, curb, or sidewalk to be cut. Such sum shall be set on a per square foot cost of construction basis. The deposit shall be retained by the Municipality for the purpose of replacing the paving, curb, or sidewalk in the event the work is done by the Municipality. In the event the Municipality elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the Municipality until the work is completed to the satisfaction of the Utilities Superintendent or of the committee of the Governing Body on streets and alleys. In addition to making the deposit above set forth, the applicant shall, before any permit is issued, execute a bond to the Municipality with a good and sufficient surety or sureties to be approved by the Governing Body in a sum set by resolution of the Governing Body.

§8-309 STREETS; PETITION FOR IMPROVEMENTS. Whenever a petition signed by the owners of record title representing more than sixty (60%) percent of the front footage of the property directly abutting upon the street, streets, alley, alleys, public way, or the public grounds proposed to be improved, shall be presented and filed with the Municipal Clerk, petitioning therefore the Governing Body shall by ordinance create a paving, graveling, or other improvement district or districts, and shall cause such work to be done or such improvement to be made, and shall contract therefore, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley, or alleys, especially benefited thereby in such district in proportion to such benefits to pay the cost of such improvement. The Governing Body shall have the discretion to deny the formation of the proposed district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the Governing Body should deny a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties. (*Ref. 17 -510 RS Neb.*)

§8-310 STREETS; DEFERRAL FROM SPECIAL ASSESSMENTS. Whenever the Governing Body of a Municipality creates an improvement district as specified in Section 8-108, which includes land adjacent to the Municipality which is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments. For purposes of this Section, the terms agricultural use and agricultural use zone shall have the meaning specified in *Section 77-1343 Reissue Revised Statutes of Nebraska 1943*.

Any owner of record title eligible for the deferral granted by this Section shall, to secure such assessment, make application to the Governing Body of the Municipality within ninety (90) days after creation of an improvement district as specified in Section 8-107. Any owner of record title who makes application for the deferral provided by this Section shall notify the County Register of Deeds of such application in writing prior to approval by the Governing Body. The Governing Body shall approve the application of any owner of record title upon determination that the property (a) is within an agricultural use zone and is used exclusively for agricultural use, and (b) the owner has met the requirements of this Section.

The deferral provided for in this Section shall be terminated upon any of the following events:

- A. Notification by the owner of record title to the Governing Body to remove such deferral;
- B. Sale or transfer to a new owner who does not make a new application within sixty (60) days of the sale or transfer, except as provided in subdivision 3 of this Section;
- C. Transfer by reason of death of a former owner to a new owner who does not make application within one hundred twenty-five (125) days of the transfer;
- D. The land is no longer being used as agricultural land; or
- E. Change of zoning to other than an agricultural zone.

Whenever property which has received a deferral pursuant to this Section becomes disqualified for such deferral, the owner of record title of such property shall pay to the Municipality an amount equal to;

A. The total amount of special assessments which would have been assessed against such property to the extent of special benefits, had such deferral not been granted; and

B. Interest upon the special assessments not paid each year at the rate of six (6%) per cent from the dates at which such assessments would have been payable if no deferral had been granted.

In cases where the deferral provided by this section is terminated as a result of a sale or transfer described in subdivision 2 or 3 of this section, the lien for assessments and interest shall attach as of the day preceding such sale or transfer. (*Ref. 19-2428 thru 19-2431 RS Neb.*) (*Amended by Ord. No. 432, 9/15/87*)

§8-311 STREETS; IMPROVEMENT OF STREETS ON CORPORATE LIMITS. The Mayor and Council shall have the power to improve any street or part thereof which divides the Municipal corporate area and the area adjoining the Municipality. When creating an improvement district including land adjacent to the Municipality, the Council shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby. (*Ref. 17-509 RS Neb.*)

§8-312 STREETS; IMPROVEMENT DISTRICTS; OBJECTIONS. Whenever the Governing Body deems it necessary to make any improvements allowed by statute which are to be funded by a levy of special assessment on the property especially benefited, the Governing Body shall by ordinance create a paving, graveling, or other improvement district and, after the passage, approval, and publication or posting of such ordinance, shall publish notice of the creation of any such district for six (6) days in a legal newspaper of the Municipality, if a daily newspaper, or for two (2) consecutive weeks if it is a weekly newspaper. If no legal newspaper is published in the Municipality, the publication shall be in a legal newspaper of general circulation in the Municipality. If the owners of the record title representing more than fifty percent (50%) of the front footage of the property directly abutting on the street or alley to be improved file with the Municipal Clerk within twenty (20) days after the first publication of such notice, written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If objections are not filed against the district in the time and manner prescribed in this section, the Governing Body shall immediately cause such work to be done or such improvement to be made, shall contract for the work or improvement, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street or alley especially benefited in such district in proportion to such benefits to pay the cost of such improvement. (*Ref. 17-511 RS Neb.*) (*Amended by Ord. No. 544, 5/6/97*)

§8-313 STREETS; IMPROVEMENT OF MAIN THOROUGHFARES. The Mayor and City Council shall have the power by a three-fourths (3/4) vote of the Governing Body, to create by ordinance a paving, graveling or other improvement district, and to order such work done upon any federal or state highway in the Municipality, or upon a street or route designated by the Mayor and City Council as a main thoroughfare that connects on both ends, to either a federal or state highway or a county road. The Governing Body shall contract therefore and shall have the power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby. *(Ref. 17-512 RS Neb.)*

§8-314 STREETS; DRIVEWAY APPROACHES. The Utilities Superintendent may require the owner of property served by a driveway approach, constructed or maintained upon the street right-of-way, to repair or replace any such driveway approach which is cracked, broken, or otherwise deteriorated to the extent that it is causing, or is likely to cause, damage to or interfere with any street structure including pavement or sidewalks.

The Municipal Clerk shall give the property owner notice by registered letter or certified mail, directed to the last-known address of such owner or the agent of such owner, directing the repair or replacement of such driveway approach. If within thirty (30) days of mailing such notice, the property owner fails or neglects to cause such repairs or replacements to be made, the Utilities Superintendent may cause such work to be done and assess the cost upon the property served by such approach. *(Ref. 18-1748 RS Neb.)*

§8-315 STREETS; VACATING PUBLIC WAYS.

(A) SPECIAL DAMAGES shall mean only those losses or damages or injuries which a property owner suffers that are peculiar or special or unique to his or her property and which result from the City Council vacating a street, avenue, alley, lane, or similar public way. SPECIAL DAMAGES shall not mean those losses or damages or injuries that a property owner suffers that are in common with the rest of the City or public at large, even though those losses or damages or injuries suffered by the property owner are greater in degree than the rest of the City or public at large.

(B) Whenever the City Council decides that it would be in the best interests of the City to vacate a street, avenue, alley, lane, or similar public way, the City Council shall comply with the following procedure:

(1) Notice. Notice shall be given to all abutting property owners either by first class mail to their last known address or if there is no known address then by publishing the notice in a newspaper that is of general circulation in the City. The content of the notice shall advise the abutting property owners that the City council will consider vacating such street, avenue, alley, lane, or similar public way at its next regular meeting or, if a special meeting is scheduled for such discussion, then the date, time, and place of such meeting.

(2) Consent; waiver. The City Council may have all the abutting property owners sign a form stating that they consent to the action being taken by the City Council and waive their right of access. The signing of such form shall have no effect on claims for special damages by the abutting property owners but shall create the presumption that the City Council's action was proper. If the abutting property owners do not sign the consent/waiver form, the City Council may still proceed with vacating the street, avenue, alley, lane, or similar public way under the authority granted by *Neb. RS 17-558 and 17-559*.

(3) Ordinance. The City Council shall pass an ordinance that includes essentially the following provisions:

(a) A declaration that the action is expedient for the public good or in the best interests of the City.

(b) A statement that the City will have an easement for maintaining all utilities.

(c) A method or procedure for ascertaining special damages to abutting property owners.

(C) The Mayor shall appoint three or five or seven disinterested residents of the City to a special commission to ascertain the amount of special damages that the abutting property owners are entitled to receive and which resulted from the City Council vacating the street, avenue, alley, lane, or similar public way. The appointees of the special commission shall be approved by the City Council. Only special damages shall be awarded to the abutting property owners.

(D) In determining the amount of compensation to award the abutting property owners as special damages, the commission shall use the following rule:

An abutting property owner is entitled to recover as compensation the difference between the value of the property immediately before and immediately after the vacating of such street, avenue, alley, lane, or similar public way. If no difference in value exists, the abutting property owner is entitled to no compensation.

(Ref. 17-558, 17-559 RS Neb.) (Ord. No. 418, 10/7/86)

§8-316 STREETS; VACATING PUBLIC WAYS; PROCEDURE. Whenever the Governing Body decides that it would be in the best interests of the Municipality to vacate a street, avenue, alley, lane or similar public way, the Governing Body shall comply with the following procedure:

A. Notice. Notice shall be given to all abutting property owners either by First (1st) Class mail to their last known address or if there is no known address then by publishing the notice in a newspaper that is of general circulation in the Municipality. The content of the notice will advise the abutting property owners that the Governing Body will consider vacating such street, avenue, alley, lane or similar public way at their next regular meeting; or if a special meeting is scheduled for such discussion, then the date, time and place of such meeting.

B. Consent/Waiver. The Governing Body may have all the abutting property owners sign a form stating that they consent to the action being taken by the Governing Body and waive their right of access. The signing of such form has no effect on claims for special damages, as defined in Section 8-315 by the abutting property owners, but does create the presumption that the Governing Body's action was proper.

However, if all the abutting property owners do not sign the consent/waiver form, the Governing Body may still proceed with vacating such street, avenue, alley, lane or similar public way under the authority granted them by *Sections 17-558 and 17-559 RRS Neb.*

C. Ordinance. The Governing Body shall pass an ordinance that shall state essentially the following:

1. A declaration that the action is expedient for the public good or in the best interests of the Municipality;
2. A statement that the Municipality shall have an easement for maintaining all utilities; and
3. A method or procedure for ascertaining special damages to abutting property owners.

D. Filing. The Clerk shall file a copy of the ordinance with the County Register of Deeds to ensure that abutting property owners can gain title to their share of the vacated street, avenue, alley, lane or similar public way and so that such land will be drawn to the attention of the County Assessor. (*Ref. 17-558. 17-559 RS Neb.*) (*Ord. No. 419, 10/7/86*)

§8-317 STREETS; CLOSING DESIGNATED PUBLIC WAYS.

1. First Street north of Main Street shall be closed to all public traffic.
2. The alleyway located immediately north and parallel to Main Street, shall be closed to public traffic between First Street and Second Street, with ingress and egress from Second Street allowed only to adjoining property owners, to and from their property. (*Ord. No. 655*)

§8-318 SNOW EMERGENCY; DEFINITION; REGULATIONS.

1) Whenever, by reason of sleet, freezing rain or a heavy snowfall, a serious public hazard impairing transportation and the movement of fire, medical and police protection services exists, a snow emergency may be declared and such snow emergency shall continue until such time as snow removal, spreading of sand, or salting operations have been declared completed.

2) The Mayor, or the Mayor's designee shall have the authority to declare a snow emergency when the aforesaid conditions exist, and also to declare the completion of snow emergency operations.

3) Whenever an emergency exists, the Mayor, or the Mayor's designee shall cause announcement thereof to be made by not less than two or more radio or television stations or other methods of communication, whose normal operating range covers the City in an expeditious manner, within one hour thereafter.

4) When a snow emergency is in effect, no one shall park a motor vehicle on the streets within the City.

5) When a snow emergency is in effect, any vehicle parked on the streets in the City shall be ordered removed as hereinafter provided. All vehicles are to remain off of said streets until the snow emergency operations have been completed.

6) Vehicles parked in violation of this section are a nuisance and a danger and interfere with snow emergency operations and the Chief of Police shall have the authority to order the removal of any vehicle parked in violation of this section. The Chief of Police may issue such order personally or through one of the regular police officers. The costs of towing and storage of such vehicle shall be paid by the registered owner. (*Ord. No. 684; 03/04/2010*)

Article 4. Trees

§8-401 TREES; DEFINITIONS.

A. STREET TREES. "Street trees" are herein defined as trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the City.

B. PARK TREES. "Park trees" are herein defined as trees, shrubs, bushes, and all other woody vegetation in public parks and all areas owned by the City or to which the public has free access.

C. SMALL TREES. "Small trees" are herein defined as trees which by their nature normally attain heights greater than twenty-five (25') feet at maturity.

D. MEDIUM TREES. "Medium trees" are herein defined as trees which by their nature normally attain heights of from twenty-five to forty-five (25' to 45') feet at maturity.

E. LARGE TREES. "Large trees" are herein defined as trees which by their nature attain heights greater than forty-five (45') feet at maturity.

§8-402 TREE BOARD; CREATION AND ESTABLISHMENT. There is hereby created and established a City Tree Board for the City of Lyons, Nebraska which shall consist of four members, citizens and residents of this city who shall be appointed by the Mayor with the approval of the City Council.

§8-403 TREE BOARD; TERM OF OFFICE. The term of the four persons to be appointed by the Mayor shall be one year. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed for a new one year term.

§8-404 TREE BOARD; COMPENSATION. Members of the Tree Board shall serve without compensation.

§8-405 TREE BOARD; DUTIES AND RESPONSIBILITIES. It shall be the responsibility of the Tree Board to study, investigate, counsel and develop and/or update annually, and administer written plans (annual and long range) for the care, replacement, maintenance, and removal or disposition of trees and shrubs in parks, along streets, and in other public areas. Such plan will be presented annually to the City Council and upon their acceptance and approval shall constitute the official comprehensive city tree plan for the City of Lyons, Nebraska.

The Tree Board, when requested by the City Council, shall consider, investigate, make finding, report, and recommend upon any special matter or question relating to trees.

§8-406 TREE BOARD; OPERATION. The Tree 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.

§8-407 TREES; SPECIES TO BE PLANTED. The following species of trees listed by common name, constitute the official street tree species for the City of Lyons, County of Burt, State of Nebraska. No species other than these included in this list may be planted as street trees without written permission of the City Council.

<u>Small Trees</u>	<u>Medium Trees</u>	<u>Large Trees</u>
Lilac, Japanese Tree	Sweet gum	Ash, Green Coffeetree
Hawthorns	Ginkgo	Kentucky Hackberry Maple
Goldenraintree	Linden	Sugar Maple, Norway Oak
Corktree	Littleleaf Linden	Bur Oak, Northern Red
Amur Maple	Redmond Mountainash	Honeylocust Sycamore
Amur Pear		American Pagodatree
European Plum		Japanese Linden,
Purpleleaf Redbud		American Flowering
Eastern Crabapples		

The City Council shall review and approve all tree planting plans for "park trees" as defined in Section 8-401 of this Article.

§8-408 TREES; SPACING. The spacing of street trees and park trees will be in accordance with the three (3) species size classes listed in Sections 8-401 and 8-407 of this Article, and no trees may be planted closer together than the following: small trees, thirty (30') feet: medium trees, forty (40') feet: large trees, fifty (50') feet: except in special plantings approved by the City Council.

§8-409 TREES; DISTANCE FROM CURB AND SIDEWALK. The distance trees may be planted from curbs or curb lines and sidewalks will be in accordance with the tree species size classes listed in Sections 8-401 and 8-407 of this Article, and no trees may be planted closer to any curb or sidewalk than the following: small trees, two (2') feet: medium trees, three (3') feet: large trees, four (4') feet.

Street trees shall be centered between the curb and sidewalk or aligned with existing street trees: except in special situations approved by the City Council. In areas with (a) no curbs or sidewalks, or (b) less than four (4') feet between the curb and sidewalk, no street trees shall be planted without written permission from the City Council.

§8-410 TREES; DISTANCE FROM STREET INTERSECTIONS, DRIVEWAYS AND ALLEYS. No street tree or park tree shall be planted within thirty-five (35') feet of any street intersection measured from the point of nearest intersecting curbs or curb lines or within fifteen (15') feet of any driveway or alley.

§8-411 TREES; DISTANCE FROM UTILITY LINES. No street trees or park trees other than those species listed as small trees in Section 8-407 of this Article, or species specifically approved by the City Council, may be planted under or within ten (10)

lateral feet of any overhead utility wire, or over or within five (5) lateral feet of any underground water line, sewer line, transmission line or other utility line, wire or main. No street tree shall be planted within ten (10) feet of any fireplug.

§8-412 TREES; CARE AND REMOVAL. The City shall have the right to plant, prune, maintain and remove street trees or park trees within the lines of all streets, alleys, avenues, lanes, squares, and public grounds as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The City Council may remove or cause or order to be removed any street tree or park tree or part thereof which is in an unsafe condition or which, by reason of its nature, is injurious to sewers, electric power lines, gas lines, water lines or other public improvements, or is infected with any injurious fungus, insect or other pest. No person or property owner shall remove any live street tree or park tree for any reason without written permission of the City Council. Utility personnel may remove trees or parts thereof which are injurious to their utility lines at their expense upon obtaining permission for such removal or trimming from the City Council. This section does not prohibit the planting of street trees by abutting property owners providing that the selection and location of said trees is in accordance with Sections 8-408 through 8-411.

§8-413 TREES; TOPPING. It shall be unlawful as a normal practice for any person, firm, or City department to top any street tree, park tree or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three (3") inches in diameter 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 other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this Article at the determination of the City Council.

§8-414 TREES; OBSTRUCTIONS; PRUNING, REMOVAL. All trees and shrubs within the City shall be pruned or removed when such trees or shrubs obstruct the light from any street lamp, obstruct the visibility of any traffic control device or sign, obstruct the passage of pedestrians on sidewalks, or obstruct the view of any street or alley intersection. The minimum clearance of any overhanging portion thereof shall be twelve (12') feet over all streets and eight (8') over sidewalks.

All shrubs and hedges defined as street trees in this Article shall be kept trimmed by the abutting property owner at least two (2') feet back from all curbs, sidewalks, driveways or alleys; and the same shall at all times be kept trimmed to a height not greater than thirty (30') inches above the top of the curb unless the City Council, for other than corner lots, determines that a greater height would not constitute a hazard to pedestrian or vehicular traffic.

The City Council shall have the power and authority to prune or remove, or order to prune or remove, any such trees or shrubs on private property .The City

Council shall notify in writing the owners of such trees or shrubs. Pruning or removal shall be done by said owners at their own expense within sixty (60) days after the date of notification. In the event of a failure of owners to comply with said notice, the City shall have the authority to prune or remove said trees or shrubs and charge the cost of said pruning or removal on the owner's property tax notice.

§8-415 TREES; NUISANCE; DEAD OR DISEASED TREES. (1) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the Municipality.

(2) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees on private property within the corporate limits of the Municipality. For the purpose of carrying out the provisions of this section, the Municipal Police shall have the authority to enter upon private property to inspect the trees thereon.

(3) Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. Within thirty (30) days after the receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing or fails to comply with the order to abate and remove the nuisance, the Municipality may have such work done and may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied or assessed. (*Ref. 17-555, 18-1720, 28-1321 RS Neb.*) (*Amended by Ord. No. 549, 9/2/97*)

§8-416 TREES; WORK ORDERED OR DONE BY THE CITY. Written permission shall not be required for any tree, shrub or hedge planting, pruning, spraying or removing ordered or done by the City, however, all such work shall be done in conformance with the requirements of Sections 8-507 through 8-515 of this Article.

§8-417 TREES; ABUSE OR MUTILATION. Unless, specifically authorized by the City Council, no person shall intentionally damage, cut, carve, transplant or remove any street tree or park tree; attach any rope, wire, nails, advertising posters or other contrivance to such trees; allow any gaseous liquid, or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of such trees. The preceding restrictions do not apply to proper planting, staking and guying practices.

§8-418 TREES; PROTECTION. All street trees or park trees near any excavation or construction of any building, structure or street work, shall be guarded with a substantial fence, frame or box not less than four (4') feet high and eight (8') feet square (8' x 8' x 4') and all construction materials, soil or other debris shall be kept outside the barrier.

No person shall excavate any ditches, tunnels, trenches or lay any drive within ten (10') feet of any street or park tree without first obtaining written permission from the City Council.

No person shall deposit, place, store or maintain upon any public property of the City, any stone, brick, sand, soil, concrete or other material which may impede the free passage of water, air, and fertilizer to the roots of any street tree or park tree, except by written permission of the City Council.

§8-419 TREES; STUMP REMOVAL. All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

§8-420 TREES; INTERFERENCE WITH CITY TREE BOARD. It shall be unlawful for any person to prevent, delay or interfere with the City Council, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any street trees, park trees, or trees on private grounds, as authorized in this Article.

§8-421 TREES; LICENSE AND BOND. It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees within the City without first applying for and procuring a license. The license fee shall be ten (\$10.00) dollars annually in advance; provided however that no license shall be required of any public service company or City employee doing such work in the pursuit of his public service endeavors. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of fifty thousand (\$50,000.00) dollars for bodily injury and one hundred thousand (\$100,000.00) dollars for property damage indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavors as herein described.

§8-422 TREES; DUTCH ELM DISEASE; NUISANCE. Trees of all species and varieties of elm, zelkova and planera infected with the fungus *Ceratostomella Ulmi*, as determined by laboratory analysis, are hereby declared to be a public nuisance, and shall be removed and burned.

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. (*Ref. 18-1720 RS Neb.*)

§8-423 TREES; ENFORCEMENT OFFICIAL; RIGHTS; DUTIES. The Utilities Superintendent is charged with enforcement of Sections 8-422 through 8-427 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

to determine whether or not the same are infected. It shall be unlawful for any person to prevent the Utility Superintendent from entering on private property for purposes of carrying out his duties hereunder, or to interfere with such Utilities Superintendent in the lawful performance of his duties under the provisions of this Article.

§8-424 TREES; NOTICE; REMOVAL; BURNING. If trees on private property are found to be infected or in a dead or dying condition, the Utilities Superintendent shall give to the owner of the premises where the same are situated, written notice of the existence of such disease or of the dead or dying condition of such trees or parts thereof; and require the removal and burning of the same under the direction and supervision of the Utilities Superintendent. Such notice shall also notify the owner of the premises that if such tree is not removed and burned after five (5) days notice by publication or personal service, the City will proceed with the removal and burning of the same, and assess the cost thereof against the property in accordance with the provisions of this Article.

§8-425 TREES; REMOVAL, SERVICE OF NOTICE. Service of notice shall be by personal service where the owner of said premises is a resident of the City. When the owner is a nonresident, said notice shall be served by registered mail addressed to such owner at his last known address, as shown on the records in the office of the County Assessor of the County of Burt, and by publication at least one (1) time in a newspaper of general circulation in the City.

§8-426 TREES; ON PRIVATE LANDS. After due notice has been served upon the owner of the said premises, it shall thereupon become his duty to cause such tree to be removed and burned under the direction and supervision of the Utilities Superintendent. In lieu thereof, the person charged with such removal and burning 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 are 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 County Clerk of Burt County, Nebraska. If the owner fails, neglects, or refuses to remove or burn such tree, the Utilities Superintendent may, five (5) days after notice is served, enter upon such private property and proceed with the removal and burning of the same; and the cost thereof shall be assessed against the real estate in the manner hereinafter provided. The Utilities Superintendent shall, not later than September fifteenth (15th) of each year, report such costs to the City Council, whereupon the City Council shall, at a regular meeting by resolution, assess such cost, together with any assessment expenses against such real estate: provided that notice of the time of such meeting of the City Council shall be given in the manner provided by law. When such assessment has been made, it shall be certified by the Clerk and delivered to the County Treasurer and shall be collected in the manner provided by law for the collection of general real estate taxes. Such assessment shall be a lien upon such

real estate from the date of such assessment and shall become delinquent in the same manner as general real estate taxes under the Statutes of the State of Nebraska relating thereto, and shall draw interest after delinquency at the rate of fourteen (14%) per cent per annum from said date until paid. It shall be the duty of the County Treasurer to collect said tax in the same manner and at the same time as general taxes, and the items of said tax shall be receipted for on the same receipt blanks as general real estate taxes.

§8-427 TREES; ON PUBLIC LANDS. Infected trees, or trees or parts thereof in a dead or dying condition on public lands, shall be removed and burned by the Utilities Superintendent within five (5) days of his discovery that such condition exists, and the cost thereof shall be borne by the City without being assessed to the abutting property owner.

§8-428 CITY ELECTRICAL SYSTEM; TRIMMING AND REMOVING TREES. Any person desiring to cut or remove trees or branches thereof in close proximity to the lines of the City Electrical System shall, before doing the said work, give reasonable written notice to the Utilities Superintendent and shall follow any and all rules and regulations which he may prescribe for doing such work. It shall be unlawful for any person felling or removing such trees or branches to disrupt or damage the lines without first giving proper notice and receiving permission in writing to do so. Any person felling or removing trees or branches which damage any property of the City, including the electrical lines, will be responsible for said damages.

Whenever it becomes necessary to protect the lines or property of the City Electrical System, the City Board shall have the power to order the cutting and removal of any overhanging branches or limbs of trees so that the lines will be free and safe with the following exceptions:

1. Trees interfering with service wires (wires from City poles to the customer's house or building) will not be trimmed or removed. Arrangements can be made to have the service wire temporarily removed to permit the property owner or contractor to trim or remove the tree. If any person wants their electric service temporarily disconnected to trim or remove a tree, the Utilities Superintendent must be contacted in advance to ensure the availability of City crew at the desired time. The service is not available on Sundays or holidays, and may be delayed due to emergency work.
2. Trees near street light and yard light wires will not be trimmed by the City under normal circumstances. The City will not trim trees near street lights or yard lights to improve illumination.

If the City requests that a tree be trimmed or removed, all wood cut from the tree will be removed from the property by the City. The City will not remove stumps. The property owner may keep any portion of the wood desired, however, City crews will not cut wood to uniform length or stack the wood. Wood from fallen trees or wood that has fallen from standing trees is also the responsibility of the property owner. The City will remove broken branches still

attached to the tree that are interfering with the wires. The City will not haul away the branches. The wood will be cut only as required to make repairs to the power lines.

Wood that is not wanted by property owners will be made available to the public on the following terms:

1. Persons who want wood on private property must make arrangements with the property owner.
2. Tree crews cannot cut wood to uniform size or any smaller than necessary for normal handling.
3. Tree crews cannot load wood into private vehicles or trailers.
4. Crews will not stack or separate wood.
5. Wood and wood chips may be dumped on private or public property with approval of the property owner, only when a savings in crew man hours and equipment hours is evident.

The City will assist property owners and/or their commercial contractors, at their request, with the trimming and removal of trees that are near city electric wires. When a tree trimming request is received, a City representative will make an inspection and explain to the property owner or contractor what the City can do to assist them. City assistance will include:

1. The temporary rerouting, de-energizing or removing of electric wires that may be hazardous to workmen or that may be damaged by falling tree wood. The City will coordinate with the property owner or contractor the time that the work can be done; and/or,
2. Trimming the tree so that it can be safely removed or trimmed by the property owner or contractor without falling onto the electric wires. All wood cut from the tree will be left on the property owner's premises. The City is not responsible for cutting wood to size or piling brush. The customer or contractor will be responsible for removing brush that is blocking sidewalks and driveways.

Article 5. Penal Provision

§8-501 VIOLATION; PENALTY.

(A) Any person, or any person's agent or servant, who violates any of the provisions of this municipal code, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500.00. A new violation shall be deemed to have been committed every twenty- four (24) hours of such failure to comply.

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

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (*Ref. Neb. RS 17-505, 18-1720*)

Chapter 9

BUILDING REGULATIONS

Article 1. Building Inspector

§9-101 BUILDING INSPECTOR; POWER AND AUTHORITY. The Building Inspector shall be the Municipal Official who shall have the duty of enforcing all building and housing regulations as herein prescribed. He shall have the authority to approve building applications and issue building permits for any project costing \$3,500.00 or less. He shall inspect all buildings repaired, altered, built, or moved in the Municipality as often as necessary to insure compliance with all Municipal Ordinances. He shall have the power and authority to order, at the direction of the Governing Body, all work stopped on any construction, alteration, or relocation which violates any provisions prescribed herein. He shall, at the direction of the Governing Body, issue permission to continue any construction, alteration, or relocation when the Governing Body is satisfied that no provision will be violated. *(Amended by Ord. No.478. 6/2/92)*

§9-102 BUILDING INSPECTOR; RIGHT OF ENTRY. It shall be unlawful for any person to refuse to allow the Building Inspector entry into any building or structure where the work of construction, alteration, repair, or relocation is taking place for the purpose of making official inspections at any reasonable hour.

§9-103 PLANS, SPECIFICATIONS, PLATS, AND REPORTS; MUNICIPAL OFFICIAL. A municipal official charged with the duty or responsibility of accepting or approving plans, specifications, plats, and reports shall not accept or approve plans, specifications, plats, or reports which have not been prepared in accordance with the Engineers and Architects Regulation Act. *(Ref. 81-3447 RS Neb.)*

Article 2. Building Permits

§9-201 BUILDING PERMITS. Any person desiring to commence or proceed to erect, construct, or cause the same to be done, shall file with the Municipal Clerk an application for a building permit. The application shall be in writing on a form to be furnished by the Municipal Clerk for that purpose. Every such application shall set forth the legal description of the land upon which the construction or relocation is to take place, the nature of the use or occupancy, the principal dimensions, the estimated cost, the names of the owner, architect, and contractor; and such plans and specifications so filed with the Municipal Clerk, except as provided for in section 9-101, shall be checked and examined by the Governing Body, and if they are found to be in conformity with the requirements of this Chapter and all other ordinances applicable thereto, the Governing Body shall authorize the Municipal Clerk to issue the said applicant a permit upon the payment of the following permit fees:

Where value of construction, repair or alteration is	
Less than \$1,000.00.....	\$2.00
\$1,000.00 to \$15,000.00.....	5.00
\$15,000.00 to \$25,000.00.....	7.00
\$25,000.00 to \$50,000.00.....	9.00
\$50,000.00 to \$100,000.00.....	12.00
\$100,000.00 to \$200,000.00.....	25.00
Over \$200,000.00.....	50.00
Mobi1eHomes.....	5.00

Whenever there is a discrepancy between permit application procedures contained herein and those contained in any building code adopted by reference, the provisions contained herein shall govern. *(Ref 15-130 through 17-132, 17-550, 17-1001 RS Neb.) (Amended by Ord. Nos. 474. 1/7/92; 478. 6/2/92)*

§9-202 BUILDING PERMIT; LIMITATION. If the work for which a permit has been issued shall not have begun within six (6) months of the date thereof, or if the construction shall be discontinued for a period of six (6) months, the permit shall be void. Before work can be resumed, a new permit shall be obtained in the same manner and form as an original permit.

§9-203 BUILDING PERMITS; CONTRACTORS. Before any contractor may begin any construction in the City of Lyons, the contractor shall ascertain that a proper building permit has been obtained from the City Clerk and approved by the appropriate authorities. *(Ord. No. 559, 2/3/98)*

Article 3. Building Moving

§9-301 BUILDING MOVING; REGULATIONS. It shall be unlawful for any person, firm, or corporation to move any building or structure within the Municipality without a written permit to do so. Application may be made to the Municipal Clerk, and shall include the present and future location of the building to be moved, the proposed route, the equipment to be used, and such other information as the Governing Body may require. The application shall be accompanied by a certificate issued by the County Treasurer to the effect that all the provisions regulating the moving of buildings have been complied with on the part of the owner of the real estate upon which the said building is presently located. The Municipal Clerk shall refer the said application to the Municipal Police for approval of the proposed route over which the said building is to be moved. Upon approval of the Governing Body, the Municipal Clerk shall then issue the said permit; provided, that a good and sufficient corporate surety bond, check, or cash in an amount set by motion of the Governing Body and conditioned upon moving said building without doing damage to any private or Municipal property is filed with the Municipal Clerk prior to the granting of any permit. No moving permit shall be required to move a building that is ten (10') feet wide, or less, and twenty (20') feet long, or less, and when in a position to move, fifteen (15') feet high, or less. In the event it will be necessary for any licensed building mover to interfere with the telephone or telegraph poles and wires, or a gas line, the company or companies owning, using, or operating the said poles, wires, or line shall upon proper notice of at least twenty-four (24) hours, be present and assist by disconnecting the said poles, wires, or line relative to the building moving operation. All expense of the said disconnection, removal, or related work shall be paid in advance by the licensee unless such disconnection or work is furnished on different terms as provided in the said company's franchise. Whenever the moving of any building necessitates interference with a water main, sewer main, pipes, or wire belonging to the Municipality, notice in writing of the time and route of the said building moving operation shall be given to the various Municipal officials in charge of the Municipal utility departments who shall proceed in behalf of the Municipality and at the expense of the mover to make such disconnections and do such work as is necessary .

§9-302 BUILDING MOVING; DEPOSIT. At such time as the building moving has been completed, the Municipal Police shall inspect the premises and report to the Municipal Clerk as to the extent of damages, if any, resulting from the said relocation and whether any Municipal laws have been violated during the said operation. Upon a satisfactory report from the Municipal Police, the Municipal Clerk shall return the corporate surety bond, cash, or check deposited by the applicant. In the event the basement, foundation, or portion thereof is not properly filled, covered, or in a clean and sanitary condition, the Governing Body may apply the money deposited for the purpose of defraying the expense of correcting the said conditions. If the expense of

correcting the hazardous condition is greater than the amount of the deposit set by resolution of the Governing Body, as required herein, the Governing Body may recover such excess expense by civil suit or otherwise as prescribed by law.

Article 4. Barricades and Lights

§9-401 BARRICADES AND LIGHTS. It shall be the duty of the owner, tenant, or lessee causing the construction, demolition, or moving of any building or improvement within the Municipality to have during such work all excavations, open basements, building materials, and debris protected by suitable guards or barricades by day, and by warning lights at night. The failure, neglect, or refusal of said persons to erect such guards shall constitute a violation of this Section and the Municipal Police or the Building Inspector shall stop all work until guards are erected and maintained as required.

Article 5. Building Code

§9-501 BUILDING CODE; ADOPTED BY REFERENCE. To provide certain minimum standards, provisions, and requirements for safe and stable design, methods of construction, and uses of materials in buildings hereafter erected, constructed, enlarged, altered, repaired, relocated, and converted, the 2009 International Building Code and the 2009 International Existing Building Code, printed in book form are hereby incorporated by reference in addition to all amended editions, as though printed in full herein, insofar as said code does not conflict with the Statutes of the State of Nebraska. One (1) copy of the Building Code and the 2009 International Existing Building Code is on file at the office of the Municipal Clerk and are available for public inspection at any reasonable time. (*Ref. 17-1001, 18-132 RS Neb.*) (*Amended by Ord.No.685; 03/04/2010*)

Article 6. Housing Code

§9-601 HOUSING CODE; ADOPTED BY REFERENCE. To provide certain minimum standards, provisions, and requirements for safe and stable design, methods of construction, and uses of materials in houses hereafter erected, constructed, enlarged, altered, repaired, relocated, and converted, the International Residential Code of 2012, published by the International Code Council, and printed in book, pamphlet or electronic form, is hereby incorporated by reference, in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the Statutes of the State of Nebraska. Electronic copies of the Housing Code are on file at the office of the Municipal Clerk and are available for public inspection at any reasonable time.. (*Ref. 17-1001, 18-132, RS Neb.*)(*Updated by Ord. No. 714; 05-05-2014*)

Article 7. Plumbing Code

§9-701 PLUMBING CODE; ADOPTED BY REFERENCE. To provide certain minimum standards, provisions, and requirements for safe and stable installation, methods of connection, and uses of materials in the installation of plumbing and heating; the National Plumbing Code, 1988 Edition, published by the American Society of Mechanical Engineers and printed in book or pamphlet form, is hereby incorporated by reference in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the Statutes of the State of Nebraska. Three (3) copies of the Plumbing Code are on file at the office of the Municipal Clerk and are available for public inspection at any reasonable time. (*Ref. 1 7-1001, 18-132.RS Neb.*)(*Amended by Ord. No. 458*)

Article 8. Electrical Code

§9-801 ELECTRICAL CODE; ADOPTED BY REFERENCE. To provide certain minimum standards, provisions, and requirements for safe and fire proof installation, methods of connection, and uses of materials in the installation of electrical wiring and appliances, the National Electrical Code, 1975 Edition, as recommended and published by the National Fire Protection Association, and printed in book or pamphlet form, is hereby incorporated by reference in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the statutes of the State of Nebraska. Three (3) copies of the Electrical Code are on me at the office of the Municipal Clerk and are available for public inspection at any reasonable time. (*Ref. 17-1001, 18-132 RS Neb.*)

Article 9. Trailers and Mobile Homes

§9-901 DEFENITIONS; MOBILE HOMES. A mobile home shall be defined as a year-round, single family structure for permanent (more than thirty (30) days) living quarters, with at least eleven hundred (1100) square feet of living area, and designed and built to be towed on its own chassis.

§9-902 DEFINITIONS; TRAILER. A trailer shall be defined as a temporary dwelling for recreational, vacation or travel purposes and with less than eleven hundred (1100) square feet of living area.

§9-903 TRAILERS AND MOBILE HOMES; PARKING RESTRICTIONS. It shall be unlawful within the Municipality, for any person to park any trailer or mobile home on any street, alley or highway or other public place, or on any tract of land owned by any person within the Municipality except under the conditions of this Article.

§9-904 TRAILERS AND MOBILE HOMES; EMERGENCY OR TEMPORARY PARKING. Emergency or temporary stopping or parking is permitted on any street, alley or highway for not longer than two (2) hours subject to any other prohibitions, regulations or limitations imposed by the Traffic Regulations of this Code for that street, alley or highway.

§9-905 TRAILERS; LOCATION. No person shall park or occupy any trailer, or erect a foundation for placement of a trailer on the premises of any occupied or unoccupied dwelling or on any lot which is not a part of the premises of any occupied or unoccupied dwelling unless such location is within a trailer court approved by the Governing Body; provided, the parking of one unoccupied trailer in an accessory private garage building or in a rear yard of a lot situated in any zoning district is permitted; and provided further, that no living quarters shall be maintained nor any business conducted in such trailer where such trailer is so parked or stored.

§9-906 MONBILE HOMES; LOCATION REQUIREMENTS. Mobile homes, as defined in this Article and whether moved into the Municipality on wheels or otherwise, must be located on a solid foundation with tongue or other pulling device removed. Said foundation must be constructed with permanent materials, but must also permit the mobile home unit to be conveniently removed and replaced. The owner or occupant must provide utilities at each mobile home space or installation.

§9-907 MOBILE HOMES; PERMISSION OF GOVERNING BODY. All mobile homes, as defined in this Article, may be located only in areas approved by the Governing Body and must otherwise conform to all present and future zoning requirements.

§9-908 MOBILE HOMES; REQUEST FOR PERMISSION. Before locating or installing any mobile home in the Municipality, the owner or occupant shall request permission from the Governing Body either in writing or through personal appearance and shall satisfactorily show the proposed location of the unit, its size, the use for which intended, and any other information which the Governing Body may request. If the Governing Body grants permission to locate the mobile home at the site requested, the owner or occupant may then, and only then, proceed with actual installation, and said installation must conform to the plans as proposed by the owner or occupant to the Governing Body.

§9-909 TRAILERS; CITY PARK. Nothing in this Article shall be construed to apply to trailers located in the City Park of the Municipality.

§9-910 TRAILERS AND MOBILE HOMES; PENALTY. Any person, firm or corporation violating any provisions of this Article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in the sum of not less than twenty (\$20.00) dollars nor more than fifty (\$50.00) dollars for each offense. Each day that a violation continues shall be deemed a separate offense.

Article 10.

Lighting & Thermal Efficiency Standards

§9-1001 LIGHTING AND THERMAL EFFICIENCY STANDARDS; NEED.

1. This Article shall be known as the Minimum Lighting and Thermal Efficiency Standards for Buildings.

2. The City finds that there is a present and continuing need to provide for the development and implementation of minimum lighting and thermal efficiency standards for buildings to insure co-ordination with federal policy under the Energy Conservation Standards for New Buildings Act of 1976, to promote the conservation of our dwindling energy resources, and to provide for the public health, safety, and welfare.

§9-1002 TERMS; DEFINED. As used in this Article, unless the context otherwise requires, the following definitions shall apply:

PRIME CONTRACTOR shall mean the person, persons, entity or entities who has a contract with the owner and is the one responsible for the overall construction of any building or the installation of any component which affects the energy efficiency of the building. Prime Contractor shall also mean a property owner who performs the work of a Prime Contractor.

ARCHITECT OR ENGINEER shall mean any person registered pursuant to *Section 81-847, Reissue Revised Statutes of Nebraska, 1943.*

BUILDING shall mean any structure which utilizes or will utilize a heating system, cooling system, or domestic hot water system, including new buildings, renovated buildings, and additions, but not including any structure which has a consumption of traditional energy sources for all purposes not exceeding the energy equivalent of one (1) watt per square foot.

RESIDENTIAL BUILDING shall mean a building three (3) stories or less that is used primarily as one (1) or more dwelling units.

RENOVATION shall mean alterations on an existing building which will cost more than fifty (50%) per cent of the replacement cost of such building at the time work is commenced or which was not previously heated or cooled, for which a heating or cooling system is now proposed, except that the restoration of historical buildings shall not be included.

ADDITION shall mean any construction added to an existing building which will increase the floor area of that building by five (5%) per cent or more.

FLOOR AREA shall mean the total area of a building, expressed in square feet, which is within the exterior face of the shell of the structure which is heated or cooled.

STANDARD shall mean The Model Energy Code, 1983 Edition, of the Council of American Building Officials.

TRADITIONAL ENERGY SOURCES shall mean electricity, petroleum based fuels, uranium, coal, and all nonrenewable forms of energy.

§9-1003 STANDARD; APPLICABILITY. The Standard shall apply to all new buildings, or renovations of, or additions to, any existing buildings on which construction is initiated on or after the effective date of this Section.

§9-1004 EXEMPTIONS. The following shall be exempt from this act:

1. Any building which has a peak design rate of energy usage for all purposes of less than one (1) watt, or three and four-tenths (3.4) British Thermal Units per hour, per square foot of floor area.
2. Any building which is neither heated nor cooled.
3. Any building or portion thereof which is owned by the United States of America.
4. Any mobile home as defined by *Section 71-4603, Reissue Revised Statutes of Nebraska, 1943.*
5. Any manufactured housing unit as defined by *Subsection (1) of Section 71-1557, Reissue Revised Statutes of Nebraska, 1943.*
6. Any building (i) listed on the National Register of Historic Places, (ii) determined to be eligible for the National Register of Historic Places by the State Historic Preservation Officer, or (iii) designated as an individual landmark or heritage preservation site by a Municipality or located within a designated landmark or heritage preservation district.
7. Any building to be renovated that is located within an area that has been designated blighted by a Municipality.
8. All residential buildings shall be exempt from lighting efficiency standards .

§9-1005 COMPLIANCE; REQUEST FOR DETERMINATION OF COMPLIANCE; APPEAL. For purposes of insuring compliance with the standard, the Chief Building Inspector may conduct such inspections and investigations as are necessary to make a determination of compliance and may issue an order containing and resulting from the findings of such inspections and investigations; and a building owner may request that the office undertake a determination pursuant to this Section. Such request shall include a list of reasons why the building owner believes such a determination is necessary.

A building owner aggrieved by the Chief Building Inspector's determination or refusal to make such determination, may appeal such determination or refusal to the Governing Body.

The Chief Building Inspector may charge an amount sufficient to recover the costs of providing such determinations.

Buildings constructed after the adoption of the standard, shall be exempt from the provisions of this Section.

§9-1006 INSPECTION; INVESTIGATIONS. The Chief Building Inspector, or any person designated by him or her, shall conduct inspections and investigations necessary

to enforce the Standard and may, at reasonable hours, enter into any building and upon any premises within its jurisdiction for the purpose of examination to determine compliance with this Article. Inspection shall be conducted only after permission has been granted by the owner or occupant or after a warrant has been issued pursuant to sections 29-830 to 29-835, *Reissue Revised Statutes of Nebraska, 1943*.

During construction, the Chief Building Inspector or persons designated by him or her shall make periodic inspection to assure compliance with this Article.

§9-1007 BUILDING PLANS, SUBMISSION FOR APPROVAL. Prior to the construction of, renovation of, or addition to any building covered by this Article, the Prime Contractor shall file sufficient plans and specifications with the Chief Building Inspector to enable him or her to make a determination whether such building will comply with the Standard. The Chief Building Inspector shall, within thirty (30) days of the filing, approve or disapprove the plans and specifications. If disapproved, the reasons shall be set forth in writing to the Prime Contractor.

If the Chief Building Inspector determines that such construction, renovation or addition will comply with the Standard, he or she shall issue a written permit which the Prime Contractor shall display in a conspicuous place on the premises where the construction work is to be done. No construction, renovation or addition shall commence until a permit is issued and displayed as required by this Section.

§9-1008 FEES. The person filing the application for a permit shall, at the time of such filing, pay to the City the sum of twenty-five (\$25.00) dollars for residential buildings and one (1¢) cent per gross square foot for any other building .

§9-1009 WHEN ARCHITECT OR ENGINEER IS RETAINED. If an architect or engineer is retained, the architect or engineer shall place his or her state registration seal on all construction drawings which shall indicate that the design meets the Standard. The Prime Contractor shall build, or cause to be built, in accordance with the construction documents prepared by the architect or engineer.

§9-1010 VIOLATION; PENALTY; ENFORCEMENT.

(A) Any person, or any person's agent or servant, who violates any of the provisions of this municipal code, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500.00. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

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

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (*Ref. Neb. RS 17-505, 18-1720*)

§9-1011 VALIDITY. If any section in this Article or any part of any section shall be declared invalid or unconstitutional such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Article 11.

Unsafe and Dangerous Buildings or Structures

§9-1101 UNSAFE BUILDINGS; SPECIAL ASSESSMENTS. *(Repealed by Ord. No. 563, 7/7/98)*

§9-1101.01 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES;

DESIGNATION. Any buildings and structures which have any or all of the following defects are hereby declared to be dangerous buildings:

(1) All buildings and structures whose walls or other vertical structural members list, lean or buckle to such extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.

(2) All buildings and structures which, exclusive of the foundation, show 33 percent (33%) or more of damage or deterioration of the supporting member or members or 50 percent (50%) of the damage or deterioration of the nonsupporting members or the outside covering.

(3) All buildings and structures which have improperly distributed loads upon floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.

(4) All buildings and structures which have been damaged by fire, wind or other causes so as to have become dangerous to life, safety, or the general health and welfare of the occupants or the people of the City.

(5) All buildings and structures which have become or are dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation, or are likely to cause sickness or disease, so as to work injury to the health, morals, safety or general welfare of those living therein.

(6) All buildings and structures having light, air and sanitation facilities which are inadequate to protect the health, safety or general welfare of human beings who live or may live therein.

(7) All buildings and structures having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes or other means of communication.

(8) All buildings and structures which have parts thereof which are so attached that they may fall and injure persons or property.

(9) All buildings and structures existing in violation of any provision of this Article, any provision of the Fire Prevention Code, or other applicable provision of this Code or ordinance of this City. *(Ord. No. 563, 7/7/98)*

§9-1102 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES;

DECLARATION OF NUISANCE. Any building or structure found to be unsafe or unfit for occupancy or use, or any building or structure which is liable to fall or collapse

from inherent structural weakness, or as the result of fire, decay or other defect, and which the owner refuses to repair in accordance with the provisions of this Article and the City's Building Code, or any structure which has deteriorated from any cause to the extent that repairs would cost 50 percent (50%) of the cost of a similar new building is hereby declared to be a nuisance. (*Ord. No. 563, 7/7/98*)

§9-1103 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; DUTY TO MAKE SAFE AND SECURE. Any building or other structure, or any appurtenance in, upon or about such building or other structure, found, either in whole or in part, to be structurally unsafe, or dangerous in case of or as a result of fire, panic, tornado, wind, lightning, deterioration or other cause, or which is insufficient or unsafe for the purpose for which it is intended to be used, shall be made safe and secure by the owner, agent, lessee or occupant of such building or other structure within the time set forth in written notice from the Building or Housing Inspector. (*Ord. No. 563, 7/7/98*)

§9-1104 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; STANDARDS FOR REPAIR, VACATION, OR DEMOLITION. The following standards shall be followed by the Building Official or Chief Housing Inspector when ordering repair, vacation or demolition:

- (1) If the dangerous building can reasonably be repaired so that it will no longer exist in violation of the terms of this Article, it shall be ordered repaired.
- (2) If the dangerous building is in such condition as to make it dangerous to the health, morals, safety or general welfare of its occupants, it shall be ordered to be vacated.
- (3) In any case where a dangerous building is 50 percent (50%) damaged or decayed, or deteriorated from its original value or structure, it shall be demolished; and in all cases where a building cannot be repaired so that it will no longer exist in violation of the terms of this Article it shall be demolished. In all cases where a dangerous building is a fire hazard existing or erected in violation of the terms of this Article it shall be demolished. In all cases where a dangerous building is a fire hazard existing or erected in violation of the terms of this Article, or any other provision of this Code or ordinance of the City, or statute of the State, it shall be demolished. (*Ord. No. 563, 7/7/98*)

§9-1105 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; PROCEDURE FOR IMMEDIATE ACTION. If the immediate action is deemed necessary to protect life or limb, the Housing Administrator or his/her authorized Administrator may cause an unsafe or dangerous building, structure, appurtenance or apparatus, or any portion or part thereof, to be taken down or repaired without delay. The cost of taking down or repairing any building or structure under the provisions of this section, in the amount of certified bills of all expenses incurred by the Housing Administrator or his/her authorized Administrator, shall be collected in the same manner provided for in section 9-1120 of this Code. (*Ord. No. 563, 7/7/98*)

§9-1106 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; DUTIES OF CHIEF BUILDING INSPECTOR. The Chief Building Inspector shall:

(1) Inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure is or may be existing in a dangerous manner.

(2) Inspect any building or structure within the jurisdictional area of the City for the purpose of determining whether any conditions exist which render such place a dangerous building within the terms of this Article.

(3) Placard every building or structure found to be a dangerous building. Such placard shall be placed on the exterior near the main entrance and shall state that the building or structure is unsafe or unfit for occupancy and use.

(4) (a) Notify in writing the owner, occupant, lessee, mortgagee, agent and all other persons having an interest in the building as shown by the land records of the County Register of Deeds, of any building found by him to be dangerous that:

1. The owner must vacate, repair, or demolish the building in accordance with the terms of the notice and the provisions of this Article.

2. The occupant or lessee must vacate the building or may have it repaired in accordance with the notice and remain in possession.

3. The mortgagee, agent or other persons having an interest in the building as shown by the land records of the County Register of Deeds may, at his/her own risk, repair, vacate or demolish said building or have such work done; provided that any person notified under this subsection to repair, vacate or demolish any building shall be given reasonable time, not exceeding ninety (90) days, to do or have the work done.

(b) This notice shall include a description of the building or structure, a statement of the conditions which make the building or structure dangerous, and an order requiring that the conditions which make the building or structure dangerous be corrected within ninety (90) days.

(5) Report to the Housing Administrator any noncompliance with the notice provided for in subsection (4) of this section.

§9-1107 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; DUTIES OF HOUSING ADMINISTRATOR. The Housing Administrator or his/her authorized representative shall:

(1) Upon receipt of a report of the Building Inspector as provided for in section 9-1106, subsection (5), of this Article, give written notice to the owner, occupant, mortgagee, lessee, agent and all other persons having an interest in the building to appear before him/her on the date specified in the notice to show cause why the building or structure reported to be a dangerous building should not be repaired, vacated or demolished in accordance with the statement of conditions described in the Housing Inspector's notice.

(2) Hold a hearing and hear such testimony as the Building Inspector or the owner, occupant, mortgagee, lessee, or any other person having an interest in said building shall offer relative to the dangerous building.

(3) Make written findings of fact from the testimony offered as provided in subsection (2) of this section as to whether or not the building in question is a dangerous building within the terms of this Article.

(4) Issue an order based upon findings of fact made as provided in subsection (3) of this section commanding the owner, occupant, mortgagee, lessee or agent and all other persons having an interest in the building to repair, vacate or demolish any building found to be a dangerous building within the terms of this Article; provided that any person so notified, except the owners, shall have the privilege of either vacating or repairing the dangerous building. Any person, not the owner of the dangerous building, but having an interest in the building as shown by court records, may demolish the dangerous building at his/her own risk to prevent the acquiring of a lien against the land on which the dangerous building stands by the city as provided in subsection (5) of this section.

(5) If the owner, occupant, mortgagee, or lessee fails to comply with the order provided for in subsection (4) of this section within ten (10) days, the Housing Administrator shall cause such buildings or structure to be repaired, vacated or demolished as the facts may warrant, under the standards provided for in section 9-1104 of this Code, and shall cause the cost of such repair, vacation or demolition to be levied, equalized and assessed as are other special assessments. Such costs may, however, be recovered in a civil suit. In cases where such procedure is desirable and any delay will not be dangerous to the health, safety or general welfare of the people of this City, the Administrator may request the City Attorney to take legal action to force the owner to make all necessary repairs or demolish the building.

(6) Report to the City Attorney the names of all persons not complying with the order provided for in subsection (5) of this section. (*Ord. No. 563, 7/7/98*)

§9-1108 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES;

PLACARDING. The Building Inspector shall placard every building or structure found to be unsafe or unfit for occupancy or use under the provisions of this Article. Such placard shall be placed on the exterior near the main entrance and shall set forth that such building or structure is unsafe or unfit for occupancy and use. (*Ord. No. 563, 7/7/98*)

§9-1109 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; REPORT TO HOUSING ADMINISTRATOR.

Whenever, in the opinion of the Building Inspector, any building is a nuisance as provided in this Article, it shall be his/her duty to file a written report thereof, directed to the Housing Administrator or his/her authorized Administrator. Such report shall state the nature and character of the building, its street number, the number and a description of the lot or tract of land upon which it is situated, and the name of the owner, lessee, occupant or mortgagee of

record, and to which the cause of the present condition is attributable. (*Ord. No. 563, 7/7/98*)

§9-1110 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; ISSUANCE OF BUILDING PERMITS OR BUILDING REPORTED AS NUISANCE. After the Building Inspector has reported a building as being a nuisance to the Housing Administrator or his/her duly authorized Administrator, no building permit for the building may be issued except with the consent and approval of the Housing Administrator or his/her authorized Administrator. (*Ord. No. 563, 7/7/98*)

§9-1111 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; HEARING SCHEDULE. Upon receipt of written notice that a building or structure is a nuisance under the provisions of this Article, the Housing Administrator or his/her authorized Administrator shall set a hearing date and shall fix the time and place at which the owner, lessee, occupant or mortgagee of record of such building may appear and show cause why such building or structure should not be condemned as a nuisance. (*Ord. No. 563, 7/7/98*)

§9-1112 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; ISSUANCE OF NOTICE OF HEARING. The Housing Administrator or his/her authorized Administrator shall immediately notify, or cause to be notified, the owner, lessee, occupant or mortgagee of record of any building or structure declared to be a nuisance under the provisions of this Article, in writing, that a hearing has been set, stating the date, time and place, and that the owner, lessee, occupant or mortgagee of record may appear and show cause why the City should not condemn the building or structure as a nuisance. (*Ord. No. 563, 7/7/98*)

§9-1113 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; SERVICE OF NOTICE OF HEARING. The notice of hearing provided for by this section shall be given not less than fifteen (15) days prior to the time of hearing; provided that, whenever the owner, lessee, occupant or mortgagee of record of the building or structure involved is a nonresident of the City or cannot be found, then the Housing Administrator or his/her authorized Administrator shall publish, in the official newspaper of the County, a notice for two (2) consecutive weeks, the last publication to be at least one (1) week prior to the date of the hearing. Service of every such notice shall be checked by the Law Department for legal sufficiency. If, for any reason, the service of notice shall be determined to be insufficient, illegal or defective, then such hearing shall be continued by the Housing Administrator or his/her authorized Administrator for a period not to exceed ten (10) days from the date of such determination, and the Housing Administrator or his/her authorized Administrator shall promptly cause proper notice to be given to those not properly notified. Notice of the date to which the hearing has been continued may be given by mail to those already properly notified. (*Ord. No. 563, 7/7/98*)

§9-1114 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; CONDUCT OF HEARING. The Housing Administrator or his/her authorized Administrator shall hear all objections made by the owner, lessee, occupant or mortgagee of record of the building or structure declared to be a nuisance, as well as evidence submitted by the Housing Inspector or other interested persons. *(Ord. No. 563, 7/7/98)*

§9-1115 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; DETERMINATION AND ORDER BY HOUSING ADMINISTRATOR.

(1) If, after consideration of all the evidence produced, the Housing Administrator or his/her authorized Administrator shall find that the building or structure is a nuisance under the provisions of this Article, the Administrator shall issue an order directing the owner to cause the building to be torn down and removed. The order shall state that the owner has fifteen (15) days to appeal to the City Council, and that if no appeal is made by that time, the order shall become effective and will be final.

(2) In the event that the owner, lessee, occupant or mortgagee of record does not appear at the hearing, then the Housing Administrator or his/her authorized Administrator shall order such building or structure to be torn down and removed, and shall notify the owner, lessee, occupant or mortgagee of record, in writing, of this order and advise that, if an appeal is not made to the City Council within fifteen (15) days, such order shall become effective at that time and will be final. *(Ord. No. 563, 7/7/98)*

§9-1116 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; CONTINUED USE OF BUILDING AFTER ISSUANCE OF ORDER TO DEMOLISH.

After a building or structure has been declared a nuisance under the provisions of this Article and ordered torn down, it shall be unlawful for any person to begin to use and/or occupy or to continue to use and/or occupy such building or structure. The Housing Administrator or his/her authorized Administrator shall place upon such building or structure a placard setting forth that the building or structure has been condemned and declared unsafe for use and/or occupancy. *(Ord. No. 563, 7/7/98)*

§9-1117 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES;

ABATEMENT BY CITY. Should the owner refuse or neglect to promptly comply with the order to tear down and remove a building or structure condemned as a nuisance under the provisions of this Article, or place the premises in a safe condition, the Housing Administrator or his/her authorized Administrator shall proceed with tearing down and removal of the building or structure, and/or removal from the premises of the remaining debris, and shall place the premises in a safe condition. *(Ord. No. 563, 7/7/98)*

§9-1118 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; APPEALS.

(1) (a) Whenever a determination and order is made as provided in section 9-1115 of this Code, the owner, lessee, occupant or mortgagee of record may appeal the determination and order to the City Council by filing with the City Clerk written

objections to said determination and order, a cash deposit or corporate surety bond, within fifteen (15) days from the date of the determination and order and file a work schedule approved by the Housing Administrator. The written objections shall set forth the location of the property and all grounds for the objections. The cash deposit or surety bond shall be as follows:

1. A structure of one (1) to three thousand (3,000) square feet: \$300.00.

2. A structure of three thousand one (3,001) to nine thousand nine hundred ninety-nine (9,999) square feet: \$1,200.00.

3. A structure of ten thousand (10,000) square feet or more: \$3,000.00.

(b) The purpose of the cash deposit or corporate surety bond is to provide an additional assurance that the appellant has the resources and intent to repair the structure, as provided by this Code within a reasonable specified time and that the structure will remain safe and secure until all repairs have been completed. The cash deposit or bond will be returned to the appellant only after all required repairs have been made to the structure per the order of the Housing Administrator or his/her authorized Administrator.

(2) Upon receipt of such written objections to the determination and order, and the cash deposit or corporate surety bond, the City Clerk shall set a hearing date and shall immediately notify the Housing Administrator or his/her authorized Administrator, stating the date, time and place of the hearing and that the parties are to appear before the City Council to be heard on the matter.

(3) The City Council shall hear the testimony of the objectors and the Housing Administrator and other interested parties; and after the hearing, the City Council may affirm, modify or reverse the determination of the Housing Administrator or his/her authorized Administrator.

(4) In the event that the appealing party does not make the necessary repairs on the building or structure within the specified time or fails to keep the building or structure secured, the cash deposit or surety bond shall be forfeited as a penalty. This provision may be modified by the City Council.

(5) In the event the City Council grants an extension to the appealing party and the repairs are not completed during the time period, a subsequent cash deposit or surety bond, equal to the amount of the original, shall be provided in order to continue the condemnation appeal. Only the most recent subsequent cash deposit or surety bond will be returned after all required repairs have been completed. (*Ord. No. 563, 7/7/98*)

§9-1119 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; RIGHT OF CITY COUNCIL TO HOLD CONDEMNATION HEARINGS.

(1) Notwithstanding the provisions contained in this section, the City Council may by resolution require the Health Board, the Lyons Rural Fire District or any other appropriate department or division of the City to evaluate whether a building or structure should be condemned.

(2) The City Clerk shall notify the appropriate persons of record, the Housing Administrator, the Lyons Rural Fire District, or any other appropriate director to attend the City Council's public hearing on the resolution to refer a proposed condemnation to the appropriate departments.

(3) Upon adoption of a resolution by the City Council, the appropriate departments shall have forty (40) working days to follow the required condemnation procedure, notifications and hearings to evaluate possible condemnation action. Within the forty (40) working-day period, the Housing Administrator shall advise the City Council of its findings and recommendation concerning the condemnation.

(4) The City Council shall then determine, by ordinance or resolution, whether to accept or reject the Housing Administrator's recommendation as to whether to condemn or not condemn the building or structure.

(5) If, after consideration of all the evidence produced, the City Council shall find that the building or structure is a nuisance as defined in section 9-1102 of this Code, the City shall proceed to abate the nuisance in accordance with the procedure set forth in section 9-1117 of this Code. (*Ord. No. 563, 7/7/98*)

§9-1120 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES;

EMERGENCY CASES. In cases where there is immediate danger to life or safety of any person unless a dangerous building is immediately vacated and demolished, the Housing Inspector shall report such facts to the Housing Administrator. The City, by and through the Administrator, shall contract for the immediate vacation and demolition of the dangerous building without requiring bids. The costs of such emergency vacation and demolition of a dangerous building shall be collected as provided in *Section 18-1722 RS Neb., as amended. (Ord. No. 563, 7/7/98)*

§9-1121 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; SERVICE OF NOTICE WHEN OWNER IS ABSENT FROM CITY.

In cases, except emergency cases, where the owner, occupant, lessee or mortgagee is absent from the City, all notices or orders provided for herein shall be sent by registered or certified mail to the owner, occupant, mortgagee, lessee and all other persons having an interest in the building as shown by the land records of the County Clerk's office to the last-known address of each; and a copy of the notice shall be posted in a conspicuous place on the dangerous building to which it relates. Mailing and posting shall be deemed adequate service. (*Ord. No. 563, 7/7/98*)

§9-1122 UNSAFE AND DANGEROUS BUILDINGS OR STRUCTURES; POLICE AND FIRE DEPARTMENTS TO AID IN ENFORCEMENT.

The Housing Administrator or his/her authorized Administrator shall have the authority to call upon the Police or Fire Department in enforcing the provisions of this Article. It shall be the duty of the Police or Fire Department or any member of these Departments to act according to the instructions of and perform the duties as may be required by the Administrator in order to enforce the provisions of this Article. (*Ord. No. 563, 7/7/98*)

Article 12.

Minimum Dwelling Standards

§9-1201 MINIMUM DWELLING STANDARDS; DEFINITIONS. For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them:

ADMINISTRATOR: The officer designated by the Mayor.

BASEMENT: A story of a building or structure having one-half (1/2) or more but less than three-fourths (3/4) of its clear height below grade.

CELLAR: A story of a building or structure having three-fourths (3/4) or more of its clear height below grade.

DWELLING: Any building which is wholly or partially used or intended to be used for living or sleeping by human occupants.

DWELLING UNIT: Any habitable room or group of habitable rooms located within a building and forming a single habitable unit with facilities which are used or intended to be used for living quarters, including sleeping, cooking and eating.

ENCLOSED FLOOR SPACE: A wall system that surrounds a floor space and is permanently attached to the floor causing it to be immobile and affording an opening for egress or entrance to the floor space.

EXTERMINATION: The control and elimination of insects, rodents, or other pests by eliminating their harborage places or their food, by poisoning, spraying fumigating, trapping, or by any other recognized and legal pest elimination methods approved by the Administrator.

GARBAGE: The animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of food.

HABITABLE ROOM: A room or enclosed floor space used or intended to be used for living quarters, including sleeping, cooking and eating purposes, excluding bathrooms, water closet compartments, laundries, pantries, foyers, or communicating corridors, closets, and storage spaces.

INFESTATION: The presence, within or around a dwelling, of any insects, rodents, or other pests.

MULTIPLE DWELLING: Any dwelling or structure, or part of such structure, containing three (3) or more dwelling units or rooming units.

OCCUPANT: Any person living, sleeping, cooking, or eating in, or having actual possession of, a dwelling unit or rooming unit.

OPERATOR: Any person who has charge, care, or control of a building, or part thereof, in which dwelling units or rooming units are let.

ORDINARY MINIMUM WINTER CONDITIONS: The temperature 15 degrees Fahrenheit above the lowest recorded temperature for the previous ten-year period.

OWNER: (1) Any person who, alone, or jointly or severally with others:

(a) Shall have legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or

(b) Shall have charge, care, or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the owner.

(2) Any such person thus representing the actual owner shall be bound to comply with the provisions of this Article, and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

PLUMBING: Any of the following supplied facilities and equipment, water pipes, gas-burning plumbing equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catch basins, drains, plumbing vents and any other similar supplied fixtures, together with all connections to water, sewer, or gas lines.

ROOMING UNIT: Any room or group of rooms forming a single habitable unit used, or intended to be used, for sleeping but not for cooking or eating purposes.

ROOMINGHOUSE: Any dwelling or that part of any dwelling containing one (1) or more rooming units, in which space is let by the owner or operator to three (3) or more persons who are not husband and wife, son or daughter, mother or father, sister or brother of the owner or operator.

RUBBISH: Combustible and noncombustible waste material, except garbage; and the term shall include the residue from the burning of wood, coal, coke, and other combustible material, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust.

SLEEPING SPACE: An enclosed floor space used or intended to be used for sleeping purposes.

SUPPLIED: Provided, furnished, or paid for by or under the control of the owner or operator.

TEMPORARY HOUSING: Any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utilities system on the same premises for more than thirty (30) consecutive days.

Whenever the words "dwelling," "dwelling unit," "rooming house," "rooming unit," or "premises" are used in this Article, they shall be construed as though they were followed by the words "or any part thereof." (*Ord. No. 560, 2/12/98*)

§9-1202 MINIMUM DWELLING STANDARDS; PENALTY. Any violation of the provisions of this Article and any willful failure or refusal to comply with any valid and final order made under the authority of this Article shall constitute a misdemeanor, and any person guilty thereof shall, upon conviction, be punished as provided in section 9-1301 of this Code. Every person shall be deemed guilty of a separate offense for every day on which such violation, neglect, or refusal shall continue. (*Ord. No. 560, 2/12/98*)

§9-1203 MINIMUM DWELLING STANDARDS; CONFLICTING PROVISIONS. In any case where a provision of this Article is found to be in conflict with a provision of any zoning, building, fire safety, or health ordinance or code of this City existing on April 5, 1994, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail. (Ord. No. 560, 2/12/98)

§9-1204 MINIMUM DWELLING STANDARDS; INSPECTIONS AUTHORIZED. The Administrator is hereby authorized and directed to make inspections responding to tenant complaints after the 14-day notification time frame set forth for repairs in the Landlord/Tenant Act of the State of Nebraska, *Sections 76-1422- 76-1428 RS Neb., as amended*, to determine the condition of dwellings, dwelling units, rooming units, and premises thereof located within the City; and to discover conditions affecting the health, safety and welfare of occupants and of the general public in order to obtain the data required to determine the steps necessary under this Article to safeguard the health, safety and welfare of the occupants and the general public. (Ord. No.560, 2/12/98)

§9-1205 MINIMUM DWELLING STANDARDS; RIGHT OF ENTRY. For the purpose of inspection, the Administrator is hereby authorized to enter, examine, and survey all of the premises, subject to the approval of the owner or occupant. Upon refusal by the owner or occupant to permit inspections at reasonable times, the Administrator may apply to any court of competent jurisdiction for a warrant authorizing entry of the premises and inspection thereof. Refusal to honor the warrant and permit inspection of the premises shall constitute a misdemeanor. (Ord. No. 560, 2/12/98)

§9-1206 MINIMUM DWELLING STANDARDS; NOTICE OF VIOLATION; ISSUANCE. Whenever the Administrator shall determine that there are reasonable grounds to believe that there has been a violation of any of the provisions of this Article, or any rule or regulation adopted pursuant hereto, he shall give notice of the alleged violation to the person or persons responsible therefore. (Ord. No. 560, 2/12/98)

§9-1207 MINIMUM DWELLING STANDARDS; NOTICE OF VIOLATION; CONTENTS. The notice of violation authorized by this Article shall:

- (1) Be in writing and contain a description thereof;
- (2) Include a statement of findings made upon the inspection; and
- (3) Fix a reasonable time for the performance of the work to be done.

(Ord. No. 560, 2/12/98)

§9-1208 MINIMUM DWELLING STANDARDS; NOTICE OF VIOLATION; SERVICE. Each notice of a violation of the provisions of this Article issued under the provisions of this Article shall be served upon the owner, or his agent, provided that the notice shall be deemed to be properly served if a copy is served on the owner, or his agent, personally, or if a copy is sent by certified or registered mail, return receipt requested, to the last known address of the owner or agent. If service cannot be

obtained by such means, service may be obtained by posting a copy of the notice in a conspicuous place in or about the premises affected by the notice. (*Ord. No. 560, 2/12/98*)

§9-1209 MINIMUM DWELLING STANDARDS; NOTICE OF VIOLATION; EXTENSION OF TIME FOR COMPLIANCE. Upon receipt of an application from the person required to conform to a notice of violation of this Article and an agreement by such person that he will comply with such notice if allowed additional time, the Administrator may, at his discretion, grant an extension of time in which to complete the required repairs or rehabilitation, if the Administrator determines that such an extension of time will not create or perpetuate a situation immediately dangerous to life or property. (*Ord. No. 560, 2/12/98*)

§9-1210 MINIMUM DWELLING STANDARDS; NOTICE OF VIOLATION; HEARING ON VIOLATION; RIGHT TO HEARING. Any person affected by a notice of violation issued under the provisions of this Article in connection with the enforcement of any provision of this Article, or of any rule or regulation adopted pursuant hereto, may request and shall be granted a hearing on the matter before the Administrator. (*Ord. No. 560, 2/12/98*)

§9-1211 MINIMUM DWELLING STANDARDS; NOTICE OF VIOLATION; HEARING ON VIOLATION; REQUEST FOR HEARING. Any person desiring a hearing on a notice of violation of this Article shall request such hearing by filing a written petition therefore with the Administrator, setting forth a brief statement of the grounds therefore, within twenty (20) days after receipt of the notice of violation. (*Ord. No. 560, 2/12/98*)

§9-1212 MINIMUM DWELLING STANDARDS; NOTICE OF VIOLATION; HEARING ON VIOLATION; TIME AND PLACE. Upon receiving a petition for a hearing on a notice of violation issued under the provisions of this Article, the Administrator shall set a time and place for such hearing and give the petitioner notice thereof. The hearing shall be commenced not later than twenty (20) days after the date the petition was filed. (*Ord. No. 560, 2/12/98*)

§9-1213 MINIMUM DWELLING STANDARDS; NOTICE OF VIOLATION; HEARING ON VIOLATION; POSTPONEMENT AT REQUEST OF PETITIONER. Upon application of the petitioner, the Administrator may postpone the date of the hearing on a notice of violation of this Article for a reasonable time beyond the twenty (20) day period provided by this Article if, in his judgment, the petitioner has submitted good and sufficient cause for such postponement. (*Ord. No. 560, 2/12/98*)

§9-1214 MINIMUM DWELLING STANDARDS; NOTICE Of VIOLATION; HEARING ON VIOLATION; CONDUCT. At the hearing on a notice of violation of the provisions of this Article, the petitioner shall be given an opportunity to be heard to show cause why such notice should be modified or withdrawn. *(Ord. No. 560, 2/12/98)*

§9-1215 MINIMUM DWELLING STANDARDS; NOTICE OF VIOLATION; HEARING ON VIOLATION; RECORD. The proceedings at a hearing on a notice of violation of the provisions of this Article, including the findings and decision of the Administrator, shall be summarized, reduced to writing, and entered as a matter of public record in the office of the Administrator. Such record shall also include a copy of every notice or order issued in connection with the matter. *(Ord. No. 560, 2/12/98)*

§9-1216 MINIMUM DWELLING STANDARDS; HEARING ON VIOLATION; ORDER. At the conclusion of a hearing on a notice of violation of the provisions of this Article, the Administrator shall sustain, modify or withdraw the notice, depending upon his finding as to whether the provisions of this Article and the rules and regulations adopted pursuant hereto have been complied with. If the Administrator sustains or modifies such notice, it shall be deemed an order. Any notice served pursuant to section 9-1206 of this Code shall automatically become an order if a written petition for a hearing is not filed in the office of the Administrator within twenty (20) days after such notice is received. *(Ord. No. 560, 2/12/98)*

§9-1217 MINIMUM DWELLING STANDARDS; EMERGENCIES. (1) Whenever, in the judgment of the Administrator, an emergency exists which requires immediate action to protect the public health, safety, or welfare, an order may be issued without notice, conference, or hearing, directing the owner, occupant, operator, or agent to take such action as is appropriate to correct or abate the emergency. If circumstances warrant, the Administrator may act to correct or abate the emergency.

(2) The owner, occupant, operator, or agent shall be granted a conference on the matter upon his request, as soon as practicable, but such conference shall in no case stay the abatement of correction of such emergencies. *(Ord. No. 560, 2/12/98)*

§9-1218 MINIMUM DWELLING STANDARDS; APPEALS; GENERALLY. Whenever the Administrator shall make any order in accordance with the provisions of this Article, or when it is claimed that the provisions of this Article do not apply, or that the true intent and meaning of this Article has been misconstrued or wrongfully interpreted, the party aggrieved may appeal from the decision of the Administrator to the City Council by filing with the City Clerk written objections to such order within ten (10) days from the date of such order. Such written objections shall set forth the location of the property and all grounds for the objections. *(Ord. No. 560, 2/12/98)*

§9-1219 MINIMUM DWELLING STANDARDS; APPEALS; HEARING DATE; NOTICE. Upon receipt of an appeal under the provisions of section 9-1218 of this

Code, the City Clerk shall set a hearing date and shall immediately notify the Administrator and the objectors in writing that such hearing has been set before the City Council, stating therein the date, time and place of such hearing and that the parties are to appear before the City Council to be heard on the matter. (*Ord. No. 560, 2/12/98*)

§9-1220 MINIMUM DWELLING STANDARDS; APPEALS; ACTION BY COUNCIL.

The City Council shall hear the testimony of all parties interested in an appeal filed under section 9-1218 of this Code. After such hearing, the Council may affirm, modify or reverse the order of the Administrator. (*Ord. No. 560, 2/12/98*)

§9-1221 MINIMUM DWELLING STANDARDS; VARIANCES. The City Council may grant variances from the provisions of this Article, or from applicable rules and regulations issued pursuant hereto, upon appeal by the objector when the Administrative Appeals Board finds:

(1) That there is a practical difficulty or unnecessary hardship connected with the performance of any act required by this Article or rules and regulations promulgated pursuant hereto.

(2) That strict adherence to such provisions would be arbitrary in the case at hand.

(3) That an extension would not provide an appropriate remedy in the case at hand in that such variances are in harmony with the general purpose of this Article to safeguard the public health, safety and welfare. (*Ord. No.560, 2/12/98*)

§9-1222 MINIMUM DWELLING STANDARDS; APPEAL TO COURTS. Any decision of the City Council pursuant to the provisions of this Article may be appealed to the District Court as provided in *Section 14-813 RS Neb.*, as amended. Such appeal must be filed within thirty (30) days from the date of the order, decision, or award of the Board. (*Ord. No.560, 2/12/98*)

§9-1223 MINIMUM DWELLING STANDARDS; UNFIT DWELLINGS;

DETERMINATION; PLACARDING. Any dwelling or dwelling unit which shall be found to have any of the following defects shall be designated as unfit for human habitation and shall be so placarded by the Administrator:

(1) One which is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin-infested that it creates a serious hazard to the health or safety of the occupants or of the public.

(2) One which lacks illumination, ventilation, or sanitation facilities adequate to protect the health or safety of the occupants or of the public.

(3) One which because of its general condition or location is unsanitary or otherwise dangerous to the health or safety of the occupants or of the public. (*Ord. No. 560, 2/12/98*)

§9-1224 MINIMUM DWELLING STANDARDS; UNFIT DWELLINGS; VACATION.

Any dwelling or dwelling unit designated as unfit for human habitation, and so placarded by the Administrator, shall be vacated within a reasonable time as ordered by the Administrator. (Ord. No. 560, 2/12/98)

§9-1225 MINIMUM DWELLING STANDARDS; UNFIT DWELLINGS; REMOVAL OF PLACARD UPON CORRECTION OF DEFECTS.

No dwelling or dwelling unit which has been so designated and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from and such placard is removed by the Administrator. The Administrator shall remove such placard whenever the defect or defects upon which the designation and placarding action were based have been eliminated. (Ord. No. 560, 2/12/98)

§9-1226 MINIMUM DWELLING STANDARDS; UNFIT DWELLINGS;

UNAUTHORIZED REMOVAL OF PLACARD. No person shall deface or remove the placard from any dwelling or dwelling unit which has been designated as unfit for human habitation and placarded as such, except as provided in section 9-1225 of this Code. (Ord. No. 560, 2/12/98)

§9-1227 MINIMUM DWELLING STANDARDS; UNFIT DWELLINGS; HEARING

AND APPEAL. Any person affected by any notice or order relating to the designating and placarding of a dwelling or dwelling unit as unfit for human habitation may request and shall be granted a hearing on the matter before the Administrator under the procedure set forth in sections 9-1206 through 9-1222 of this Code. (Ord. No.560, 2/12/98)

HOUSING STANDARDS

§9-1228 MINIMUM DWELLING STANDARDS; HOUSING STANDARDS; RULES AND REGULATIONS; ADOPTION BY ADMINISTRATOR.

The Administrator is hereby authorized to make and, after public hearing has been held, to adopt such written rules and regulations as may be necessary for the proper enforcement of the provisions of this Article; provided that such rules and regulations shall not be in conflict with the provisions of this Article. (Ord. No .560, 2/12/98)

§9-1229 MINIMUM DWELLING STANDARDS; HOUSING STANDARDS; RULES AND REGULATIONS; COUNCIL APPROVAL.

After adoption by the Administrator, he shall file a certified copy of rules and regulations authorized by this Article with the City Clerk, who shall submit the same to the City Council at its next regular meeting. Such rules and regulations shall be in full force and effect immediately upon approval by the Council. (Ord. No. 560, 2/12/98)

§9-1230 MINIMUM DWELLING STANDARDS; HOUSING STANDARDS; RULES AND REGULATIONS; STATUS.

Rules and regulations promulgated under the

authority of sections 9-1228 through 9-1231 of this Code and approved by the City Council shall have the same force and effect as the provisions of this Article. (*Ord. No. 560, 2/12/98*)

§9-1231 MINIMUM DWELLING STANDARDS; HOUSING STANDARDS; RULES AND REGULATIONS; PENALTY FOR VIOLATION. The penalty for the violation of any rule or regulation promulgated under the authority of sections 9-1228 through 9-1231 of this Code shall be the same as the penalty for the violation of the provisions of this Article. (*Ord. No. 560, 2/12/98*)

MINIMUM EQUIPMENT AND FACILITIES

§9-1232 MINIMUM DWELLING STANDARDS; MINIMUM EQUIPMENT AND FACILITIES; COMPLIANCE. No person shall occupy or permit another to occupy any dwelling or dwelling unit, for the purpose of living, sleeping, cooking, and eating therein, which does not comply with the provisions of sections 9-1232 through 9-1240 of this Code. (*Ord. No. 560, 2/12/98*)

§9-1233 MINIMUM DWELLING STANDARDS; MINIMUM EQUIPMENT AND FACILITIES; KITCHEN SINK. Every dwelling unit shall contain a kitchen sink in good working condition and properly connected to a water and sewer system, or a septic tank; all connections are to comply with the provisions of the City's Plumbing Code. (*Ord. No. 560, 2/12/98*)

§9-1234 MINIMUM DWELLING STANDARDS; MINIMUM EQUIPMENT AND FACILITIES; SEPARATE TOILET ROOM. Every dwelling unit shall contain a room or rooms which afford privacy to a person within said room, and which is equipped with a water closet and a basin in good working condition. All plumbing fixtures and appurtenances thereto shall be installed and connected in conformance to the requirements of the City's Plumbing Code. (*Ord. No. 560, 2/12/98*)

§9-1235 MINIMUM DWELLING STANDARDS; MINIMUM EQUIPMENT AND FACILITIES; SEPARATE BATHROOM. Every dwelling unit shall contain a room or rooms which afford privacy to a person within said room, and which is equipped with a bathtub or shower in good working condition. All plumbing fixtures and appurtenances thereto shall be installed and connected in conformance to the requirements of the City's Plumbing Code. (*Ord. No. 560, 2/12/98*)

§9-1236 MINIMUM DWELLING STANDARDS; MINIMUM EQUIPMENT AND FACILITIES; HOT AND COLD WATER CONNECTIONS. Every kitchen sink, lavatory basin, and bathtub or shower required under the provisions of sections 9-1233 through 9-1235 of this Code shall be properly connected with both hot and cold water lines. (*Ord. No. 560, 2/12/98*)

§9-1237 MINIMUM DWELLING STANDARDS; MINIMUM EQUIPMENT AND FACILITIES; RUBBISH STORAGE FACILITIES. Every dwelling unit shall have adequate rubbish storage facilities, the type and location of which shall comply with the provisions for disposal of refuse. *(Ord. No. 560, 2/12/98)*

§9-1238 MINIMUM DWELLING STANDARDS; MINIMUM EQUIPMENT AND FACILITIES; GARBAGE DISPOSAL FACILITIES. Every dwelling unit shall have adequate garbage disposal facilities or garbage storage containers, the type and location of which shall comply with the provisions for disposal of refuse. *(Ord. No. 560, 2/12/98)*

§9-1239 MINIMUM DWELLING STANDARDS; MINIMUM EQUIPMENT AND FACILITIES; WATER HEATING FACILITIES. Every dwelling shall have supplied water heating facilities which are properly installed, are maintained in safe and good working condition, and are properly connected with the hot water lines required under the provisions of section 9-1236 of this Code, and are capable of heating water to a temperature of not less than 120 degrees Fahrenheit (48.9 degrees Celsius) at the outlet to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub or shower. Such supplied water heating facilities shall be capable of meeting the requirements of this section when the dwelling or dwelling unit heating facilities required under the provisions of sections 9-1246 through 9-1248 of this Code are not in operation. *(Ord. No. 560, 2/12/98)*

§9-1240 MINIMUM DWELLING STANDARDS; MINIMUM EQUIPMENT AND FACILITIES; EXITS. Every dwelling unit shall have safe, unobstructed means of egress leading to safe open space at ground level, as required by the laws of this State and the City. *(Ord. No. 560, 2/12/98)*

LIGHT, VENTILATION AND HEATING

§9-1241 MINIMUM DWELLING STANDARDS; LIGHT, VENTILATION AND HEATING; COMPLIANCE. No person shall occupy or permit another to occupy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the provisions of sections 9-1241 through 9-1251 of this Code. *(Ord. No. 560, 2/12/98)*

§9-1242 MINIMUM DWELLING STANDARDS; LIGHT, VENTILATION AND HEATING; WINDOWS AND SKYLIGHTS; TOTAL AREA REQUIRED. Every habitable room shall have at least one (1) window or skylight facing directly to the outdoors. The minimum total window area measured between stops, for every habitable room, shall be ten percent (10%) of the floor area of such room. Whenever walls or other portions of structures face a window of any such room and such light-obstruction structures are located less than three (3) feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face

directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of such skylight shall equal at least fifteen percent (15%) of the total floor area of such room. (*Ord. No. 560, 2/12/98*)

§9-1243 MINIMUM DWELLING STANDARDS; LIGHT, VENTILATION AND HEATING; WINDOWS AND SKYLIGHTS; TOTAL OPENABLE AREA. Every habitable room shall have at least one (1) window or skylight which can easily be opened or such other device as will adequately ventilate the room. The total openable window area in every habitable room shall be equal to at least fifty percent (50%) of the minimum window area size or minimum skylight-type window size, as required in section 9-1265 of this Code, except where there is supplied some other device for affording adequate ventilation and approved by the Administrator. (*Ord. No. 560, 2/12/98*)

§9-1244 MINIMUM DWELLING STANDARDS; LIGHT, VENTILATION AND HEATING; BATHROOMS AND TOILET ROOMS. Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms contained in sections 9-1242 and 9-1243 of this Code, except that no window or skylight shall be required in adequately ventilated bathrooms and water closet compartments equipped with a ventilation system which is in good working order. (*Ord. No. 560, 2/12/98*)

§9-1245 MINIMUM DWELLING STANDARDS; LIGHT, VENTILATION AND HEATING; ELECTRIC LIGHT FIXTURES AND OUTLETS. Where there is electric service available from power lines which are not more than three hundred (300) feet away from a dwelling, every habitable room of such dwelling shall contain at least two (2) separate floor or wall-type electric convenience outlets, or one (1) such convenience outlet and one (1) supplied ceiling-type electric light fixture; and every water closet compartment, bathroom, laundry room, furnace room, and public hall shall contain at least one (1) supplied ceiling or wall-type electric light fixture. Every such outlet and fixture shall be properly installed, shall be maintained in good and safe working condition, and shall be connected to the source of electric power in a safe manner. (*Ord. No. 560, 2/12/98*)

§9-1246 MINIMUM DWELLING STANDARDS; LIGHT, VENTILATION AND HEATING; HEATING FACILITIES; REQUIRED. Every dwelling shall have heating facilities which are properly installed, are maintained in safe and good working condition to comply with the provisions of the Building Code, and which maintain safe and adequate heating of all habitable rooms, bathrooms and water closet compartments in every dwelling unit located therein to a temperature of at least 70 degrees Fahrenheit (21.1 degrees Celsius) under ordinary minimum winter conditions. Temperature

readings shall be taken at a height of three (3) feet above the floor at approximately the center of the room or rooms. (*Ord. No. 560, 2/12/98*)

§9-1247 MINIMUM DWELLING STANDARDS; LIGHT, VENTILATION AND HEATING; HEATING FACILITIES; NOTICE OF VIOLATION; HEARING.

Notwithstanding any provisions of this Article, any person affected by a notice of violation of section 9-1246 of this Code shall request a hearing thereon, if such hearing is desired, within twenty-four (24) hours of the receipt of such notice. If such hearing is not requested within such twenty-four (24) hours, such notice shall automatically become an order enforceable as provided in this Article. If requested, such hearing shall be conducted as provided in sections 9-1204 through 9-1212 of this Code. (*Ord. No. 560, 2/12/98*)

§9-1248 MINIMUM DWELLING STANDARDS; LIGHT, VENTILATION AND HEATING; HEATING FACILITIES; ENFORCEMENT.

If the owner or mortgagee or other person having an interest in a building fails to comply with the notice provided for in section 9-1247 within twenty-four (24) hours, or any reasonable time ordered by the Administrator, then the Administrator shall cause such building or structure to be repaired or vacated as the facts may warrant under the standards provided in section 9-1246 of this Code. The costs of such repair or vacation shall be levied against the lot or tract of land upon which the building or structure is situated as a special assessment in the manner as provided by law. In the event a vacation of the substandard building is ordered or agreed to, the cost thereof levied against the lot or tract of land upon which the building or structure is situated shall not exceed the amount expended in moving the occupants and their personal property to another suitable dwelling located within the City. The special taxes so levied shall become due and payable immediately, and delinquent fifty (50) days thereafter, and shall bear interest at the same rate provided by State law for interest on delinquent special assessments. All such assessments shall be equalized, levied and collected as otherwise provided by law for the equalization, levying and collection of special assessments. (*Ord. No. 560, 2/12/98*)

§9-1249 MINIMUM DWELLING STANDARDS; LIGHT, VENTILATION AND HEATING; LIGHTS IN PUBLIC HALLS AND STAIRWAYS.

Every public hall and stairway in every multiple dwelling containing five (5) or more dwelling units shall be adequately lighted at all times. Every public hall and stairway in structures devoted solely to dwelling occupancy and containing not more than four (4) dwelling units may be supplied with conveniently located light switches, controlling an adequate lighting system which may be turned on when needed, instead of full-time lighting. (*Ord. No. 560, 2/12/98*)

§9-1250 MINIMUM DWELLING STANDARDS; LIGHT, VENTILATION AND HEATING; SCREENS ON WINDOWS.

During that portion of each year when the Administrator deems it necessary for protection against mosquitoes, flies, and other

insects, every door opening directly from a dwelling unit to outdoor space shall have supplied screens and a self-closing device; and every window or other device with openings to outdoor space, used or intended to be used for ventilation, shall likewise be supplied with screens; provided that such screens shall not be required during such period in rooms deemed by the Administrator to be located high enough in the upper stories of buildings as to be free from such insects. (*Ord. No. 560, 2/12/98*)

§9-1251 MINIMUM DWELLING STANDARDS; LIGHT , VENTILATION AND HEATING; SCREENING AGAINST RODENTS. Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be supplied with a screen or such other device as will effectively prevent their entrance. (*Ord. No. 560, 2/12/98*)

MAINTENANCE

§9-1252 MINIMUM DWELLING STANDARDS; MAINTENANCE; COMPLIANCE. No person shall occupy or permit another to occupy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the provisions of sections 9-1252 through 9-1260 of this Code. (*Ord. No. 560, 2/12/98*)

§9-1253 MINIMUM DWELLING STANDARDS; MAINTENANCE; FOUNDATION, FLOORS, WALLS, CEILINGS, AND ROOF. Every foundation, floor, wall, ceiling, and roof shall be reasonably weather tight, watertight, and rodent proof; shall be capable of affording privacy; and shall be kept in good repair. (*Ord. No. 560, 2/12/98*)

§9-1254 MINIMUM DWELLING STANDARDS; MAINTENANCE; WINDOWS, DOORS, AND OTHER OPENINGS. Every window, exterior door, and basement hatchway shall be reasonably weather tight, watertight, and rodent proof; and shall be kept in sound working condition and good repair. (*Ord. No. 560, 2/12/98*)

§9-1255 MINIMUM DWELLING STANDARDS; MAINTENANCE; STAIRS AND PORCHES. Every inside and outside stair, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that nominal use may cause to be placed thereon; and shall be kept in sound condition and good repair. (*Ord. No. 560, 2/12/98*)

§9-1256 MINIMUM DWELLING STANDARDS; MAINTENANCE; PLUMBING FIXTURES AND PIPES. Every plumbing fixture and water and waste pipe shall be properly installed to comply with the provisions of the Plumbing Code, and maintained in good sanitary working condition, free from defects, leaks, and obstructions. (*Ord. No. 560, 2/12/98*)

§9-1257 MINIMUM DWELLING STANDARDS MAINTENANCE; BATHROOMS AND TOILET ROOM FLOORS. Every water closet compartment floor surface and bathroom floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition. *(Ord. No. 560 2/12/98)*

§9-1258 MINIMUM DWELLING STANDARDS MAINTENANCE; SUPPLIED EQUIPMENT AND FACILITIES. Every supplied facility, piece of equipment, or utility which is required under this Article shall be so constructed or installed that it will function safely and effectively and shall be maintained in satisfactory working condition and installed according to the provisions of this Code. *(Ord. No. 560, 2/12/98)*

§9-1259 MINIMUM DWELLING STANDARDS MAINTENANCE; REMOVING OR SHUTTING OFF EQUIPMENT AND FACILITIES. No owner, operator, or occupant shall cause any service, facility, equipment, or utility which is required under this Article to be removed from, or shut of from, or discontinued for any occupied dwelling let or occupied by him, except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies when discontinuance of service is approved by the Administrator. *(Ord. No. 560, 2/12/98)*

§9-1260 MINIMUM DWELLING STANDARDS MAINTENANCE; DWELLING UNITS TO BE CLEAN, SANITARY AND FIT FOR HUMAN OCCUPANCY. No owner shall occupy or let to any other occupant any vacant dwelling unit unless it is clean, sanitary, and fit for human occupancy. *(Ord. No.560, 2/12/98)*

SPACE, USE AND LOCATION

§9-1261 MINIMUM DWELLING STANDARDS; SPACE, USE AND LOCATION; COMPLIANCE. No person shall occupy or permit another to occupy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the provisions of sections 9-1261 through 9-1267. *(Ord. No. 560, 2/12/98)*

§9-1262 MINIMUM DWELLING STANDARDS; SPACE, USE AND LOCATION; TOTAL FLOOR SPACE. Every dwelling unit shall contain at least one hundred fifty (150) square feet of floor space for the first occupant thereof, and at least seventy-five (75) additional square feet of floor space for one additional occupant, and one hundred (100) square feet of floor space for each additional occupant thereof, which floor space is to be calculated on the basis of total habitable room area. For purposes of this section, the floor space of the bathroom may be counted and included in the calculated total floor space available. *(Ord. No. 560, 2/12/98)*

§9-1263 MINIMUM DWELLING STANDARDS; SPACE, USE AND LOCATION; FLOOR SPACE IN SLEEPING ROOMS. In every dwelling unit of two (2) or more rooms, every room occupied for sleeping purposes by one occupant shall contain at least seventy (70) square feet of floor space, and every room occupied for sleeping purposes by more than one (1) occupant shall contain at least fifty (50) square feet of floor space for each occupant thereof. *(Ord. No. 560, 2/12/98)*

§9-1264 MINIMUM DWELLING STANDARDS; SPACE, USE AND LOCATION; ROUTES TO BATHROOM OR OTHER ROOMS. No dwelling or structure occupied by two (2) or more families shall have such room arrangements that any occupant must pass through a common bathroom or a room of another family in order to enter his own quarters. Rooms of each dwelling unit shall be so constructed and located as to provide privacy from other living units in the structure. *(Ord. No. 560, 2/12/98)*

§9-1265 MINIMUM DWELLING STANDARDS; SPACE, USE AND LOCATION; CEILING HEIGHT. At least one-half (1/2) of the floor area of every habitable room shall have a ceiling height of at least seven (7) feet, and the floor area of that part of any room where the ceiling height is less than five (5) feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof. *(Ord. No. 560, 2/12/98)*

§9-1266 MINIMUM DWELLING STANDARDS; SPACE, USE AND LOCATION; OCCUPANCY OF BASEMENT ROOMS. No basement shall be used as a habitable room or dwelling unit unless:

- (1) The floor and walls are impervious to leakage of underground and surface runoff water and insulated against dampness;
- (2) The total window area in each room is equal to at least the minimum window area sizes as required in section 9-1242 of this Code;
- (3) Such required minimum window area is located entirely above the grade of the ground adjoining such window area; and
- (4) The total openable window area in each room is equal to at least the minimum required under section 9-1243 of this Code, except where there is supplied some other device affording adequate ventilation. *(Ord. No. 560, 2/12/98)*

§9-1267 MINIMUM DWELLING STANDARDS; SPACE, USE AND LOCATION; MAXIMUM NUMBER OF OCCUPANTS. Every dwelling unit of one (1) habitable room shall be occupied by a maximum of two (2) occupants. *(Ord. No. 560, 2/12/98)*

RESPONSIBILITIES OF OWNERS AND OCCUPANTS

§9-1268 MINIMUM DWELLING STANDARDS; RESPONSIBILITIES OF OWNERS AND OCCUPANTS; CLEANLINESS OF PUBLIC AREAS. Every owner of a dwelling containing two (2) or more dwelling units shall be responsible for maintaining, in a

clean and sanitary condition, the shared or public areas of the dwelling and premises thereof. (Ord. No. 560, 2/12/98)

§9-1269 MINIMUM DWELLING STANDARDS; RESPONSIBILITIES OF OWNERS AND OCCUPANTS; CLEANLINESS OF OCCUPIED AREAS. Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit, and premises thereof which he occupies and controls. (Ord. No. 560, 2/12/98)

§9-1270 MINIMUM DWELLING STANDARDS; RESPONSIBILITIES OF OWNERS AND OCCUPANTS; DISPOSAL OF RUBBISH. Every occupant of a dwelling or dwelling unit shall dispose of all rubbish in a clean and sanitary manner by placing it in the rubbish containers required by section 9-1237 of this Code. (Ord. No. 560, 2/12/98)

§9-1271 MINIMUM DWELLING STANDARDS; RESPONSIBILITIES OF OWNERS AND OCCUPANTS; DISPOSAL OF GARBAGE. (1) Every occupant of a dwelling or dwelling unit shall dispose of all his garbage and any other organic waste which might provide food for rodents, in a clean and sanitary manner, by placing it in the garbage disposal facilities or garbage containers required by section 9-1238 of this Code. (2) It shall be the responsibility of the owner to supply such facilities or containers for all dwelling units in a dwelling containing more than four (4) dwelling units for all dwelling units located on premises where more than four (4) dwelling units share the same premises. In all other cases it shall be the responsibility of the occupant to furnish such facilities or containers. (Ord. No. 560, 2/12/98)

§9-1272 MINIMUM DWELLING STANDARDS; RESPONSIBILITIES OF OWNERS AND OCCUPANTS; HANGING SCREENS AND STORM DOORS. Every occupant of a dwelling or dwelling unit shall be responsible for hanging all screens and double or storm doors and windows whenever the same are required under the provisions of this Article or of any rule or regulation adopted pursuant thereto, except where the owner has agreed to supply such service. (Ord. No. 560, 2/12/98)

§9-1273 MINIMUM DWELLING STANDARDS; RESPONSIBILITIES OF OWNERS AND OCCUPANTS; EXTERMINATION OF INSECTS AND OTHER PESTS. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one (1) dwelling unit shall be responsible for such extermination whenever his dwelling unit is infested. Notwithstanding the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a rat proof or reasonable insect proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in the shared or public parts of any dwelling containing two (2) or

more dwelling units, extermination thereof shall be the responsibility of the owner. The extermination of termites shall be the responsibility of the owner. (Ord. No. 560, 2/12/98)

§9-1274 MINIMUM DWELLING STANDARDS; RESPONSIBILITIES OF OWNERS AND OCCUPANTS; MAINTENANCE OF PLUMBING FIXTURES. Every occupant of a dwelling unit shall keep all plumbing fixtures in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof. (Ord. No. 560, 2/12/98)

ROOMINGHOUSES

§9-1275 MINIMUM DWELLING STANDARDS; ROOMINGHOUSES; MINIMUM REQUIREMENTS. No person shall operate a rooming house, or shall occupy or permit another to occupy any rooming unit, except in compliance with all applicable provisions of this Article. (Ord. No. 560, 2/12/98)

§9-1276 MINIMUM DWELLING STANDARDS; ROOMINGHOUSES; HOTELS. Every provision of this Article which applies to rooming houses shall also apply to hotels, except to the extent that any such provision may be found in conflict with the laws of this State or with the lawful regulations of any State board or agency. (Ord. No. 560, 2/12/98)

§9-1277 MINIMUM DWELLING STANDARDS; ROOMINGHOUSES; TOILET FACILITIES. At least one (1) flush water closet, lavatory basin, and bathtub or shower, properly connected to a water and sewer system conforming to the requirements of this Code and in good working condition, shall be supplied for each eight (8) persons or fraction thereof residing within a rooming house, including members of the operator's family, wherever they share the use of the said facilities; provided that, in a rooming house where rooms are let only to males, flush urinals may be substituted for not more than one-half (1/2) the required number of water closets. All such facilities shall be so located within the dwelling as to be reasonably accessible from a common hall or passageway to all persons sharing such facilities. Every lavatory basin and bathtub or shower shall be supplied with hot water at all times. No such facilities shall be located in a basement except by written approval of the Administrator. (Ord. No.560, 2/12/98)

§9-1278 MINIMUM DWELLING STANDARDS; ROOMINGHOUSES; CLEAN TOWELS AND BED LINEN. The operator of every rooming house shall change supplied bed linen and towels therein at least once each week and prior to the letting of any room to any occupant. The operator shall be responsible for the maintenance of all supplied bedding in a clean and sanitary manner. (Ord. No.560, 2/12/98)

§9-1279 MINIMUM DWELLING STANDARDS; ROOMINGHOUSES; FLOOR SPACE WITH SLEEPING ROOMS. Every room occupied for sleeping purposes by

one (1) person shall contain at least seventy (70) square feet of floor space, and every room occupied for sleeping purposes by more than one (1) person shall contain at least fifty (50) square feet of floor space for each occupant thereof. (*Ord. No.560, 2/12/98*)

§9-1280 MINIMUM DWELLING STANDARDS; ROOMINGHOUSES; EXITS. Every rooming unit shall have a safe, unobstructed means of egress leading to safe and open space at ground level, as required by the laws of this State and the City. (*Ord. No. 560, 2/12/98*)

§9-1281 MINIMUM DWELLING STANDARDS; ROOMINGHOUSES; SANITARY MAINTENANCE. The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors, and ceilings, and for maintenance of a sanitary condition in every other part of the rooming house; and he shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building is leased or occupied by the operator. (*Ord. No.560, 2/12/98*)

Article 13. Penal Provision

§9-1301 VIOLATION; PENALTY.

(A) Any person, or any person's agent or servant, who violates any of the provisions of this municipal code, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500.00. A new violation shall be deemed to have been committed every twenty- four (24) hours of such failure to comply.

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

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (*Ref. Neb. RS 17-505, 18-1720*)

Chapter 10

BUSINESS REGULATIONS

Article 1. Alcoholic Beverages

§10-101 ALCOHOLIC BEVERAGES; DEFINITIONS. All words and phrases herein used are to have the definitions applied thereto. As defined in the Liquor Control Act of the State of Nebraska. (*Ref. 53-103 RS Neb.*)

§10-102 ALCOHOLIC BEVERAGES; LICENSE REQUIRED. It shall be unlawful for any person to manufacture for sale, sell, keep for sale, or to barter any alcoholic liquors within the Municipality unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act. (*Ref. 53-102 RS Neb.*)

§10-103 ALCOHOLIC BEVERAGES; LICENSE DISPLAYED. Every licensee under the Nebraska Liquor Control Act shall cause his license to be framed and hung in plain public view in a conspicuous place on the licensed premise. (*Ref. 53-148 RS Neb.*)

§10-104 ALCOHOLIC BEVERAGES; LICENSEE REQUIREMENTS.

- (A) No license shall be issued to:
- (1) A person who is not a resident of this state, except in case of railroad, airline, or boat licenses;
 - (2) A person who is not of good character and reputation in the community in which he or she resides;
 - (3) A person who is not a citizen of the United States;
 - (4) A person who has been convicted of or has pleaded guilty to a felony under the laws of this state, any other state, or the United States;
 - (5) A person who has been convicted of or has pleaded guilty to any Class I misdemeanor pursuant to Neb. RS Chapter 28, art. 3, 4, 7, 8, 10, 11, or 12, or any similar offense under a prior criminal statute or in another state, except that any additional requirements imposed by this division on May 18, 1983, shall not prevent any person holding a license on that date from retaining or renewing that license if the conviction or plea occurred prior to May 18, 1983;
 - (6) A person whose license issued under the State Liquor Control Act has been revoked for cause;
 - (7) A person who at the time of application for renewal of any license issued under the Act would not be eligible for that license upon initial application.
 - (8) A partnership, unless 1 of the partners is a resident of this state and unless all the members of that partnership are otherwise qualified to obtain a license;

(9) A limited liability company, unless 1 of the members is a resident of this state and unless all the members of that company are otherwise qualified to obtain a license;

(10) A corporation, if any officer, manager, or director of the corporation or any stockholder owing in the aggregate more than 25% of the stock of that corporation would be ineligible to receive a license under this section for any reason other than the reasons stated in Divisions (A)(1) and (A)(3) of this section, except that a manager of a corporate licensee shall be a resident of this state. This division shall not apply to railroad licenses;

(11) A person whose place of business is conducted by a manager or agent, unless that manager or agent possesses the same qualifications required of the licensee;

(12) A person who does not own the premises for which a license is sought or does not have a lease or combination of leases on the premises for the full period for which the license is to be issued;

(13) Except as provided in this division, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such an applicant shall become eligible for a liquor license only if the State Liquor Control Commission finds from the evidence that the public interest will not be infringed upon if the license is granted. It shall be prima facie evidence that when a spouse is ineligible to receive a liquor license, the applicant is also ineligible to receive a liquor license. This prima facie evidence shall be overcome if it is shown to the satisfaction of the Commission:

(a) The licensed business will be the sole property of the applicant; and

(b) The licensed premises will be properly operated.

(14) A person seeking a license for premises which do not meet standards for fire safety as established by the State Fire Marshal;

(15) A law enforcement officer, except that this division shall not prohibit a law enforcement officer from holding membership in any nonprofit organization holding a liquor license or from participating in any manner in the management or administration of a nonprofit organization; or

(16) A person less than 21 years of age.

(B) When a trustee is the licensee, the beneficiary or beneficiaries of the trust shall comply with the requirements of this section, but nothing in this section shall prohibit any such beneficiary from being a minor or person who is mentally incompetent. (*Neb. RS 53-125*)

§10-105 LICENSE APPLICATIONS; MUNICIPAL EXAMINATION. (A) Any person desiring to obtain a new license to sell alcoholic liquor at retail or a craft brewery license shall file an application with the Liquor Control Commission. The Commission shall then notify by registered or certified mail the Municipal Clerk. The Commission shall set for hearing before it any application for a retail license relative to which it has

received, within 30 days from the date of receipt of the application by the municipality, a recommendation of denial from the Municipality.

(B) Upon receipt of the notice and copy of the application, the City Council shall fix a time and place at which a hearing will be held, and at which the City Council may receive evidence, either orally or by affidavit, from the applicant or any other person concerning the propriety of the issuance of the license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in the Municipality 1 time not less than 7 nor more than 14 days before the time of the hearing. The notice shall include but not be limited to a statement that all persons desiring to give evidence before the local City Council in support of or protest against the issuance of the license may do so at the time of the hearing. The hearing shall be held not more than 21 days after the receipt of this notice from the Commission.

(C) In determining what recommendation to make to the Commission, the City Council shall consider:

(1) Whether the applicant is fit, willing, and able to properly provide the service proposed within the municipality;

(2) Whether the applicant can conform to all provisions, requirements, rules, and regulations provided for in the State Liquor Control Act;

(3) Whether the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to ensure that the licensed business can conform to all provisions, requirements, rules, and regulations provided for in the State Liquor Control Act; and

(4) Whether the issuance of the license is or will be required by the present or future public convenience and necessity.

(D) After the hearing, the City Council shall cause to be spread at large, in the minute record of its proceedings, a resolution recommending either issuance or refusal of such license. The Municipal Clerk shall thereupon mail to the Commission by first class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply herewith shall not render void any license issued by the Commission. In the event the Commission refuses to issue such a license, the cost of publication of notice as herein required shall be paid by the Commission from the security for costs. (*Neb. RS 53-131 through 53-134*)

§10-106 ALCOHOLIC BEVERAGES; LIQUOR LICENSE RENEWAL. Retail or bottle club licenses issued by the Commission and outstanding may be automatically renewed in the absence of a request by the Governing Body to require the said licensee to issue an application for renewal. Any licensed retail or bottle club establishment located in an area which is annexed to the Municipality shall file a formal application for a license, and while such application is pending, the licensee shall be authorized to continue all license privileges pursuant to this Article until the original license expires, is canceled, or revoked. If such license expires within sixty (60) days following the annexation date of such area, the license may be renewed by order of the Commission for not more than one (1) year. The Municipal Clerk, upon notice from the Commission, between January

tenth (10th) and January thirtieth (30th) of each year, shall cause to be published in a legal newspaper in, or of general circulation in the Municipality, one (1) time, a notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the Municipality; provided, Class C license renewal notices shall be published between the dates of July tenth (10th) and July thirtieth (30th) of each year. The Municipal Clerk shall then file with the Commission proof of publication of said notice on or before February tenth (10th) of each year or August tenth (10th) of each year for Class C licenses. Upon the conclusion of any hearing required by this Section, the Governing Body may request a licensee to submit an application. (*Ref. 53-135, 53-135.01 RS Neb.*)

§10-107 ALCOHOLIC BEVERAGES; LICENSES; MUNICIPAL POWERS AND DUTIES.

(A) The Governing Body is authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail or craft brewery licenses carried on within the corporate limits of the Municipality. (*Neb. RS 53-134.03*)

(B) During the period of 45 days after the date of receiving from the Nebraska Liquor Control Commission notice and a copy of the application for a new license to sell alcoholic liquor at retail or a craft brewery license, the Governing Body may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant. (*Neb. RS 53-131*)

(C) The Governing Body, with respect to licenses within the corporate limits of the Municipality, has the following powers, functions, and duties with respect to retail and craft brewery licenses;

1. To cancel or revoke for cause retail or craft brewery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the Nebraska Liquor Control Commission;

2. To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule, or regulation adopted by the Governing Body has been or is being violated and at such time examining the premises of such licensee in connection with such determination;

3. To receive a signed complaint from any citizen within its jurisdiction that any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the Act;

4. To receive retail license fees and craft brewery license fees as provided in *Neb. RS 53-124* and pay the same, after the license has been delivered to the applicant, to the Municipal Treasurer;

5. To examine or cause to be examined any applicant or any retail licensee or craft brewery licensee upon whom notice of cancellation or revocation has been served as provided in the Act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the Governing Body may authorize its agent or attorney to act on its behalf;

6. To cancel or revoke on its own merit any license if, upon the same notice and hearing as provided in section 10-122 (Citizen Complaints), it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the Commission within 30 days after the date of the order by filing a notice of appeal with the Commission. The Commission shall handle the appeal in the manner provided for hearing on an application in *Neb. RS 53-133*;

7. Upon receipt from the Commission of the notice and copy of application as provided in *Neb. RS 53-131*, to fix a time and place for a hearing at which the Governing Body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in the Municipality, one time not less than 7 and not more than 14 days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the Governing Body in support of or in protest against the issuance of such license may do so at the time of the hearing. The hearing shall be held not more than 45 days after the date of receipt of the notice from the Commission, and after such hearing the Governing Body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The Municipal Clerk shall mail to the Commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the commission. If the Commission refuses to issue such a license, the cost of publication of notice shall be paid by the Commission from the security for costs. (*Neb. RS 53-134*)

(D) (1) When the Nebraska Liquor Control Commission mails or delivers to the Municipal Clerk a retail or craft brewery license issued or renewed by the commission, the Clerk shall deliver the license to the licensee upon receipt from the licensee of proof of payment of:

(a) The license fee if by the terms of *Neb. RS 53-124 (5)* the fee is payable to the Municipal Treasurer;

(b) Any fee for publication of notice of hearing before the Governing Body upon the application for the license;

(c) The fee for publication of notice of renewal, if applicable, as provided in *Neb. RS 53-135.01*; and

(d) Occupation taxes, if any, imposed by the Municipality.

(2) Notwithstanding any ordinance or charter power to the contrary, the Municipality shall not impose an occupation tax on the business of any person, firm, or corporation licensed under the Nebraska Liquor Control Act and doing business within the corporate limits of the Municipality in any sum which exceeds two times the amount of the license fee required to be paid under the Act to obtain such license.

§10-108 ALCOHOLIC BEVERAGES; OWNER OF PREMISES. The owner of any premise used for the sale at retail of alcoholic beverages shall be deemed guilty of a violation of these laws to the same extent as the said licensee if the owner shall permit the licensee to use the said licensed premise in violation of any Municipal Code Section or Nebraska Statute. (*Ref. 53-1,101 RS Neb.*)

§10-109 ALCOHOLIC BEVERAGES; EMPLOYER. The employer of any officer, director, manager, or employees working in a retail liquor establishment shall be held to be liable and guilty of any act or omission or violation of any law or ordinance, and each such act or omission shall be deemed and held to be the act of the employer, and will be punishable in the same manner as if the said act or omission had been committed by him personally. (*Ref. 53-1,102 RS Neb.*)

§10-110 ALCOHOLIC BEVERAGES; CLEAR VIEW. It shall be unlawful to use any screen, blind, curtain, partition, article, or other device in the windows or upon the doors of any retail liquor establishment, other than restaurants, hotels, and clubs which will have the effect of preventing a clear view into the interior of such licensed premises from the street, road, or sidewalk at all times. All licensed premises shall be continuously lighted during business hours by natural or artificial white lights to insure the clear visibility into said establishment. Any licensee who willfully violates the provisions of this section shall be subject to a revocation of his license by the Municipality as provided herein. (*Ref. 53-167 RS Neb.*)

§10-111 ALCOHOLIC BEVERAGES; MINORS AND COMPETENTS. It shall be unlawful for any person or persons to sell, give away, dispose of, exchange, permit the sale of, or make a gift of any alcoholic liquors; or to procure any such alcoholic liquors to or for any minor or to any person who is mentally incompetent. (*Ref. 53-180 RS Neb.*)

§10-112 ALCOHOLIC BEVERAGES; CREDIT SALES. No person shall sell or furnish alcoholic liquor at retail to any person or persons for credit of any kind, barter, or services rendered; provided, nothing herein contained shall be construed to prevent any bona fide club from permitting checks or statements for alcoholic liquor to be signed by

members, or guests of members, and charged to the accounts of the said members or guests in accordance with the bylaws of any such club; and provided further, nothing herein shall be construed to prevent any hotel from permitting checks or statements for liquor to be signed by bona fide guests residing in the said hotel and charged to the accounts of such guests. (Ref. 53-183 RS Neb.)

§10-113 ALCOHOLIC BEVERAGES; SPIKING BEER. It shall be unlawful for any person or persons who own, manage, or lease any premise in which the sale of alcoholic beverages is licensed to serve or offer for sale any beer to which there has been added any alcohol, or permit any person or persons to add alcohol to any beer on the licensed premise of such licensee. (Ref. 53-1 74 RS Neb.)

§10-114 ALCOHOLIC BEVERAGES; ORIGINAL PACKAGE. It shall be unlawful for any person or persons who own, manage, or lease any premise in which the sale of alcoholic beverages is licensed, to have in their possession for sale at retail any alcoholic liquor contained in casks or other containers except in the original package. Nothing in this section shall prohibit the refilling of original packages of alcoholic liquor for strictly private use and not for resale. (Ref. 53-184 RS Neb.) (Amended by Ord. No. 492, 9/7/93)

§10-115 ALCOHOLIC BEVERAGES; MINOR'S PRESENCE. It shall be unlawful for any person or persons who own, manage, or lease an establishment selling alcoholic beverages at retail to allow any minor, under the age of eighteen (18) years, to frequent or otherwise remain in the said establishment unless the said minor is accompanied by his parent or legal guardian, and unless said minor remains seated with, and under the immediate control of, the said parent or legal guardian.

§10-115 ALCOHOLIC BEVERAGES; HOURS OF SALE. It shall be unlawful for any licensed person or persons or their agents to sell at retail any alcoholic beverages within the Municipality except during the hours provided herein:

HOURS OF SALE

Alcoholic Liquors (except beer and wine)

Secular Days

Off Sale 6:00 a.m. to 1:00 a.m.

On Sale 6:00 a.m. to 2:00 a.m.

Sundays

Off Sale..... 6:00 a.m. to 1:00 a.m.

On Sale 12:00 noon to 2:00 a.m.

Beer and Wine

Secular Days

Off Sale..... 6:00 a.m. to 1:00 a.m.

On Sale 6:00 a.m. to 1:00 a.m.

Sundays

Off Sale..... 12:00 noon to 1:00 a.m.

On Sale 12:00 noon to 1:00 a.m.

No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than fifteen (15) minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises. For the purposes of this section, "on sale" shall be defined as alcoholic beverages sold by the drink for consumption on the premises of the licensed establishment; "off sale" shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

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 beverages is prohibited by this section. *(Ref. 53-179 RS Neb.) (Amended by Ord. No.491, 9/7/93)*

§10-117 ALCOHOLIC BEVERAGES; SANITARY CONDITIONS. It shall be unlawful to open for public use any retail liquor establishment that is not in a clean and sanitary condition. Toilet facilities shall be adequate and convenient for customers and patrons and said licensed premises shall be subject to any health inspections the Governing Body or the Municipal Police may make or cause to be made. All applications for liquor licenses shall be viewed in part from the standpoint of the sanitary conditions, and a report concerning the said sanitary conditions shall be made at all hearings concerning the application for, or renewal of, a liquor license.

§10-118 ALCOHOLIC BEVERAGES; HIRING MINORS. It shall be unlawful for any person to hire a minor, regardless of sex, under the age of nineteen (19) years to serve or dispense alcoholic liquors, including beer, to said licensee's customers.

§10-119 ALCOHOLIC BEVERAGES; CONSUMPTION IN PUBLIC PLACES. It shall be unlawful for any person to consume alcoholic beverages within the corporate limits upon the public ways and property, including inside vehicles while upon the public ways and property unless authorized by the Lyons City Council. Authorization is hereby granted under this section for all activities conducted in the Lyons City Auditorium unless specifically denied by the City Council at the time application is made to the City Clerk for rental of the Auditorium. It shall further be unlawful for any person to consume alcoholic beverages within any other public business that is not a licensed liquor establishment. *(Ref. 53-186, 53-186.01 RS Neb.) (Amended by Ord. No. 424. 3/3/87)*

§10-120 ALCOHOLIC BEVERAGES; ACQUISITION AND POSSESSION. It shall be unlawful for any person to purchase, receive, acquire, accept, or possess any alcoholic liquor acquired from any other person other than one duly licensed to handle alcoholic liquor under the Nebraska Liquor Control Act; provided, nothing in this section shall prevent (1) the possession of alcoholic liquor for the personal use of the possessor and his or her family and guests, as long as the quantity of alcoholic liquor transported, imported, brought, or shipped into the State does not exceed nine liters in any one

calendar month; (2) the making of wine, cider, or other alcoholic liquor by a person from fruits, vegetables, or grains, or the product thereof, by simple fermentation and without distillation, if made solely for the use of the maker and his or her family and guests; (3) any duly-licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, any hospital or other institution caring for the sick and diseased persons from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution. or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in compounding of prescriptions of licensed physicians; (4) the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church; (5) persons who are sixteen years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor; (6) persons who are sixteen years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment; or (7) persons who are nineteen years old or older from serving or selling alcoholic liquor in the course of their employment. (Ref. 53-168.06, 53-175, 53-194.03 RS Neb.) (Amended by Ord. Nos. 4-9, 11/5/85; 537, 12/3/96)

§10-121 ALCOHOLIC BEVERAGES; INSPECTIONS. It shall be the duty of the Governing Body to cause frequent inspections to be made on the premises of all retail and bottle club licensees. If it is found that any such licensee is violating any provision of the Nebraska Liquor Control Act or regulations of the Nebraska Liquor Control Commission, or is failing to observe in good faith the purposes of said Act, the license may be suspended, cancelled, or revoked after the licensee has been given an opportunity to be heard by the Governing Body. (Ref. 53-146 RS Neb.)

§10-122 ALCOHOLIC BEVERAGES; CITIZEN COMPLAINTS. Any five (5) residents of the Municipality shall have the right to file a complaint with the Governing Body stating that any retail or bottle club licensee, subject to the jurisdiction of the Governing Body, has been or is violating any provision of the Nebraska Liquor Control Act or the rules or regulations issued pursuant thereto. Such complaint shall be in writing in the form prescribed by the Governing Body and shall be signed and sworn by the parties complaining. The complaint shall state the particular provision, rule, or regulation believed to have been violated and the facts in detail upon which belief is based. If the Governing Body is satisfied that the complaint substantially charges a violation and that from the fact alleged there is reasonable cause for such belief, it shall set the matter for hearing within ten (10) days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge in the complaint; provided, that the complaint must in all cases be disposed of by the Governing Body within thirty (30) days from the date the complaint was filed by resolution thereof, said resolution shall be deemed the final order for purposes of appeal to the Nebraska Liquor Control Commission as provided by law. (Ref. 53-1.114 RS Neb.) (53-194.03 RS Neb.)

§10-123 ALCOHOLIC BEVERAGES; REMOVAL OF INTOXICATED PERSONS FROM PUBLIC OR QUASI-PUBLIC PROPERTY.

Any law enforcement officer with the power to arrest for traffic violations may take a person who is intoxicated and, in the judgment of the officer, dangerous to himself, herself, or others, or who is otherwise incapacitated, from any public or quasi-public property. An officer removing an intoxicated person from public or quasi-public property shall make a reasonable effort to take such intoxicated person to his or her home or to place such person in any hospital, clinic, alcoholism center, or with a medical doctor as may be necessary to preserve life or to prevent injury. Such effort at placement shall be deemed reasonable if the officer contacts those facilities or doctor which have previously represented a willingness to accept and treat such individuals and which regularly do accept such individuals. If such efforts are unsuccessful or are not feasible, the officer may then place such intoxicated person in civil protective custody, except that civil protective custody shall be used only as long as is necessary to preserve life or to prevent injury, and under no circumstances longer than twenty-four (24) hours. The placement of such person in civil protective custody shall be recorded at the facility or jail at which he or she is delivered and communicated to his or her family or next of kin, if they can be located, or to such person designated by the person taken into civil protective custody.

The law enforcement officer who acts in compliance with this section shall be deemed to be acting in the course of his or her official duty and shall not be criminally or civilly liable for such actions. The taking of an individual into civil protective custody under this section shall not be considered an arrest. No entry or other record shall be made in indicate that the person has been arrested or charged with a crime.

For purposes of this section, public property shall mean any public right-of-way, street, highway, alley, park, or other state, county, or municipally-owned property utilized for proprietary or business uses which invites patronage by the public or which invites public ingress and egress. (*Ref. 53-1, 121 RS Neb.*)

§10-124 LIQUOR APPLICATIONS; RETAIL LICENSING STANDARDS; BINDING RECOMMENDATIONS.

The Governing Body shall consider the following licensing standards and criteria at the hearing and an evaluation 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, and for the purpose of formulating a recommendation from the Governing Body to the Nebraska Liquor Control Commission in accordance with the Nebraska Liquor Control Act:

1. The adequacy of existing law enforcement resources and services in the area;
2. The recommendation of the Police Department or any other law enforcement agency;
3. 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;

4. Zoning restrictions and the Municipality's zoning and land-use policies;
5. Sanitation or sanitary conditions on or about the proposed licensed premises;
6. The existence of a citizen's protest and any other evidence in support of or in opposition to the application;
7. The existing population and projected growth, both Municipality-wide and within the area to be served;
8. The existing liquor licenses, the class of such license, and the distance and times of travel to such licenses;
9. The nature and needs of the neighborhood or community where the proposed premises are located, as well as its projected growth;
10. 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;
11. Whether the applicant can ensure that all alcoholic beverages, including beer and wine, will be handled by persons in accordance with *Neb. Rev. Stat. §53-102* of the Nebraska Liquor Control Act;
12. 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;
13. 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;
14. 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;
15. The background information of the applicants established by information contained in the public records of the Nebraska Liquor Control Commission and investigations conducted by the Police Department;
16. Past evidences of discrimination involving the applicant(s) as evidenced by findings of fact before any administrative board or agency of the Municipality, or any other governmental board or agency of the Municipality, or any other governmental unit or any court of law;
17. Past compliance with state laws and liquor regulations and municipal ordinances and regulations;
18. 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;
19. Whether the applicant or its representatives has suppressed any fact or provided any nonfactual information to the local Governing Body or its employees in regard to the license application or liquor investigations; (The applicant is required to cooperate in providing a full disclosure to the investigating agents of the Municipality.)

20. Whether the application will provide an improvement to the neighborhood, a betterment to the Municipality, or a true increase in service to the public at large;

21. Proximity of and impact on schools, hospitals, libraries, and public institutions.;

22. 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.

23. 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.

24. Applications for Class "B," "C," and "D" licenses (as defined by *Section 53-124, R.S.S.*) 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 separate 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 this ordinance may be continued for the life of the license. Such nonconforming premises may not be enlarged, extended, or restored after damage during interim. For the purposes of this section, other business activity shall mean 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 the premises and the sale or display of ice, drink mix, tobacco, cups, or carbonated beverages.

25. Whether or not 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 of forfeiting bond to appear in court and answer charges for violating any law or ordinance relating to alcoholic liquors;

26. The Governing Body may fix certain requirements and prescribe certain conditions upon a license when it is granted or permitted to continue in full force and effect whether such requirements or conditions are imposed at a formal hearing, by a written notice, or in a written stipulation, and such requirements or conditions shall be deemed to be a part of the license as though fully endorsed therein; and any violation or breach of any requirement or condition is prohibited.

27. Other information and data that may reasonably be considered pertinent to the issuance of the license.

The preceding standards 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 "applicants" as used herein is synonymous with "license." (*Ref. 53-134 RS Neb.*) (*Ord. No.415, 10/7/86*)

§10-125 ALCOHOLIC BEVERAGES; LIQUOR APPLICATION; NOTICE;

PROCEDURE. A. Notice. Notice of a hearing held pursuant to *Neb. Rev. Stat. Section 53-134* shall be given to the applicant by the Municipal Clerk and shall contain the date, time, and location of the hearing. Two (2) or more proceedings which are legally or factually related may be heard and considered together unless any party thereto makes a showing sufficient to satisfy the Governing Body that prejudice would result therefrom.

B. Procedure. Hearings will be informal and conducted by the Municipal Attorney. The intent is an inquiry into the facts, not an adversarial action. Each witness may present their testimony in narrative fashion or by question and answer. The Governing Body or the applicant may order the hearing to be recorded by the Clerk, at the expense of the applicant(s).

The Governing Body and its representatives shall not be bound by the strict rules of evidence, and shall have full authority to control the procedures of the hearing, including the admission or exclusion of testimony or other evidence. The Governing Body may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent individuals. The Municipal Attorney may limit testimony where it appears incompetent, irrelevant, or unduly repetitious. If there is opposition to any application, and such opposition desires the opportunity to present arguments and to cross-examine the applicant, and any witnesses in favor of such application, they shall choose a spokesperson to perform such function who shall notify the Municipal Attorney of his/her representation prior to the start of the hearing.

The order of the proceeding is as follows:

1. Exhibits will be marked in advance by the Clerk and presented to the Municipal Attorney during the presentation;
2. Presentation of evidence, witnesses, and arguments by applicant;
3. Testimony of any other citizens in favor of such proposed license;
4. Examination of applicant, witnesses or citizens by Municipal Attorney, Governing Body, or duly appointed agent;
5. Cross-examination of applicant, witnesses or citizens by spokesperson for opposition, if any;
6. Presentation of evidence and witnesses by opposition;
7. Testimony of any other citizens in opposition to such proposed license;
8. Presentation of evidence by Municipality and law enforcement personnel;
9. Cross-examination by applicant;
10. Rebuttal evidence by both parties, and by Municipality administration and agent;
11. Summation by applicant and opposition spokesperson, if any.

In all cases, the burden of proof and persuasion shall be on the party filing the application.

Any member of the Governing Body and the Municipal Attorney may question any witness, call witnesses, or request information. All witnesses shall be sworn.

The Governing Body may make further inquiry and investigation following the hearing.

The Governing Body or the applicant may order the hearing to be recorded by the Clerk, at the expense of the applicant(s). (*Ref. 53-134 RS Neb.*) (*Ord. No.416, 10/7/86*)

§10-126 ALCOHOLIC BEVERAGES; MANUFACTURE, SALE, DELIVERY, AND POSSESSION; GENERAL PROHIBITIONS; EXCEPTIONS.

(A) No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish, or possess any alcoholic liquor for beverage purposes except as specifically provided in this chapter and the Nebraska Liquor Control Act.

(B) Nothing in this chapter shall prevent:

(1) The possession of alcoholic liquor legally obtained as provided in this chapter or the Act for the personal use of the possessor and his or her family or guests;

(2) The making of wine, cider, or other alcoholic liquor by a person from fruits, vegetables, or grains, or the product thereof, by simple fermentation and without distillation, if made solely for the use of the maker and his or her family and guests;

(3) Any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, any hospital or other institution caring for the sick and diseased persons from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution, or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in the compounding of prescriptions of licensed physicians;

(4) The possession and dispensation of alcoholic liquor by an authorized representative of any religion on the premises of a place of worship, for the purpose of conducting any bona fide religious rite, ritual, or ceremony;

(5) Persons who are sixteen years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor;

(6) Persons who are sixteen years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment;

(7) Persons who are sixteen years old or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment; or

(8) Persons who are nineteen years old or older from serving or selling alcoholic liquor in the course of their employment. (*Neb. RS 53-168.06*)

§10-127 ALCOHOLIC BEVERAGES; CATERING LICENSES.

(A) The holder of a Class C, Class D, Class D-1, or Class I license issued under Neb. RS 53-124(5) or a craft brewery license may obtain an annual catering license by filing an application and license fee with the Nebraska Liquor Control commission. (*Neb. RS 53-124.12(1)*)

(B) Upon receipt from the Commission of the notice and copy of the application as provided in *Neb. RS 53-124.12*, the Governing Body shall process the application in the same manner as provided in section 10-107 (Alcoholic Beverages; Licenses; Municipal Powers) (*Neb. RS 53-124.12(3)*)

(C) The Governing Body, with respect to catering licensees within its liquor license jurisdiction, may cancel a catering license for cause for the remainder of the period for which such catering license is issued. Any person whose catering license is canceled may appeal to the District Court. (*Neb. RS 53-124.12(4)*)

(D) The Governing Body may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the Governing Body. The tax may not exceed double the license fee for a catering license. (*Neb. RS 53-124.12(6)*)

(E) For purposes of this section, the liquor license jurisdiction of the Governing Body is, with respect to the holders of Class D-1 licenses, the area outside the corporate limits of the Municipality but within its extraterritorial zoning jurisdiction and, with respect to the holders of other licenses, the corporate limits of the Municipality.

Article 2. Peddlers and Hawkers

§10-201 PEDDLERS AND HAWKERS; REGULATION. To prevent the sale of fraudulent, dangerous, and unhealthful goods and services, and to protect the public by maintaining records of the products sold and the persons and companies responsible for such sales, all peddlers and hawkers shall, before doing business within the Municipality, make application for, and be issued a registration certificate. Application for said registration certificate shall be made to the Municipal Clerk, and shall contain all the necessary information and documents required for the protection of the residents of the Municipality. Any person or persons granted a peddler and hawker registration certificate shall be subject to any fees, occupation taxes, and other rules and regulations which the Governing Body deems appropriate for the purposes stated herein. Any certificate so granted shall be subject to revocation for good and sufficient cause by the Municipal Police. (*Ref. 17 - 134, 17-525, 17-562 RS Neb.*)

§10-202 PEDDLERS AND HAWKERS; EXCEPTIONS. Nothing herein shall be construed to apply to any person, or persons, selling produce raised within the county, or to wholesale salesmen soliciting merchants directly.

Article 3. Occupation Taxes

§10-301 OCCUPATION TAX; AMOUNTS. For the purpose of raising revenue an occupation tax is hereby levied on the following businesses:

Liquor Establishments Class C	\$500.00
Telephone Companies	20.00
Fire Insurance Companies	5.00
Tobacco (State license fee).....	10.00

(Ref. 17-525 RS Neb.)

§10-302 OCCUPATION TAX; FIRE INSURANCE COMPANIES. For the use, support, and maintenance of the Municipal Fire Department, all revenue realized from the occupation tax on Fire Insurance Companies shall be appropriated to the Fire Department Fund. *(Ref. 35-106 RS Neb.)*

§10-303 OCCUPATION TAX; COLLECTION DATE. All occupation taxes shall be due and payable on the first (1st) day of May of each year, except in the event that the said tax is levied daily; and upon the payment thereof by any person or persons to the Municipal Clerk, the said Clerk shall give a receipt, properly dated, and specifying the person paying the said tax and the amount paid. The revenue collected shall then be immediately deposited into the General Fund by the Municipal Treasurer. The Municipal Treasurer shall keep an accurate account of all revenue turned over to him or her. All funds and receipts herein mentioned shall be issued in duplicate. One (1) copy shall then be kept by each party in the transaction. *(Ref. 17-525 RS Neb.)*

§10-304 OCCUPATION TAX; CERTIFICATES. The receipt issued after the payment of any occupation tax shall be the Occupation Tax Certificate. The said certificate shall specify the amount of the tax and the name of the person and business that paid the said tax. The Occupation Tax Certificate shall then be displayed in a prominent place, or carried in such a way as to be easily accessible, while business is being conducted. *(Ref. 17-525 RS Neb.)*

§10-305 OCCUPATION TAX; FAILURE TO PAY. If any person, company, or corporation fails, or neglects to pay the occupation taxes as provided herein on the day it becomes due and payable, the Municipality shall then proceed by civil suit to collect the amount due. All delinquent taxes shall bear interest at the rate of one (1%) per cent per month until paid. *(Ref. 17-525 RS Neb.)*

Article 4. Lottery

§10-401 LOTTERY; PARTICIPATION, RESTIRCTIONS.

(A) No person under 19 years of age shall play or participate, in any way, in the lottery established and conducted by the municipality.

(B) No owner or officer of a lottery operator with whom the municipality contracts to conduct its lottery shall play the lottery conducted by the municipality. No owner or officer of an authorized sales outlet location for the municipality shall play in the lottery conducted by the municipality. No employee or agent of the municipality, lottery operator, or authorized sales outlet location, shall play the lottery of the municipality for which he or she performs work, during such time as he or she is actually working at such lottery or while on duty.

(C) Nothing shall prohibit any member of the Governing Body, a municipal official, or the immediate family of such member or official from playing the lottery conducted by the municipality, as long as such person is 19 years of age, or older.

(D) No person, or employee or agency of any person or the municipality, shall knowingly permit an individual, under 19 years of age, to play or participate, in any way, in the lottery conducted by the municipality.

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

DEFINITION: Immediate Family of a Member of the Governing Body or a Municipal Official shall mean:

(a) A person who is related to the member or official by blood, marriage, or adoption, and resides in the same household; or,

(b) A person who is claimed by the member or official, or the spouse of the member or official, as a dependent, for federal income tax purposes.

(Statutory reference: State provisions on participation restriction, Neb.Rev.Stat.9-646) (Ord.No. 709; 02/04/2014)

Article 5. Penal Provision

§10-501 VIOLATION; PENALTY. (A) Any person, or any person's agent or servant, who violates any of the provisions of this municipal code, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500.00. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

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

(2) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (*Ref. Neb. RS 17-505, 18-1720*)

Chapter 11

Municipal Planning

Article 1. Municipal Limits

§11-101 MUNICIPAL LIMITS: DEFINED. All additions, lots, lands, subdivisions, and parcels of ground included within the official Municipal Map and plat on file at the office of the County Register of Deeds, having been by act or ordinance of the Governing Body or by law, duly annexed to or made a part of this Municipality or having been, by the act, authority, acquiescence, consent, platting, and dedication of their respective owners, created either as the original town site or as additions to the Municipality, are hereby declared to be within the corporate limits of the Municipality. Lawfully constituted additions or changes in said Municipal Limits shall be indicated upon said maps and plat by the Municipal Engineer, after such addition or change has been completed in accordance with the ordinances of this Municipality and the laws of the State of Nebraska. (*Ref. 17-405 thru 17-426, 17-1002, 17-1003 RS Neb.*)

§11-102 ORIGINAL PLATS. Each and all plats, lots, blocks, additions, subdivisions, outlets, and parcels of ground included within the corporate limits of the Municipality and not vacated of record prior to the enactment of this Chapter, including the Original Plat of the Municipality, are hereby accepted, approved, and confirmed as valid; and each and all of said lots, blocks, additions, subdivisions, and outlets as heretofore platted and recorded in the office of the County Register of Deeds and not heretofore vacated; and all other parcels of ground included within said corporate limits, are hereby declared to be within said Municipality and an integral part thereof. (*Ref. 17-405 thru 17-426, 17-1002, 17-1003 RS Neb.*)

§11-103 MUNICIPAL PLANNING; SURVEY AND PLAT. (A) The owner or proprietor of any tract or parcel of land who shall subdivide the same into two or more parts for the purpose of laying out any addition to the City or any part thereof, or suburban lots, shall cause a plat of such subdivision, with references to known or permanent monuments, to be made, which shall accurately describe all subdivisions of such tract or parcel of land, numbering the same by progressive numbers, and giving the dimensions and length and breadth thereof, and the breadth and courses of all streets and alleys established therein. (*Neb. RS 17-415*)

(B) The map or plat of land within the corporate limits of the City or of any land within the area designated as the City's extraterritorial jurisdiction pursuant to *Neb. RS 17-1002* shall designate explicitly the land so laid out and particularly describe the lots, blocks, streets, avenues, alleys, and other grounds belonging to such addition. The lots shall be designated by numbers, and streets, avenues, and other grounds, by names and numbers. Such plat shall be acknowledged before some other officer authorized to take the acknowledgments of deeds, and shall contain a dedication of the

streets, alleys, and public grounds therein to the use and benefit of the public, and have appended a survey made by some competent surveyor with a certificate attached, certifying that he or she has accurately surveyed such addition and that the lots, blocks, streets, avenues, alleys, parks, commons, and other grounds are well and accurately staked off and marked. When such map or plat is so made out, acknowledged, and certified, and has been approved by the City Council, the same shall be filed and recorded in the office of the Register of Deeds and County Assessor. (*Neb. RS 19-916*)

§11-104 MUNICIPAL PLANNING; DESIGNATION OF EXTRATERRITORIAL JURISDICTION.

The territory located within one mile of the corporate limits of the City is hereby designated as the City's extraterritorial jurisdiction for the purpose of exercising the powers and duties granted by *Neb. RS 17-1002 and 17-1003* with respect to subdivisions and platting and *Neb. RS 19-2402* with respect to extension of water or sanitary sewer service. The boundaries of the territory so designated shall be as shown on the official zoning map, a copy of which is on file and available for public inspection in the office of the City Clerk. (*Neb. RS 17-1002*)

§11-105 MUNICIPAL PLANNING; SUBDIVISIONS AND ADDITIONS

PERMITTED. The proprietor or proprietors of any land within the corporate limits of the City, or of any land within the area designated as the City's extraterritorial jurisdiction pursuant to *Neb. RS 17-1002*, may lay out such land into lots, blocks, streets, avenues, alleys, and other grounds under the name of _____ Addition to the City of Lyons and may subdivide, plat, or lay out any such land upon conformance to and compliance with the conditions in this code and state law. (*Neb. RS 19-916*)

§11-106 MUNICIPAL PLANNING; ADDITIONS; INCORPORATION INTO MUNICIPALITY.

All additions to the City laid out and previously located within the corporate boundaries of the City shall remain a part of the City. All additions laid out adjoining or contiguous to the corporate limits may be included within the corporate limits and become a part of the City for all purposes whatsoever at such time as the addition is approved as provided in *Neb RS 19-916*. If the City Council includes the addition within the corporate limits, the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all the laws, ordinances, rules and regulations of the City. (*Neb. RS 19-916*)

Article 2. Comprehensive Plan

§11-201 COMPREHENSIVE PLAN; ADOPTED. In order to accommodate anticipated long-range future growth, the Comprehensive Development Plan for the City of Lyons, Nebraska, as prepared by JEO Consulting Group, Inc., Wahoo, Nebraska has been adopted by Ordinance by the Governing Body on November 11, 2002. Three (3) copies of the adopted Plan shall be kept on file with the Municipal Clerk and available for inspection by any member of the public during office hours. (*Ref. 18-132 RS Neb.*)

Article 3. Zoning Regulations

§11-301 ZONING REGULATIONS: ADOPTED. For the purpose of setting minimum standards to promote the public health, safety , morals, convenience, order, prosperity , and general welfare of the community, and to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements, the Zoning Regulations for the City of Lyons, Nebraska, as prepared by JEO Consulting Group, Inc., Wahoo, Nebraska, and published in pamphlet form, have been adopted by Ordinance 626, November 11, 2002. Three (3) copies of the adopted Zoning Regulations shall be kept on file with the Municipal Clerk and available for inspection by any member of the public during office hours. (*Ref. 18-132, 18-1302 RS Neb.*) (*Amended by Ord. Nos. 477, 5/12/92; 497, 4/5/94; 626, 11/11/2002*)

§11-302 MUNICIPAL PLANNING; DESIGNATION OF EXTRATERRITORIAL JURISDICTION. The territory located within one mile of the corporate limits of the city and outside of any other organized city or village is hereby designated as the city's extraterritorial jurisdiction for the purpose of exercising the powers and duties granted by *Neb. RS 17-1002 and 17-1003* with respect to subdivisions and platting and *Neb. RS 19-2402* with respect to extension of water or sanitary sewer service. The boundaries of the territory so designated shall be as shown on the official zoning map, a copy of which is on file and available for public inspection in the office of the City Clerk. (*Neb. RS 17-1002*)

Article 4. Flood Plain Management

§11-401 FLOOD PLAIN MANAGEMENT; ENFORCEMENT OFFICIAL. The Mayor hereby has these added responsibilities and is authorized and directed to enforce all the provisions of this Article and all other Ordinances of the City of Lyons now in force or hereafter adopted, related to zoning, subdivision or building codes.

§11-402 FLOOD PLAIN MANAGEMENT; ENFORCEMENT OFFICIAL; APPOINTMENT. The Mayor shall be appointed to these additional responsibilities by resolution of the Governing Body, and his/her appointment shall continue during good behavior and satisfactory service. During temporary absence or disability of the Mayor, the Governing Body of the City shall designate an acting enforcement official.

§11-403 FLOOD PLAIN MANAGEMENT; MAP. The Governing Body of the City of Lyons hereby designates the current Flood Hazard Boundary Map/Flood Insurance Rate Map, and amendments, as the official map to be used in determining those areas of special flood hazard.

§11-404 FLOOD PLAIN MANAGEMENT; PERMITS REQUIRED. No person, firm or corporation shall erect, construct, enlarge, or improve any building or structure in the City or cause the same to be done without first obtaining a separate development permit for each building or structure.

A. Within Zone(s) A on the official map, separate development permits are required for all new construction, substantial improvements, and other developments, including the placement of manufactured homes.

B. Application: To obtain a permit, the applicant shall first file an application therefore in writing on a form furnished for the purpose. Every such application shall:

1. Identify and describe the work to be covered by the permit for which application is made;
2. Describe the land on which the proposed work 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 work;
3. Indicate the use or occupancy for which the proposed work is intended;
4. Be accompanied by plans and specifications for proposed construction;
5. Be signed by the permitted or his authorized agent who may be required to submit evidence to indicate such authority;
6. Within designated flood prone areas, be accompanied by elevations (in relation to mean sea level) of the lowest floor (including basement) or in the case of flood proofed non-residential structures, the elevation to which it has

been flood proofed; documentation or certification of such elevations will be maintained by the Building Inspector; and

7. Give such other information as reasonably may be required by the Building Inspector.

§11-405 FLOOD PLAIN MANAGEMENT; PERMITS. The Mayor shall review all development permit applications to determine if the site of the proposed development is reasonably safe from flooding and that all necessary permits have been received as required by Federal or State Law.

§11-406 FLOOD PLAIN MANAGEMENT; PERMIT REVIEW. The Mayor, in reviewing all applications for new construction, substantial improvements, prefabricated buildings, placement of manufactured homes, and other development(s) (as defined in Section 11-411 of this Article) will:

A. Obtain, review, and reasonably utilize if available, any regulatory flood elevation data from Federal, State or other sources until such other data is provided by the Federal Insurance Administration in a Flood Insurance Study: and require within areas designated as Zone A on the official map that the following performance standards be met:

1. Residential Construction -New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one (1') foot above the base flood elevation.

2. Non-residential Construction -New construction or substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated one (1') foot above the level of the base flood elevation or, together with attendant utility and sanitary facilities, be flood proofed so that below such a 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 local enforcement official.

3. Required for all new construction and substantial improvements -That fully enclosed areas below the lowest floor that 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 minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1') foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

- B. Require the use of construction materials that are resistant to flood damage;
- C. Require the use of construction methods and practices that will minimize flood damage;
- D. Require that new structures be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- E. New structures be constructed 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;
- F. Assure that all manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with State laws, local building codes and 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:
 - 1. Over-the-top ties be provided at each of the four (4) corners of the manufactured home with two (2) additional ties per side at the intermediate locations and manufactured homes less than fifty (50') feet long requiring one (1) additional tie per side;
 - 2. Frame ties be provided at each corner of the home with five (5) additional ties per side at intermediate points and manufactured homes less than fifty (50') feet long requiring four (4) additional ties per side;
 - 3. All components of the anchoring system be capable of carrying a force of 4800 pounds;
 - 4. Any additions to manufactured homes be similarly anchored;
- G. Require that all manufactured homes to be placed within Zones AI-30, AH, and AE on the community's FIRM be elevated on a permanent foundation such that the lowest floor of the manufactured homes is one (1') foot above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection F above.

§11-407 FLOOD PLAIN MANAGEMENT; FINDINGS OF FACT. The Governing Body of the City shall review all subdivision applications and other proposed new developments, including manufactured home parks or subdivisions, and shall make findings of fact and assure that:

- A. All such proposed developments are consistent with the need to minimize flood damage;
 - B. Subdivision proposals and other proposed new development greater than five (5) acres or fifty (50') foot lots, whichever is lesser, include within such proposals regulatory flood elevation data in areas designated Zone A;
 - C. Adequate drainage is provided so as to reduce exposure to flood hazards;
- and

D. All public utilities and facilities are located so as to minimize or eliminate flood damage.

§11-408 FLOOD PLAIN MANAGEMENT; NEW WATER AND SEWER, ETC. New and replacement water and sewer systems shall be constructed to eliminate or minimize infiltration by, or discharge into floodwaters. Moreover, on-site waste disposal systems will be designed to avoid impairment or contamination during flooding.

§11-409 FLOOD PLAIN MANAGEMENT; COOPERATION AND NOTIFICATION. The Governing Body of the City will insure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained. The City will notify, in riverine situations, adjacent communities, and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Federal Emergency Management Agency. Moreover, the City will work with appropriate State and Federal Agencies in every way possible in complying with the National Flood Insurance Program in accordance with the National Flood Disaster Protection Act of 1973.

§11-410 FLOOD PLAIN MANAGEMENT; PRECEDENCE OF ARTICLE. This Article shall take precedence over conflicting Articles or ordinances or parts of Articles or ordinances. The Governing Body of the City of Lyons may, from time to time, amend this Article to reflect any and all changes in the National Flood Disaster Protection Act of 1973. The regulations of this Article are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulations.

§11-411 FLOOD PLAIN MANAGEMENT; DEFINITIONS. Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Article its most reasonable application.

DEVELOPMENT - Any man-made 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.

FLOOD - A general and temporary condition of partial or complete inundation of normally dry land areas from: (1) The over-flow of inland or tidal waters; and (2) The unusual and rapid accumulation or run-off of surface water from any source.

FLOODPROOFING - Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

MANUFACTURED HOMES - A structure transportable in one or more sections which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. For flood plain

management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

MANUFACTURES HOME PARK OR (SUBDIVISION) A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

REGULATORY FLOOD ELEVATION -The water surface elevation of the 100-year flood.

SPECIAL FLOOD HAZARD AREA - The land within a community, subject to a one percent or greater chance of flooding in any given year. This land is identified as Zone A on the official map.

STRUCTURE - A walled and roofed building that is principally above the ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

SUBSTANTIAL IMPROVEMENT - Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either (a) before the improvement is started, or (b) if the structure has been damaged and is being restored before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any alteration to comply with existing State or local health, sanitary, building or safety codes or regulations as well as structures listed in National or State Registers of Historic Places.

100 YEAR FLOOD - The condition of flooding having a one percent (1%) chance of annual occurrence.