

**MUNICIPAL CODE  
OF THE  
CITY OF BENNINGTON,  
NEBRASKA**

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**MAYOR AND CITY COUNCIL MEMBERS**

MAYOR.....ZAC JOHNS  
COUNCIL MEMBER.....KAYE BRIDGEFORD  
COUNCIL MEMBER.....SHANE PEKNY  
COUNCIL MEMBER.....CLINT ADAMS  
COUNCIL MEMBER.....JOSHUA DOWDING

**CITY OFFICIALS**

CITY CLERK/TREASURER.....MINDI LAAKER  
POLICE CHIEF.....DREW HILSCHER  
PUBLIC WORKS DIRECTOR.....JAKE CONLEY  
CITY DIRECTOR.....JOHN BOHRER  
LIBRARIAN.....LISA FLAXBEARD  
CITY ENGINEER.....JEO CONSULTING  
CITY ATTORNEY.....JEFF MILLER

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# **CHAPTER I      CIVIL ADMINISTRATION**

## **ARTICLE I - MAYOR AND CITY COUNCIL**

### **SECTION 1-101: CORPORATE EXISTENCE**

The City of Bennington, Nebraska, is hereby declared to be a city of the second class and shall be governed in all respects by the laws regulating cities of the second class.

### **SECTION 1-102: CITY COUNCIL; NUMBER AND QUALIFICATIONS; WARDS**

The elected officials of the City shall consist of a Mayor and four (4) Council members, who shall be citizens of the United States and residents of the City and registered voters. A Council member's term shall expire, and the office shall become vacant upon removal or change of residence from the ward for which he or she is elected. The Council members shall qualify and meet on the first regular meeting in December following their election.

The City is divided into two (2) wards for the election of City Council members. Each ward of the City shall have two (2) Council members.

Ward 1 shall consist of the contiguous territory shown and designated on Exhibit "A" hereto, which is more particularly described as follows:

A PARCEL OF LAND LOCATED IN SECTIONS 10 AND 11, ALL IN TOWNSHIP 16 NORTH, RANGE 11 EAST OF THE SIXTH P.M., DOUGLAS COUNTY, NEBRASKA, BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 10; THENCE WEST ON THE SOUTH LINE OF SAID NORTHWEST QUARTER TO THE SOUTHWEST CORNER OF OUTLOT "B", BENNINGTON PARK WEST AS PLATTED IN THE CITY OF BENNINGTON, NEBRASKA; THENCE NORTHERLY ON THE WESTERLY LINE OF SAID BENNINGTON PARK WEST TO THE INTERSECTION OF SAID WESTERLY LINE WITH THE EAST LINE OF SAID NORTHWEST QUARTER; THENCE NORTH ON SAID EAST LINE TO THE NORTHERLY RIGHT OF WAY LINE OF NEBRASKA HIGHWAY 36; THENCE SOUTHERLY AND EASTERLY ON SAID NORTHERLY RIGHT OF WAY LINE TO THE INTERSECTION WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 10; THENCE CONTINUING EASTERLY ON SAID NORTHERLY RIGHT OF WY LINE TO THE INTERSECTION WITH THE NORTHERLY EXTENSION OF THE CENTERLINE OF ASHWOOD DRIVE; THENCE SOUTHERLY ON THE CENTERLINE OF ASHWOOD DRIVE AND ITS NORTHERLY EXTENSION TO THE CENTERLINE OF WILLOW STREET; THENCE WEST ON SAID CENTERLINE OF WILLOW STREET TO THE CENTERLINE OF ELMWOOD DRIVE; THENCE NORTHERLY AND WESTERLY ON SAID CENTERLINE OF ELMWOOD DRIVE TO THE NORTHEAST CORNER OF LOT 4, BENNINGTON INDUSTRIAL PARK; THENCE WEST ON THE NORTH LINE OF SAID LOT 4 TO THE NORTHWEST

CORNER OF SAID LOT 4; THENCE SOUTHWEST TO THE NORTHEAST CORNER OF LOT 72, PRAIRIE HOLLOW ADDITION; THENCE SOUTHWESTERLY ON THE NORTHWESTERLY LINE OF SAID LOT 72 AND ITS SOUTHWESTERLY EXTENSION TO THE CENTERLINE OF NORTH ALLEN STREET; THENCE NORTH ON THE CENTERLINE OF NORTH ALLEN STREET TO THE POINT OF INTERSECTION WITH THE EASTERLY EXTENSION OF THE SOUTHERLY LINE OF LOT 34, PRAIRIE HOLLOW ADDITION; THENCE SOUTHWESTERLY ON SAID SOUTHERLY LINE AND ITS EASTERLY EXTENSION TO THE SOUTHWEST CORNER OF SAID LOT 34; THENCE NORTHERLY ON THE WEST LINE OF PRAIRIE HOLLOW ADDITION, TO THE NORTHEAST CORNER OF LOT 8, LEBERTS SECOND ADDITION TO BENNINGTON; THENCE WEST ON THE NORTH LINE OF SAID LOT 8 AND ITS WESTERLY EXTENSION TO THE CENTERLINE OF NORTH MOLLEY STREET; THENCE SOUTH ON THE CENTERLINE OF NORTH MOLLEY STREET TO THE CENTERLINE OF HOWARD LANE; THENCE WEST ON THE CENTERLINE OF HOWARD LANE TO THE CENTERLINE OF NORTH 156<sup>TH</sup> STREET; THENCE NORTH ON THE CENTERLINE OF NORTH 156<sup>TH</sup> STREET TO THE CENTERLINE OF NORTH 4<sup>TH</sup> STREET; THENCE WEST ON THE CENTERLINE OF NORTH 4<sup>TH</sup> STREET TO THE CENTERLINE OF NORTH 156<sup>TH</sup> AVENUE; THENCE SOUTHEASTERLY ON THE CENTERLINE OF NORTH 156<sup>TH</sup> AVENUE TO THE CENTERLINE OF NORTH 2<sup>ND</sup> STREET; THENCE EAST ON THE CENTERLINE OF NORTH 2<sup>ND</sup> STREET TO THE CENTERLINE OF NORTH 156<sup>TH</sup> STREET; THENCE SOUTH ON THE CENTERLINE OF NORTH 156<sup>TH</sup> STREET TO THE CENTERLINE OF BENNINGTON ROAD; THENCE WEST ON THE CENTERLINE OF BENNINGTON ROAD TO A POINT SOUTH OF THE SOUTHEAST CORNER OF A TRACT OF LAND DESCRIBED ON A SURVEY BY JEFFREY J. SERAFIN DATED 3/8/2006, AS MEASURED AT RIGHT ANGLES; THENCE NORTH THE SOUTHEAST CORNER OF SAID PREVIOUSLY DESCRIBED TRACT; THENCE WEST ON THE NORTH LINE OF BENNINGTON ROAD TO THE CENTERLINE OF BIG PAPILLION CREEK; THENCE WESTERLY ON THE CENTERLINE OF BIG PAPILLION CREEK TO THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 10; THENCE NORTH ON SAID WEST LINE OF THE SOUTHEAST QUARTER TO THE POINT OF BEGINNING.

Ward 2 shall consist of the contiguous territory shown and designated on Exhibit "A" hereto, which is more particularly described as follows:

A PARCEL OF LAND LOCATED IN SECTIONS 9, 10, 11, 14 AND 15, ALL IN TOWNSHIP 16 NORTH, RANGE 11 EAST OF THE SIXTH P.M., DOUGLAS COUNTY, NEBRASKA, BEING DESCRIBED AS FOLLOWS: REFERRING TO THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 10; THENCE SOUTH ON THE EAST LINE OF SAID SOUTHWEST QUARTER A DISTANCE OF 1303 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF A TRACT OF LAND SURVEYED BY HANSEN IN 2014 AND THE POINT OF BEGINNING; THENCE WEST ON THE NORTH LINE OF SAID TRACT TO THE NORTHEAST CORNER OF A TRACT OF LAND SURVEYED BY TINKHAM IN 2016; THENCE WESTERLY ON THE NORTH LINE OF SAID TRACT TO THE NORTHWEST CORNER OF SAID TRACT; THENCE SOUTH ON THE WEST LINE OF SAID TRACT TO THE CENTERLINE OF BIG

PAPILLION CREEK; THENCE NORTHWESTERLY ON THE CENTERLINE OF BIG PAPILLION CREEK TO THE NORTH LINE OF SAID SOUTHWEST QUARTER; THENCE WEST ON SAID NORTH LINE TO THE EAST RIGHT OF WAY LINE OF NORTH 168TH STREET; THENCE NORTH ON SAID EAST RIGHT OF WAY LINE TO THE INTERSECTION WITH THE EASTERLY EXTENSION OF THE EASTERLY LINE OF OUTLOT 3, BENNINGTON LAKE; THENCE NORTHERLY AND WESTERLY ON THE EASTERLY LINE OF SAID OUTLOT 3 AND ITS EASTERLY EXTENSION TO THE NORTHEAST CORNER OF SAID OUTLOT 3; THENCE SOUTHWESTERLY ON THE NORTHERLY LINE OF SAID OUTLOT 3 TO THE NORTHWEST CORNER OF SAID OUTLOT 3; THENCE SOUTHEASTERLY ON THE WESTERLY LINE OF SAID OUTLOT 3 TO THE SOUTHWEST CORNER OF SAID OUTLOT 3; THENCE EAST ON THE SOUTH LINE OF SAID OUTLOT 3 TO THE WEST RIGHT OF WAY LINE OF NORTH 168TH STREET; THENCE SOUTH ON SAID WEST RIGHT OF WAY LINE TO THE SOUTH RIGHT OF WAY LINE OF BENNINGTON ROAD; THENCE EAST ON SAID SOUTH RIGHT OF WAY LINE TO THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15; THENCE NORTH ON SAID WEST LINE TO THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE EAST ON THE NORTH LINE OF SAID NORTHEAST QUARTER TO THE CENTERLINE OF BIG PAPILLION CREEK; THENCE SOUTHEASTERLY ON SAID CENTERLINE OF BIG PAPILLION CREEK TO THE EAST LINE OF SAID NORTHEAST QUARTER; THENCE SOUTH ON SAID EAST LINE TO THE INTERSECTION WITH THE WESTERLY EXTENSION OF THE SOUTH LINE OF OUTLOT B, ORIGINAL TOWN OF BENNINGTON; THENCE EAST ON THE SOUTH LINE OF SAID OUTLOT B AND ITS WESTERLY EXTENSION AND THE SOUTH LINE OF LOT C, ORIGINAL TOWN OF BENNINGTON TO THE SOUTHEAST CORNER OF SAID LOT C; THENCE SOUTHERLY AND EASTERLY ON THE SOUTH LINE OF THE EXISTING BENNINGTON CORPORATE LIMITS TO THE SOUTHEAST CORNER OF LOT 21, WAREHOUSE LOTS; THENCE NORTH ON THE EAST LINE OF LOT 21, WAREHOUSE LOTS, TO THE NORTHEAST CORNER OF SAID LOT 21; THENCE NORTH ON THE EAST LINE OF VERMONT STREET (NOW VACATED) TO THE SOUTH LINE OF BENNINGTON ROAD; THENCE EAST ON SAID SOUTH LINE TO THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 14; THENCE NORTH ON SAID EAST LINE TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 11; THENCE NORTH ON THE EAST LINE OF SAID SOUTHWEST QUARTER TO THE SOUTHWEST CORNER OF RIDGEWOOD REPLAT 1; THENCE EAST ON THE SOUTH LINE OF SAID RIDGEWOOD REPLAT 1 TO THE SOUTHEAST CORNER OF RIDGEWOOD REPLAT 1; THENCE NORTHERLY ON THE EASTERLY LINE OF SAID RIDGEWOOD REPLAT 1 TO THE NORTHEAST CORNER OF SAID RIDGEWOOD REPLAT 1; THENCE NORTHERLY ON THE NORTHERLY EXTENSION OF SAID EASTERLY LINE OF RIDGEWOOD REPLAT 1 TO THE NORTHERLY RIGHT OF WAY LINE OF NEBRASKA HIGHWAY 36; THENCE WESTERLY ON SAID NORTHERLY RIGHT OF WAY LINE TO THE INTERSECTION WITH THE NORTHERLY EXTENSION OF THE CENTERLINE OF ASHWOOD DRIVE; THENCE SOUTHERLY ON SAID CENTERLINE OF ASHWOOD DRIVE AND ITS NORTHERLY EXTENSION TO THE CENTERLINE OF WILLOW STREET; THENCE WEST ON SAID CENTERLINE OF WILLOW STREET TO THE CENTERLINE OF ELMWOOD DRIVE; THENCE



NORTHERLY AND WESTERLY ON SAID CENTERLINE OF ELMWOOD DRIVE TO THE NORTHEAST CORNER OF LOT 4, BENNINGTON INDUSTRIAL PARK; THENCE WEST ON THE NORTH LINE OF SAID LOT 4 TO THE NORTHWEST CORNER OF SAID LOT 4; THENCE SOUTHWEST TO THE NORTHEAST CORNER OF LOT 72, PRAIRIE HOLLOW ADDITION; THENCE SOUTHWESTERLY ON THE NORTHWESTERLY LINE OF SAID LOT 72 AND ITS SOUTHWESTERLY EXTENSION TO THE CENTERLINE OF NORTH ALLEN STREET; THENCE NORTH ON THE CENTERLINE OF NORTH ALLEN STREET TO THE POINT OF INTERSECTION WITH THE EASTERLY EXTENSION OF THE SOUTHERLY LINE OF LOT 34, PRAIRIE HOLLOW ADDITION; THENCE SOUTHWESTERLY ON SAID SOUTHERLY LINE AND ITS EASTERLY EXTENSION TO THE SOUTHWEST CORNER OF SAID LOT 34; THENCE NORTHERLY ON THE WEST LINE OF PRAIRIE HOLLOW ADDITION, TO THE NORTHEAST CORNER OF LOT 8, LEBERTS SECOND ADDITION TO BENNINGTON; THENCE WEST ON THE NORTH LINE OF SAID LOT 8 AND ITS WESTERLY EXTENSION TO THE CENTERLINE OF NORTH MOLLEY STREET; THENCE SOUTH ON THE CENTERLINE OF NORTH MOLLEY STREET TO THE CENTERLINE OF HOWARD LANE; THENCE WEST ON THE CENTERLINE OF HOWARD LANE TO THE CENTERLINE OF NORTH 156<sup>TH</sup> STREET; THENCE NORTH ON THE CENTERLINE OF NORTH 156<sup>TH</sup> STREET TO THE CENTERLINE OF NORTH 4<sup>TH</sup> STREET; THENCE WEST ON THE CENTERLINE OF NORTH 4<sup>TH</sup> STREET TO THE CENTERLINE OF NORTH 156<sup>TH</sup> AVENUE; THENCE SOUTHEASTERLY ON THE CENTERLINE OF NORTH 156<sup>TH</sup> AVENUE TO THE CENTERLINE OF NORTH 2<sup>ND</sup> STREET; THENCE EAST ON THE CENTERLINE OF NORTH 2<sup>ND</sup> STREET TO THE CENTERLINE OF NORTH 156<sup>TH</sup> STREET; THENCE SOUTH ON THE CENTERLINE OF NORTH 156<sup>TH</sup> STREET TO THE CENTERLINE OF BENNINGTON ROAD; THENCE WEST ON THE CENTERLINE OF BENNINGTON ROAD TO A POINT SOUTH OF THE SOUTHEAST CORNER OF A TRACT OF LAND DESCRIBED ON A SURVEY BY JEFFREY J. SERAFIN DATED 3/8/2006, AS MEASURED AT RIGHT ANGLES; THENCE NORTH THE SOUTHEAST CORNER OF SAID PREVIOUSLY DESCRIBED TRACT; THENCE WEST ON THE NORTH LINE OF BENNINGTON ROAD TO THE CENTERLINE OF BIG PAPILLION CREEK; THENCE WESTERLY ON THE CENTERLINE OF BIG PAPILLION CREEK TO THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 10; THENCE NORTH ON SAID WEST LINE OF THE SOUTHEAST QUARTER TO THE POINT OF BEGINNING.

(Amended 11-11-19, Ord. No 481; 12-13-2021, Ord. No. 506)

#### SECTION 1-103: ELECTION OF CITY OFFICIALS

The term of office of the mayor and City Council is four years. The members elected in the general election in 2002 shall continue to hold their office until December, 2006. Those members elected in 2004 shall continue to hold their office until December 2008. Thereafter, two council members' terms shall expire every two years. The election of the council members shall be held on the date of the statewide general election.

#### SECTION 1-104: MAYOR; DUTIES AND POWERS

1. The Mayor of the City shall:

- A. Have the general and immediate control over all property and officials of the City.
- B. Preside at all meetings of the City Council and may vote when his/her vote shall be decisive on any pending matter, legislation, or transaction. For the purpose of such vote, the mayor shall be deemed to be a member of the City Council.
- C. Sign all of the city clerk's minutes of all meetings, 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/her veto by a two-thirds vote by the members of the Council; but if the mayor neglects or refuses to sign any ordinance and returns it to the Council with his/her objections in writing at the next regular council meeting, the same shall become a law without his/her signature.
- D. From time to time communicate to the City Council such information and recommendations as, in his/her opinion, may improve the City.

2. The Mayor may:

- A. Require, at reasonable intervals, any city official to exhibit his/her accounts and make reports to the City Council on any subject pertaining to his/her office.
- B. Discipline, suspend from duty in case of misconduct, neglect of duty, or disobedience of order, and recommend for discharge as provided in City Municipal Code Sections 1-703 and 1-702, an appointed police officer or the police chief of the City.

3. The mayor's territorial authority shall extend over all places within five miles of the corporate limits of the City for the enforcement of any health ordinance, and one mile in all matters vested in him/her except taxation. He/she shall also have such other duties as the City Council may by resolution confer upon him/her.

4. Any candidate for mayor must be a registered voter and resident of the City prior to filing for the said office.  
(Am. by Ord. No. 381, 3/9/09)

#### SECTION 1-105: MAYOR; VACANCY

1. Whenever a vacancy occurs in the office of mayor, or in case of his/her 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 the case of temporary absence, until the mayor returns.

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

3. 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 herein.

(Ref. Neb. Rev. Stat. §17-107)

#### SECTION 1-106: PRESIDENT OF COUNCIL; ACTING PRESIDENT

In case of any vacancy in the office of mayor, or in case of his/her 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. In the absence of the president, the Council shall elect one of its own bodies to occupy his/her place temporarily, who shall be styled "acting president of the Council." The president and acting president, when occupying the place of the mayor, shall have the same privileges as other members of the Council; and all acts of the president or acting president, while so acting, shall be as binding upon the Council and upon the City as if done by the mayor.

(Ref. Neb. Rev. Stat. §17-148)

#### SECTION 1-107: VACANCIES IN CITY OFFICES

1. Any vacancy shall be filled by the Council for the balance of the unexpired term. In the event of a vacancy on the Council, the Council shall give public notice of the vacancy by causing to be published in a newspaper of general circulation within the City, or posting in three public places in the City, notice of the office vacated and the length of the unexpired term. Within four weeks after the regular meeting at which such notice of vacancy has been presented, or after the death of the incumbent, the mayor shall call a special meeting of the Council, at which time he/she shall submit the name of a qualified elector to fill the vacancy for the balance of the unexpired term. The council members shall vote upon such nominee, and if a majority of the Council votes in favor of such nominee, the vacancy shall be declared filled. If a majority fails to confirm such appointment, the nomination shall be rejected and the mayor shall, at the next regular meeting, submit the name of another qualified elector to fill the vacancy.

2. If the vote on the nominee at such meeting fails to carry by a majority vote, the mayor shall continue at such meeting to submit the names of qualified electors of the City in nomination and the Council shall continue to vote until the vacancy is filled. The mayor shall vote for or against the nominee in case of a tie vote. All council members present shall cast a ballot for or against the nominee.

(Ref. Neb. Rev. Stat. §17-212, 32-568, 32-569)

#### SECTION 1-108: RESIGNATIONS

All resignations of the mayor and City Council members shall be in writing and submitted to the Council for acceptance. Resignations shall not be effective until accepted by formal action of the Council. No resignations shall be accepted unless a quorum for conducting business will remain after such acceptance of such resignation.

#### SECTION 1-109: CITY COUNCIL; POWERS

The City Council shall have all powers granted under the laws of the State of Nebraska, including but not limited to the following:

1. To pass ordinances to prevent and remove nuisances;
2. To prevent, restrain and suppress gambling and disorderly houses;
3. To license and regulate amusements;
4. To establish and provide for police protection;
5. To prevent the spread of contagious diseases;
6. To regulate business;
7. To erect, repair, construct and regulate public ways and property;
8. To maintain good government, public welfare, and domestic tranquility; and
9. To enforce all ordinances by inflicting penalties upon inhabitants or other persons for violation thereof not exceeding the amount permitted by Nebraska law for each offense, recoverable with costs, together with enforcement by injunction where necessary.

(Am. by Ord. No. 383, 3/9/09)

#### SECTION 1-110: OFFICERS' SALARIES

1. All elected officers shall receive such compensation as the Council shall fix by ordinance. The emoluments of appointive and elective officers of this city shall be neither increased nor decreased during the term for which elected or appointed, except by merger of offices or when there are other officers elected or appointed to the Council and the terms of one or more members commence and end at different times; the compensation of all members of such Council may be increased or diminished at the beginning of the full term of any member thereof. The officers' salaries shall be set by ordinance of the City Council and will be available for public inspection at the office of the city clerk.

(Ord. No. 524, 9/11/23, establishing compensation for mayor and council members)

2. No person who shall have resigned or vacated any office shall be eligible to the same during the time for which he/she was elected or appointed, if during the same time the emoluments thereof have been increased. In addition to the salaries herein provided, the various officers shall be entitled to mileage and expenses, if and when claims therefor are filed, audited and allowed. The mayor and Council may by resolution authorize clerical assistance in one or more offices when the same may be needed and claims therefor out of the proper funds may be presented, allowed, audited and paid. All fees earned by an officer of this city in the performance of his/her duties as such shall

be considered the property of this city and shall be promptly paid over to the city treasurer and by him/her credited to the appropriate fund.  
(Ref. Neb. Rev. Stat. §17-108.02, 17-612)

## SECTION 1-111: COMPENSATION; CONFLICT OF INTEREST

1. For purposes of this section, "officer" shall mean any member of any board or commission of the City or any appointed official if such official serves on a board or commission which spends and administers its own funds and is dealing with a contract made by such board or commission; or any elected city official.

2. Unless specified otherwise, volunteer firefighters and ambulance drivers shall not be considered officers for purposes of this section, with respect to their duties as firefighters and ambulance drivers.

3. No officer of the City shall be permitted to benefit from any contract to which the City is a party. The existence of such an interest in any contract renders the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment thereof with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the City or by any resident thereof and must be brought within one year after the contract is signed or assigned. Any such decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor or services furnished under the contract, to the extent that the City has benefited thereby. The prohibition in this section shall apply only when the officer or his or her parent, spouse, or child:

- A. Has a business with which the individual is associated or business association which shall mean a business (i) in which the individual is a partner, director or officer; or (ii) in which the individual or a member of the individual's immediate family is a stockholder of a closed corporation stock worth \$1,000.00 or more at fair market value or which represents more than 5% equity interest, or is a stockholder of publicly traded stock worth \$10,000.00 or more at fair market value or which represents more than 10% equity interest; or
- B. Will receive a direct pecuniary fee or commission as a result of the contract; provided, however, if such officer is (i) an employee of the business involved in the contract and (ii) has no ownership interest or will not receive pecuniary fee, such officer shall not be deemed to have an interest within the meaning of this section.

4. The provisions of this section shall not apply if the interested officer:

- A. Makes a declaration on the record to the governmental body responsible for approving the contract regarding the nature and extent of his/her interest, prior to official consideration of the contract;

- B. Does not vote on the matter of granting the contract, except that if the number of members of the Council declaring an interest in the contract would prevent the Council, with all members present, from securing a quorum on the issue, then all members may vote on the matter; and
- C. Does not act for the City as to inspection or performance under the contract in which he/she has an interest.

5. The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of any city by a financial institution shall not be considered a contract under the provisions of this section. The ownership of less than 5% of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section. Notwithstanding the provisions of subsections 4(A) through 4(C) above, if an officer's parent, spouse or child is an employee of the City, 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/her parent, spouse or child for special action. If an officer has the power to employ personnel and he/she hires his/her parent, spouse or child, such officer shall disclose the hiring pursuant to subsections 6(A) through 6(E) below, except that if the parent, spouse or child is already employed in the position at the time the officer takes office and such position does not change, no disclosure need be made. Notwithstanding any other provision of this section, any contract entered into with an interested officer shall be subject to applicable competitive bidding requirements and shall be fair and reasonable to the City.

6. The city clerk shall maintain, separately from other records, a ledger containing the information listed in subsections A through E of this section about every contract entered into by the City in which an officer has an interest as specified above for which disclosure is made as provided in subsections 4(A) through 4(C) above. 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:

- 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 City involved;
- D. Amount of the contract; and
- E. Basic terms of the contract.

7. The information supplied relative to the contract shall be provided to the clerk not later than ten days after the contract has been signed by both parties. The ledger kept by the clerk shall be available for public inspection during the normal working hours of the office in which it is kept.

8. An open account established for the benefit of any city or entity thereof, with a business in which an officer has an interest, shall be deemed a contract subject to the provisions of this section. The statement required to be filed pursuant to this section shall be filed within ten days after such an account is opened. Thereafter, the clerk

shall maintain a running account of all amounts purchased on the open account. Purchases made from petty cash, or a petty cash fund shall not be subject to the provisions of this section.

9. The City may enact ordinances exempting from the provisions of this section contracts involving \$100.00 or less in which an officer of such city may have an interest.

10. No officer, including volunteer firefighters and ambulance drivers, shall receive any pay or perquisites from the City other than his/her salary. The City Council shall not pay or appropriate any money or other valuable thing to pay a person who is not an officer for the performance of any act, service or duty which shall come within the proper scope of the duties of any officer of the City.  
(Ref. Neb. Rev. Stat. §17-611, 18-305 through 18-312, 49-14,103.01 through 49-14,103.03, 70-624.04)

#### SECTION 1-112: ELECTED OFFICIALS; QUALIFICATIONS; RESTRICTIONS ON OTHER EMPLOYMENT OR ELECTIVE OFFICE

1. Elected officials shall be residents and registered voters of the City. The mayor and members of the Council shall hold no other elective or appointive office or employment with the City.

2. For purposes of this section, (A) "elective office" means any office which has candidates nominated or elected at the time of a statewide primary election; any office which has candidates nominated at the time of a statewide primary election and elected at the time of a statewide general election; any office which has candidates elected at the time of a statewide general election; any office which has candidates nominated or elected at a city election; and any office created by an act of the Legislature which has candidates elected at an election and includes an office which is filled at an election held in conjunction with the annual meeting of a public body created by an act of the Legislature; and (B) "high elective office" means a member of the Legislature, an elective office described in Article IV, Sections 1 or 20, or Article VII, Sections 3 or 10, of the Constitution of Nebraska, or a county, city or school district elective office.

3. No candidate for member of the Legislature or an elective office described in Article IV, Sections 1 or 20, or Article VII, Sections 3 or 10 of the Constitution of Nebraska shall be eligible to file as a candidate, to petition on the ballot as a candidate, to accept nomination by a political party or by party convention, caucus or committee to fill a vacancy or to be declared a write-in candidate for more than one elective office to be filled at the same election, except for the position of delegate to a county, state or national party convention. No candidate for any other high elective office shall be eligible to file as a candidate, to petition on the ballot as a candidate, to accept nomination by a political party or by party convention, caucus or committee to fill a vacancy or to be declared write-in candidate for more than one elective office to be filled at the same election.

4. Except as provided in subsection 5 or 7 of this section, no person shall be

precluded from being elected or appointed to or holding an elected office for the reason that he/she has been elected or appointed to or holds another elected office.

5. No person serving as a member of the Legislature or in an elective office described in Article IV, Sections 1 or 20 or Article VII, Sections 3 or 10 of the Constitution of Nebraska shall simultaneously serve in another elective office which is filled at an election held in conjunction with the annual meeting of a public body.

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

7. No person serving in a high elective office shall simultaneously serve in any other high elective office.

8. Notwithstanding subsections 5 through 7 of this section, any person holding more than one high elective office on September 13, 1997, shall be entitled to continue to serve the remainder of all terms for which he/she was elected or appointed.  
(Ref. Neb. Rev. Stat. §17-108.02, 32-109, 32-603, 32-604)



## ARTICLE II - APPOINTIVE OFFICERS

### SECTION 1-201: APPOINTIVE OFFICERS

The mayor, at the first regular meeting of the City Council held after he/she takes office or as soon thereafter as he/she can reasonably do so, may appoint, with the advice and consent of the Council, a city administrator, a city clerk, city treasurer, city attorney, city police chief and street superintendent. He/she shall also appoint whatever other officials of the City which he/she deems necessary and/or as shall be required by ordinance or otherwise required by law. Such officers may be removed from office by the mayor. The terms of office for all officers, except regular police officers, appointed by the mayor and confirmed by the Council shall be until the end of the mayor's term of office and until their successors are appointed and qualified unless sooner removed. (Ref. Neb. Rev. Stat. §17-107, 17-541) (Amended 3-12-24, Ord. No. 528)

### SECTION 1-202: MERGER OF OFFICES

The City Council may in its discretion by ordinance combine and merge any elective or appointive office or employment, except the mayor or a city council member, with any other elective or appointive office so that one or more of such offices may be held by the officer or employee at the same time. Any offices 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. For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers.

### SECTION 1-203: 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 offices 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.

### SECTION 1-204: CITY CLERK; DUTIES

The city clerk shall:

1. Have custody of all laws and ordinances.
2. Keep a current journal of the proceedings of the City Council.

3. Maintain a complete record of all outstanding bonds against the City, showing the number and amount of each, for and to whom the said bonds were issued and all other pertinent information in regard to said bonds.
4. Take possession of all books, papers and all other official records of the City and maintain said records in a safe place.
5. Have custody of the seal of the City and all written official papers of the City.
6. Attend the meetings of the City Council and keep a minute record of the proceedings thereof.
7. Maintain an account of all of the appropriations of the several funds of the City.
8. Draw, sign and attest all warrants ordered for the payment of money on a particular fund from which the same is payable, and at the end of each month make a report of the amount appropriated to each fund and the amount of warrants drawn thereon.
9. Attest to the mayor's signature.
10. Attach the city seal to all official documents.
11. Whenever any claim presented by any person has been disallowed by the City Council, notify said claimant of said disallowance by the Council within five days after such disallowance.
12. Account for and keep proper records of all money received in the normal course of city business, issuing a proper receipt to those parties making payment to the account of the City.
13. Publish all notices required in the performance of his/her duties; keep a record of all published notices issued; keep a record of the publisher's affidavit of said publication if said notices are published in a legal newspaper.
14. Maintain all books and public records of the City for public inspection for any resident of the City during normal business hours.
15. Make a notation of the date of receipt of all correspondence and, as soon as possible, convey said correspondence to the appropriate official of the City.
16. Keep and maintain all other legal papers required by these ordinances or by Nebraska state law.
17. Maintain a proper minute book wherein shall be recorded all of the formal and informal actions of the mayor and City Council.
18. Maintain a record of the various ordinances and resolutions passed by the City Council.

The duties of the city clerk will be those set forth herein and as set forth specifically in the job description separately adopted by the mayor and City Council.  
(Ref. Neb. Rev. Stat. §17-605, 19-1102, 19-1104, 84-1201 through 84-1220, 84-712)

#### SECTION 1-205: CITY TREASURER; DUTIES

The city treasurer shall:

1. Keep a separate account of each and every fund or appropriation and the debits and credits belonging to the City.
2. Provide a receipt for anyone paying money into the city treasury if such person requests a receipt, specifying the date of payment and on what account paid, and also

file copies of said receipts with the monthly reports made to the mayor and City Council.

3. Publish or cause to be published in a legal weekly newspaper published in or of general circulation in said city within 60 days following the end of each fiscal year a report of the activities of his/her office, which said report shall show in detail all receipts, disbursements, warrants outstanding, and the debit or credit balance of the City.
4. Deposit, and at all times keep on deposit for safekeeping, in banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing, all money collected, received, or held as city treasurer; such deposits shall be subject to all regulations imposed by law or adopted by the city council for the receiving and holding thereof. The fact that a stockholder, director, or other officer of 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 such municipality shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds.

(Ref. Neb. Rev. Stat. §17-606 through 17-609, 84-712)

#### SECTION 1-206: CITY TREASURER; MONTHLY REPORT

The city treasurer shall, at the end of each month and as often as may be required:

1. Render a report to the mayor and City Council showing, under oath, the condition of the various accounts of the treasury at the time of such reports and the balance of money in the treasury.
2. Accompany such accounts with a statement of all receipts and disbursements, together with all warrants paid which, with any and all vouchers held by him/her, shall be filed with the accounts in the city clerk's office.
3. Keep a record of each and every warrant paid and from what fund paid in a book suitable for that purpose.
4. Produce depository evidence that all city money is in a solvent and going bank in the name of the City. If the city treasurer neglects or fails, for a period of ten days from the end of each and every month, to render his/her account, the City Council shall by resolution declare the office vacant pursuant to Section 17-606, R.R.S. Neb. 1943, and the mayor and City Council shall fill the vacancy by appointment.

(Ref. Neb. Rev. Stat. §17-606)

#### SECTION 1-207: CITY TREASURER; ANNUAL REPORT

It shall be the duty of the treasurer to 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.

(Ref. Neb. Rev. Stat. §19-1101)

#### SECTION 1-208: CITY ATTORNEY; DUTIES

The city attorney when appointed shall:

1. Be legal advisor to the mayor and the City Council, undertaking all legal matters of the City as set forth by Nebraska statutes.
2. Commence, prosecute and defend all suits and actions necessary to be commenced, prosecuted or defended on behalf of the City or that may be ordered by the Council.
3. Attend meetings of the Council when requested and give the members his/her opinion upon any matters submitted either orally or in writing as may be required.
4. Draft or review for legal correctness ordinances, contracts, franchises and other instruments as may be required.
5. Perform such other duties as may be imposed upon him/her by general law or ordinance.

The City Council shall have the right to pay the city attorney compensation for legal services on such terms as the City Council and attorney may agree, and to employ additional legal assistance as necessary and to pay for such legal assistance out of the funds of the City.

(Ref. Neb. Rev. Stat. §17-610)

#### SECTION 1-209: CITY POLICE CHIEF; DUTIES

The chief of police shall:

1. Inquire diligently into any and all violations of the City ordinances and state statutes. In the event that he/she determines that a violation of a City ordinance or state statute has occurred, he/she shall issue a written complaint and cause the arrest of such person violating the ordinance or state law.
2. Have general control over motor vehicular traffic within the City, and said police chief, together with such special officers detailed to assist as traffic officers, shall direct the movement of traffic at intersections and elsewhere; and it shall be unlawful for any person to violate any order or signal of the City police or any special traffic officer.
3. Bring all prisoners who are under arrest for the violation of any City ordinances or state laws before the County Court whenever required to do so by rule or order of the county judge, and shall make or cause to be made the necessary written complaint against such person or persons when arrested.
4. Perform such other duties as may be required by resolution or by order of the mayor and City Council.
5. Establish a procedure for accepting and handling citizen complaints. Such a procedure shall be easily accessible to all citizens of the City; require that complaints be in writing and include the date, time, and nature of the incident, as well as the names or descriptions of any wit

nesses and the police officers involved; and inform the filing citizen of the process for the handling of his or her complaint.

Written complaints filed under this section shall be sent to the police chief, the mayor, and the members of the City Council who have been appointed as Safety & Health Commissioners.

Written complaints filed under this section may serve as the basis for disciplinary action, suspension, or removal if acted upon by the police chief or mayor according to his or her authority under Section 1-702 of the Bennington Municipal Code. (Amended 9-9-19, Ord. No. 480)

#### SECTION 1-210: UTILITIES SUPERINTENDENT

The utilities superintendent shall:

1. Have charge of the City's sewer system and, when requested, make a detailed report to the City Council on the condition of such system and direct its attention to such improvements, repairs, extensions, additions and additional employees as he/she may believe are needed, along with estimates of the costs thereof.
2. Inspect and supervise all repairs made to said system.
3. Have such other duties as the City Council may designate.  
(Ref. Neb. Rev. Stat. §17-145)

#### SECTION 1-211: STREET SUPERINTENDENT

The street superintendent shall:

1. Have general charge, direction and control of all work on streets, sidewalks, culverts and bridges.
2. See that gutters and drains function properly and that the same are kept in good repair.
3. At the request of the Council, make detailed reports on the condition of streets, sidewalks, culverts, alleys and bridges and direct its attention to such improvements, repairs, extensions, additions and additional employees as he/she may believe or need to maintain a satisfactory street system, along with an estimate of the cost thereof.
4. Supervise and direct snow and tree removal work.
5. Perform such other duties as the Council may require.  
(Ref. Neb. Rev. Stat. §17-107, 17-119)

#### SECTION 1-212: SPECIAL ENGINEER

The City Council may employ a special engineer to make or assist the city engineer in making any particular estimate, survey or other work. The special engineer shall:

1. Make a record of the minutes of his/her surveys and all other work done for the City.
2. When directed by the City Council, accurately make all plats, sections, profiles and

maps as may be necessary in the judgment of the City Council.

3. Upon request of the City Council, make estimates of the costs of labor and material which may be done or furnished by contract with the City.
4. Make all surveys, estimates and calculations necessary for the establishment of grades, bridges, building of culverts, sewers, electric systems, waterworks, power plants, public heating system, curbing and gutters and the improvement of streets and erection and repair of buildings.
5. Perform such other duties as the City Council may require.

All records of the special engineer shall be public records which shall belong to the City and shall be turned over to his/her successor.

(Ref. Neb. Rev. Stat. §17-405, 17-568, 17-568.01, 17-919)

#### SECTION 1-213: BUILDING INSPECTOR

The City has entered into an interlocal agreement with the Douglas County building inspector to act as building inspector for the City. Such inspector shall have authority to inspect all construction within the City and shall use such building codes and inspection rules and regulations as utilized by Douglas County in the inspection of building structures within the City and its zoning area.

#### SECTION 1-214: CITY ADMINISTRATOR

There is hereby created the office of city administrator. The city administrator shall be appointed by the mayor with the approval of the City Council. The city administrator shall perform all of the duties heretofore and hereafter adopted by the mayor and Council, which shall include but be limited to the following:

- A. The city administrator is the chief administrative officer and finance director of the City and is responsible for ensuring the efficient and effective implementation of City Council policies and priorities. This position is responsible for the daily operation and overall administration of City government by providing management and guidance to all City department heads and through the direct supervision of all City personnel. The city administrator is also responsible for advising and assisting the mayor and City Council in determining and implementing strategic and economical forecasts for the City.
- B. Acts as the budget director for the City by preparing the annual operating budget for the City through coordination and cooperation with the City department heads and city auditor with approval of the mayor and City Council.
- C. Acts as the personnel administrator for the City by preparing all information actions of City employees including hiring, disciplining, terminating, etc., for approval by the mayor and City Council; interprets, applies, and enforces employee handbook and policy manual position classification system, salary administration program, and the performance evaluation system with approval of the mayor and City Council; and conducts and coordinates annual performance reviews for all City employees and makes recommendations to the City Council regarding annual advancement in compensation.

- D. Is responsible for being the active participant and member of various committees and meetings; is deeply involved in researching, strategizing, planning, and overseeing numerous activities and projects in support of the City's strategic plan; attends various seminars and conferences to maintain awareness and keep abreast of changes for municipal/public administration functions and responsibilities; and represents the City at conferences and civic meetings as directed by the mayor and City Council.
  - E. Acts as manager of City business by ensuring effective/efficient implementation of City Council policies, plans, directions, and priorities; coordinating City's departments and employees; working with the City legal counsel to negotiate and administer various contracts with final approval by mayor and City Council; working with City legal counsel, engineer, department heads, fiscal agent, mayor and City Council to determine strategic and economic forecasts for the City and to prioritize projects and activities, control costs, and prepare the City's long- and short-term improvement plans and recommendations; developing program policies and procedures to ensure effective implementation of city ordinances and departmental/City operations by applying local, state and federal law; working with the city attorney on legal matters affecting the operation/administration of City government; coordinating economic development of the City; coordinating, preparing, and administering grants and intergovernmental funding; and representing the City by serving as a liaison for legislative issues of the City as directed by the mayor and City Council.
  - F. Plans and directs an active public relations program as approved by the mayor and City Council including but not limited to press releases, public appearances, and addressing the concerns of citizens, community groups and representatives of organizations; and represents the City by serving as a liaison to all public and private entities.
- (Amended 3-12-24, Ord. No. 528)

## ARTICLE III – ADMINISTRATION

### SECTION 1-301: CORPORATE SEAL

There shall be owned by the City, in the office of the city clerk, a common seal of the corporation, having engraved thereon the words "City of Bennington, Nebraska, Seal." The city clerk shall affix an impression of said seal on all papers or documents executed by the clerk in his/her official capacity. (Ref. Neb. Rev. Stat. §17-502)

### SECTION 1-302: OATH OF OFFICE

All officers of the City, whether elected or appointed, shall before entering upon the duties of their respective offices declare and subscribe the following oath or affirmation: "I, \_\_\_\_\_, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Nebraska against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely and without mental reservation or for the purpose of evasion; and that I will faithfully and impartially perform the duties of the office of \_\_\_\_\_ according to law and to the best of my ability. And I do further swear that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am in this position I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence. So help me God." This oath or affirmation so subscribed shall be filed in the office of the city clerk. (Ref. Neb. Rev. Stat. §11-101)

### SECTION 1-303: MEETINGS; PUBLIC; QUORUM

1. All public meetings as defined by law shall be held in a public building which shall be open to attendance by the public. All meetings shall be held in the public building in which the City Council usually holds such meetings unless the publicized notice 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 City Council and to the public by a method designated



and recorded in the minutes by the Council or by the mayor if the Council 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 notice or a statement that such an agenda kept continually current shall be available for public inspection at the office of the city clerk. The clerk's minutes shall include the time and specific place of the meetings and the names of each council member present or absent at each convened meeting.

2. The minutes of the City Council shall be a public record open to inspection by the public upon request at any reasonable time at the office of the city clerk. Any official action on any question or motion duly moved and seconded shall be taken only by roll call vote of the City Council in open session. The record of the city clerk shall show how each member voted or that the member was absent and did not vote. A quorum shall be declared if a majority of the members of the City Council are present.

3. Formal actions taken at any public meeting not in conformity with the provisions of this section shall be deemed to be void.

(Ref. Neb. Rev. Stat. §84-1408, 84-1409, 84-1411, 84-1413) (Am. by Ord. No. 380, 12/8/08)

#### SECTION 1-304: SPECIAL MEETINGS

1. Special meetings may be called by the mayor or by three members of the City Council. The object of such special meeting shall be submitted to the Council in writing. The call and object, as well as the disposition thereof, shall be entered upon the journal by the city clerk. On making the call for a special meeting, the 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 City Council member known to be out of the state or physically unable to be present. A majority of the members of the 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.

2. At the hour appointed for the meeting, the city clerk shall proceed to call the roll of members and announce whether a quorum is present. If a quorum is present, the City 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 council president, the council members shall elect a president pro tempore.

(Ref. Neb. Rev. Stat. §17-106) (Am. by Ord. No. 380, 12/8/08)

#### SECTION 1-305: MEETINGS; CLOSED SESSIONS

1. The City Council 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. The subject matter and the reason necessitating the closed session shall be identified in the motion to hold a closed session. 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 City;
- 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.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to the City Council.

2. The vote to hold a closed session shall be taken in open session. The motion, 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. If the motion passes, the presiding officer shall restate on the record the limitation of the subject matter of the closed session immediately prior to the closed session. The City Council shall restrict its consideration of 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 shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the City Council to legal counsel or other negotiators in closed sessions authorized under subsection (1)(A) of this section.

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

4. Nothing in this section shall be construed to require that any meeting be closed to the public. The City Council nor any number shall fail to invite a portion of its members to a meeting and the Council shall not designate itself a sub-committee of the whole body for the purpose of circumventing the Nebraska Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax or other electronic communication shall be used for the purpose of circumventing the requirements of the Nebraska Open Meetings Act.

5. The Nebraska Open Meetings Act 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.

(Ref. Neb. Rev. Stat. §84-1410) (Am by Ord. No. 380, 12/8/08)

#### SECTION 1-306: MEETINGS; NOTICE TO NEWS MEDIA

The city clerk 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. Neb. Rev. Stat. §84-1411)

#### SECTION 1-307: MEETINGS; PUBLIC PARTICIPATION

1. Subject to the provisions of this article, the public shall have the right to attend and the right to speak at meetings of the City Council and all or any part of a meeting of the City Council, except for closed meetings called pursuant to Section 1-305. All council meetings except 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.

2. It shall not be a violation of this section for the mayor to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting or recording its meetings. The City Council may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings. The City shall not require members of the public to identify themselves as a condition for admission to the meeting. The Council may require any member of the public desiring to address the body to identify himself/herself.

3. The Council shall not, for the purpose of circumventing the provisions of this article, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience. The City shall not be deemed in violation of this section if it holds its meetings in its traditional meeting place which is located in this state. The City shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting. The City 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.

(Ref. Neb. Rev. Stat. §84-1412, 18-2438)

#### SECTION 1-308: MEETINGS; CITY COUNCIL

1. The meetings of the City Council shall be held at the council chambers or other location set by the Council by resolution. Regular meetings shall be held on the second Mon-

day of each month at the hour of 6:00 P.M. unless otherwise scheduled by the mayor. Special meetings may be called by the mayor or by any three members of the City Council for those purposes which shall be conveyed in writing to the council members prior to said special meeting. The call and object of said special meeting shall be entered upon the journal of the city clerk as well as the disposition of said special meeting.

2. 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. At the hour appointed for the meeting, the city clerk shall proceed to call the roll of members and announce whether a quorum is present. If a quorum is present, the City Council shall be called to order by the mayor. In the absence of the mayor, the Council president shall preside and conduct the meeting. In the absence of the mayor and council president, the remaining council members may appoint one of themselves to conduct the meeting. In this event, the member appointed will have all the power and authority of the mayor for purposes of conducting the meeting and executing legal documents authorized and approved at such meeting. (Ref. Neb. Rev. Stat. §17-105, 17-106) (Am. by Ord. No. 339, 8/14/06)

#### SECTION 1-309: MEETINGS; ORDER OF BUSINESS

All meetings of the City Council shall be open to the public. Promptly at the hour set by law on the day of each regular meeting, the members of the City Council, the city clerk, the mayor, and such other city officials that may be required shall take their regular stations in the city hall and the business of the City shall be taken up for consideration and disposition in the order as provided in the agenda for the meeting. Such order of business may be modified by the mayor and City Council at any time to accommodate persons in attendance or for any other reason. (Am. by Ord. No. 383, 12/8/08)

#### SECTION 1-310: MEETINGS; PARLIAMENTARY PROCEDURE

1. The mayor shall preserve order during meetings of the City Council and shall decide all questions of order, subject to an appeal to the Council. When any person is called to order, he/she shall be seated until the point is decided. When the mayor is putting the questions, no person shall leave the meeting room. Every person present, before speaking, shall rise from his/her seat and address the presiding officer, and while speaking shall confine himself/herself to the question.

2. All resolutions or motions shall be reduced to writing before being acted upon if requested by the city clerk or any member of the Council. Every member of the Council who is present when a question is voted upon shall cast his/her vote, unless excused by a majority of the Council present. No motion shall be put or debated unless seconded. When seconded, it shall be stated by the mayor before being debatable.

3. In all cases where a motion or resolution is entered on the minutes, the name of the council member making the motion or resolution shall be entered also. After each vote, a roll call vote shall be taken and entered in the minutes upon the request of any council member. Before the vote is actually taken, any resolution, motion or proposed ordinance may be withdrawn from consideration by its sponsor with the consent of the

council member seconding the said resolution, motion or ordinance. 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.

4. Any of the rules of the City Council for meeting may be suspended by a two-thirds vote of the members present. In all cases in which provisions are not made by these rules, *Robert's Rules of Order* is the authority by which the Council shall decide all procedural disputes that may arise.

#### SECTION 1-311: MEETINGS; CHANGE IN OFFICE

The change in office shall be made as follows: The mayor and Council shall meet on the first regular meeting date in December of each year in which a city election is held and the outgoing officers and the outgoing members of the Council shall present their reports. Once the old Council has completed its business up to the said time, the outgoing members shall surrender their offices to the incoming members and the outgoing officers shall thereupon each surrender to his/her successor in office all property, records, papers, and monies belonging to the same.

#### SECTION 1-312: MEETINGS; ORGANIZATIONAL

1. The newly elected City Council shall convene in the council chambers on the first regular meeting in December of each year in which a city 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. Each officer who is required to give a bond shall file the required bond in the office of the city clerk with sufficient sureties, conditioned on the faithful discharge of the duties of his/her office, with the oath endorsed thereon. 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."

2. The mayor shall then nominate his/her candidates for appointive offices and proceed with the regular order of business. It is hereby made the duty of each and every member of the Council or his/her successor in office and of each officer elected to any office to qualify prior to the first regular meeting in December following the election. All appointive officers shall qualify within two weeks following their appointments. Qualification for each officer who is not required to give bond shall consist in his/her subscribing and taking an oath to support the Constitution of the United States, the Constitution of the State of Nebraska and the laws of the City and to perform faithfully and impartially the duties of his/her office, said oath to be filed in the office of the city clerk.

#### SECTION 1-313: 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. Notice to the news media as provided in Section 1-306 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. Neb. Rev. Stat. §84-1411) (Am. by Ord. No. 383, 12/8/08)

#### SECTION 1-314: APPOINTMENT OF COMMITTEES

At the organizational meeting of the City Council, the mayor may appoint members of such committees as may be necessary from time to time, whose members shall serve at the pleasure of the mayor. The membership of such standing committees may be changed at any time by the mayor, who shall be a member ex officio of each standing committee. The members of the standing committees shall serve a term of office of one year, unless reappointed.

#### SECTION 1-315: CITY OFFICERS; BOND OR EQUIVALENT INSURANCE

In place of the individual bonds required to be furnished by city officers, a schedule, position, blanket bond or undertaking, or evidence of equivalent insurance may be given by city officers, or a single corporate surety fidelity, schedule, position, or blanket bond or undertaking, or evidence of insurance coverage covering all the officers, including officers required by law to furnish an individual bond or undertaking, may be furnished. The City may pay the premium for the bond or insurance coverage. The bond or insurance coverage shall be, at a minimum, an aggregate of the amounts fixed by law or by the person, council, or board authorized by law to fix the amounts and with such terms and conditions as may be required. (Ord. No. 372, 11/1/07)

## ARTICLE IV – ORDINANCES, RESOLUTIONS AND MOTIONS

### SECTION 1-401: GRANT OF POWER

The City Council shall have the responsibility of making all ordinances, by-laws, rules, regulations and resolutions, not inconsistent with the laws of the State of Nebraska, as may be necessary and proper for maintaining the peace, good government and welfare of the City and its trade, commerce and security.

(Ref. Neb. Rev. Stat. §17-505)

### SECTION 1-402: INTRODUCTION

Ordinances may be introduced by the mayor and any council member at any regular or special meeting so long as the same has been included on the agenda for such meeting. Such ordinances may be read by the city clerk or the city attorney for consideration.

### SECTION 1-403: RESOLUTIONS AND MOTIONS

Resolutions and motions may be introduced by either the mayor or any council member at any regular or special meeting so long as the same has been included on the agenda for such meeting.

### SECTION 1-404: PASSAGE

Ordinances, resolutions or orders for the appropriation or payment of money shall require for their passage the concurrence of a majority of all members elected to the City Council, except that in a tie vote the mayor shall have the power to vote to break the tie. Ordinances of a general or permanent nature shall be read by title on three different

days unless three-fourths of the Council present vote to suspend this requirement, except that such requirement shall not be suspended for any ordinance for the annexation of territory. Three-fourths of the Council present may require a reading of any ordinance in full before enactment. (Ref. Neb. Rev. Stat. §17-614) (Amended 8/14/06, Ord. No. 340)

#### SECTION 1-405: SUSPENSION OF RULES

In the event that three-fourths of the Council present vote to dispense with the rule that ordinances of a general or permanent nature be read by title on three different days, such ordinances shall be read by title and then moved for final passage. (Amended 8/14/06, Ord. No. 340)

#### SECTION 1-406: STYLE

The style of all city ordinances shall be: "Be it ordained by the Mayor and City Council of the City of Bennington, Nebraska:" (Ref. Neb. Rev. Stat. §17-613)

#### SECTION 1-407: EFFECTIVE DATE

The city clerk shall, within 15 days after the passage of any ordinances, publish the same in a legal newspaper of general circulation in the City, or post the ordinance in the normal three public places. The ordinance shall become effective upon publication or posting. (Ref. Neb. Rev. Stat. §17-613)

#### SECTION 1-408: TITLE

No ordinance shall contain a subject not clearly expressed in its title. (Ref. Neb. Rev. Stat. §17-614)

#### SECTION 1-409: EMERGENCY ORDINANCES

In the case of riot, infectious or contagious diseases or other impending danger, failure of a public utility or other emergency requiring its immediate operation, any ordinance dealing therewith shall take effect upon the proclamation of the mayor and the posting thereof in at least three of the most public places in the City. Such emergency notice shall recite the emergency and be passed by a three-fourths vote of the Council, then entered upon the city clerk's minutes. (Ref. Neb. Rev. Stat. §17-613, 19-3701)

#### SECTION 1-410: CERTIFICATE OF PUBLICATION OR POSTING

The passage, approval and publication or posting of all ordinances shall be sufficiently proven by a certificate under the city seal from the city clerk showing that the said ordi-



nance was passed and approved, and when, and in what paper the same was published, or when, by whom and where the same was posted.  
(Ref. Neb. Rev. Stat. §17-613)

#### SECTION 1-411: 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 shall be repealed. (Ref. Neb. Rev. Stat. §17-614)

### ARTICLE V - FISCAL MANAGEMENT

#### SECTION 1-501: FISCAL YEAR

The fiscal year of the City shall commence on October 1 and extend through the following September 30.  
(Ref. Neb. Rev. Stat. §17-701)

#### SECTION 1-502: 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 and shall be followed wherever practicable.

#### SECTION 1-503: BUDGET STATEMENT; FILING

The City Council shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed "The Annual Appropriation Bill," in which the Council shall appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the City. Such budget statement shall be prepared on forms prescribed and furnished by the Nebraska Auditor of Public Accounts and shall contain that information required by the *Manual of Instructions for City/Village: Budgets*, prepared by the state auditor.

The annual appropriation bill shall not be amended without a majority vote of the City Council after a public hearing. Notice of the time and place of the hearing shall be pub-

lished at least five days prior to the date set for hearing in a newspaper of general circulation within the City. The income arising from the operation of proprietary functions shall be deemed especially appropriated to the payment of the current expenses of and to the cost of improvements, extensions and additions to such functions and shall not be included in the annual appropriation bill.  
(Ref. Neb. Rev. Stat. §13-504)

#### SECTION 1-504: BUDGET HEARING

Subsequent to the filing of the proposed budget statement, the City Council shall publish a proposed budget and conduct a public hearing on the proposed budget statement. Notice of the place and time of the said hearing, as well as a copy of the proposed budget, shall be published at least five days prior to the date set for the hearing in a newspaper of general circulation in the City. After such hearing, the statement shall be adopted or amended, and adopted as amended, and a written record shall be made of such hearing. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of such changes shall be published within 20 days after its adoption.  
(Ref. Neb. Rev. Stat. §13-504; §13-506)

#### SECTION 1-505: BUDGET FILING

The City Council shall file with and certify to the levying board and file with the Nebraska State Auditor a copy of the adopted budget statement, together with the amount of the tax to be levied and proof of publication. Such filing shall be made on or before September 20th. The City Council shall not certify any tax that exceeds the maximum levy prescribed by state law; provided, in certifying the amount to be so levied, allowance may be made for delinquent taxes not exceeding five percent of the amount to be levied plus the actual percentage of delinquent taxes for the preceding tax year.  
Ref. Neb. Rev. Stat. §13-506

#### SECTION 1-506: ANNUAL AUDIT

The City Council shall cause an audit of the city's accounts to be made by a recognized independent and qualified accountant as expeditiously as possible following the close of the fiscal year for such city and to cover all financial transactions and affairs of the City for such preceding fiscal year. Such audit shall be made on a cash or accrual method at the discretion of the City. Such audit shall be completed and the annual audit report made by such accountant shall be submitted within six months of the close of the fiscal year in any event, unless an extension of time shall be granted by a written resolution of the City Council.  
Ref. Neb. Rev. Stat. §19-2903

#### SECTION 1-507: CONTRACTS AND PURCHASES; BIDDING AND OTHER REQUIREMENTS

- A. No contract for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to property, costing over \$30,000.00 shall be made unless it is first approved by the City Council.
- B. Before the City Council makes any contract in excess of \$30,000.00 for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to property, an estimate of the cost shall be made by the city engineer and submitted to the Council. In advertising for bids as provided in subsections (C) and (D) of this section, the Council may publish the amount of the estimate.
- C. Advertisements for bids shall be required for any contract costing over \$30,000.00 entered into:
  - a. For enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to property; or
  - b. For the purchase of equipment used in the construction of such enlargement or general improvements.
- D. The advertisement provided for in subsection (C) of this section shall be published at least seven days prior to the bid closing in a legal newspaper published in or of general circulation in the City. 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. Rev. Stat. §17-613 when adopted by a three-fourths vote of the City Council and entered of record.
- E. If, after advertising for bids as provided in this section, the City Council receives fewer than two bids on a contract or if the bids received by the City Council contain a price which exceeds the estimated cost, the City Council may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.
- F. 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 City, the city Council may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.
- G. Any City bidding procedure is hereby waived by the City Council:
  - a. 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. Rev. Stat. §81-145 to 81-162; or
  - b. When the contract is negotiated directly with a sheltered workshop pursuant to Neb. Rev. Stat. §48-1503; or
  - c. When the purchase of personal property is by participation in a contract competitively bid by another state or group of states, by a group of states and any politi-

cal subdivision of any other state, or by a cooperative purchasing organization on behalf of a group of states.

- H. Notwithstanding any other provisions of law, if the City has established, by an interlocal agreement with any county, a joint purchasing division or agency, then the City may purchase personal property without competitive bidding if the price for the property has been established by the federal General Services Administration or the materiel division of the Department of Administrative Services. For purposes of this subsection:
- a. "Personal property" includes, but is not limited to, supplies, materials, and equipment used by or furnished to any officer, office, department, institution, board, or other agency; and
  - b. "Purchasing" or "purchase" means the obtaining of personal property by sale, lease, or other contractual means.
- I. Pursuant to City Municipal Code 1-514, proposed expenditures of over \$10,000.00 for City improvement, maintenance, and construction projects which are included in the City's annual budget or annual appropriation bill, and proposed expenditures of over \$10,000.00 for purchased of capital items such as equipment, machinery, vehicles, and similar such capital items which are included in the City's annual budget or annual appropriation bill, shall be approved by the City Council before the project is initiated and before the purchase of any such capital items may be made.
- Ref. Neb. Rev. Stat. §17-568.01(Amended 3-11-2024, Ord. No. 529)

#### SECTION 1-508: CLAIMS

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

Ref. Neb. Rev. Stat. §17-714, 17-715

#### SECTION 1-509: TRANSFER OF FUNDS

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, the City Council may 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 City Council 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 days prior to the date set for the hearing in a newspaper of general circulation in the City. 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 approval by the City Council, said council shall file with the county clerk and the state auditor a copy of the supplemental budget and shall certify the amount of additional tax to be levied. The City Council 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 therefor.

#### SECTION 1-510: SPECIAL ASSESSMENT FUND

All money received on special tax assessments shall be held by the city treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made. (Ref. Neb. Rev. Stat. §17-710)

#### SECTION 1-511: SINKING FUNDS

The City Council, subject to the limitations set forth herein, shall have the power to levy a tax not to exceed that prescribed by state law in addition to the amount of tax which may be annually levied for the purposes of the adopted budget statement of the City, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension or repair of the approved uses as authorized by state law. To initiate the said sinking fund, the City Council shall declare its purpose by resolution to submit to the qualified electors of the City the proposition to provide the improvement at the next general city election. The resolution shall set forth 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 times on successive weeks before the day of the election in a legal newspaper of general circulation in the City. The sinking fund may be established after the election if a majority or more of the legal votes were in favor of the establishment of the fund. The City Council may then proceed to establish the said fund in conformity with the provisions of the proposition and applicable state law. The funds received by the city treasurer shall, as they accumulate, be immediately invested with the written approval of the City Council in the manner provided by state law. No sinking fund so established shall be used for any purpose or purposes contrary to the purpose as it appeared on the ballot unless the City Council is authorized to do so by 60% of the qualified electors of the City voting at a general election favoring such a change in the use of the sinking fund.

(Ref. Neb. Rev. Stat. §19-1301 through 19-1304, 77-2337, 77-2339)

#### SECTION 1-512: DEPOSIT OF FUNDS

The City Council, at its first meeting in each fiscal year, shall designate one or more banks of approved and responsible standing in which the city treasurer shall keep at all times all money held by him/her; provided, if more than one bank in the City meets the requirements for approved banks as herein defined, the said funds shall be deposited in each of them and the city treasurer shall not give a preference to any one or more of them in the money he/she shall deposit. A bond shall be required from all banks so selected in a penal sum which equals the maximum amount on deposit at any time less the amount insured by the Federal Deposit Insurance Corporation or a pledge of sufficient assets of the bank to secure the payment of all such deposits.  
(Ref. Neb. Rev. Stat. §17-607, 77-2362 through 77-2364)

#### SECTION 1-513: INVESTMENT OF FUNDS

The City Council may, by resolution, direct and authorize the city treasurer to invest surplus funds in the outstanding bonds or registered warrants of the City, 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. Neb. Rev. Stat. §17-608, 17-609, 72-1259, 77-2341)

#### SECTION 1-514: EXPENDITURES; APPROVAL BY CITY COUNCIL

No City official shall have the power to appropriate, issue or draw any order or warrant on the City treasury for money, unless the same has been appropriated or ordered by ordinance, or approved by the City Council, or the claim for the payment of such order or warrant has been allowed by the City Council according to Nebraska law, and funds for the claim or out of which said claim is payable had been included in the adopted annual budget or annual appropriation bill according to law.

Proposed expenditures of over \$10,000.00 for City improvement, maintenance and construction projects which are included in the City's annual budget or annual appropriation bill, and proposed expenditures of over \$10,000.00 for purchases of capital items such as equipment, machinery, vehicles, and similar such capital items which are included in the City's annual budget or annual appropriation bill, shall be approved by the City Council before the project is initiated and before the purchase of any such capital items may be made.

Pursuant to City Municipal Code 1-507, certain contracts for enlargement or general improvements, or any other work or improvements when the cost is assessed to property, or for the purchase of equipment used in construction of such enlargement or general improvements, costing over \$30,000.00, are subject to the bidding, advertising, city engineer cost estimate, Council approval, and other requirements set forth in City Municipal Code 1-507.

In the City's normal course of operations many time sensitive bills such as payroll, withholding taxes, scheduled payments, and utility bills are presented which require imme-

date payment before such expenditures can be approved by the City Council at its one regular monthly meeting via inclusion in the bills presentation. Such expenditures are for budgeted items and are evaluated by the City Treasurer before making payment and are promptly included in the following bills presentation to the City Council. The City could not meet its financial obligations in a timely and efficient manner without the use of this procedure, and the City Treasurer is authorized to continue to use this procedure and nothing in this Section shall negate the use of such procedure or the City Treasurer's authority to use the same.

(Amended 6-19-17, Ord. No. 450, 3-11-24, Ord. No. 529)

#### SECTION 1-515: BOND ISSUES

The City Council may, after meeting all the requirements of state law, issue bonds, fund bonds, and retire bonds for such purposes as may be permitted by state law. The City Council shall have the authority to levy special assessments for the payment of interest and principal on such bonds, and may spread the payments up to the maximum number of years permitted by state law.

(Ref. Neb. Rev. Stat. §10-201 through 10-411, 10-606 through 10-612, 12-1001, 17-529.08, 17-534, 17-905, 17-908, 17-911, 17-939, 17-958, 17-968, 18-1801 through 18-1805, 23-3513, 39-836)

#### SECTION 1-516: SALES TAX

For the purpose of raising revenue, there is hereby adopted a sales and use tax, pursuant to the provisions of Neb. Rev. Stat. §71-2701 to 77-27,135, known as the Nebraska Revenue Act of 1967, and Neb. Rev. Stat. §77-27,142 to 77-27,148, known as the Local Option Revenue Act of 1969, as amended from time to time, in an amount of 1% upon the same transactions within the corporate limits of the City on which the State of Nebraska is authorized to impose a tax pursuant to the provisions of said acts, as amended from time to time.

The administration of the sales and use tax imposed by this section, the making of returns for the ascertainment, assessment, the provisions for tax claims, remedies, the laws governing consummation of sales, penalties, and collection and for the disposition and distribution of the taxes so imposed and collected shall be as provided in Neb. Rev. Stat. §71-2701 to 77-27,135 as amended and Neb. Rev. Stat. §77-27,142 to 77-27,148 as amended, to be used for such purposes as may be determined by the mayor and City Council.

## ARTICLE VI - LIBRARY BOARD

### SECTION 1-601: MEMBERS, TERMS, DUTIES

Pursuant to Nebraska Revised Statute §51-201 a Library Board for the City of Bennington has previously been established. The Library Board shall be appointed and shall consist of at least five members, a majority of which shall be residents of the City. Members of the Library Board shall be nominated by the mayor and approved by a majority vote of the City Council.

The members of the Library Board shall serve a four-year term of office, and may be reappointed at the end of any such term. In cases of vacancies by resignation, removal, or otherwise, the mayor and City Council shall fill such vacancy for the unexpired term. The Library Board's members 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. Neither the mayor nor any member of the City Council shall serve as a member of the Library Board while serving a term of office as mayor or as a member of the City Council.

At the time of the Library Board's first meeting in January of each year, the members shall organize by selecting from their number a president, secretary, and such other officers as may be necessary. No member of the Library Board shall serve in the capacity of both president and secretary. It shall be the duty of the secretary to keep the full and correct minutes and records of all meetings and to file the same with city clerk, where they shall be available for public inspection at any reasonable time. A majority of the Library Board's members shall constitute a quorum for the transaction of



business. The Library Board shall meet at such times as the City Council may designate, or as otherwise provided in the procedures and rules which the Library Board may adopt. Special meetings may be held upon the call of the president or any three members of the Library Board.

The Library Board shall have the authority to appoint a librarian subject to the approval of the City Council. The Library Board shall have the authority to appoint all other library employees. The City Council shall approve any personnel administrative or compensation policy or procedure before implementation of such policy or procedure by the Library Board. It shall be the duty of the Library Board to have general charge of the library and to establish appropriate by-laws, rules, and regulations for the Board's guidance and for the management, operation, and governance of the library as it may deem expedient, but not inconsistent with §§51-201 to 51-219 of the Nebraska Revised Statutes. The Library Board shall have supervisory authority over all employees of the library including the librarian. All actions of the Library Board shall be subject to review and supervision of the City Council. The Library Board shall be responsible for making such reports and performing such additional duties as the City Council may designate from time to time.

(Amended 9-12-05, Ord. No. 316; 1-8-07, Ord. No. 354; 6-10-19, Ord. No. 478)

#### SECTION 1-602: OPERATION AND FUNDING

The City owns and manages the library through the Library Board. The City Council, for the purpose of defraying the cost of the management, purchases, improvements and maintenance of the library, may each year levy a tax not exceeding the maximum limit prescribed by state law on the actual valuation of all real estate and personal property within the City that is subject to taxation. The revenue from the said tax shall be known as the Library 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 library. Such fund shall at all times be in the custody of the city treasurer.

#### SECTION 1-603: BOOKS

The Library Board may authorize the sale, exchange or disposal of any surplus, damaged, defective, obsolete or duplicate books in the library. Records shall be kept of any such surplus, damaged, defective, obsolete or duplicate books so disposed of.

#### SECTION 1-604: RULES AND REGULATIONS

The Library Board shall establish rules and regulations for the governing of the library for the preservation and efficient management thereof. They shall fix and impose general rules, penalties and forfeitures for injury to the library grounds, rooms, books or other property, or for failure to return a book. All fees, penalties and forfeitures may be

collected in civil action in the event of failure, neglect or refusal to pay the said assessments.

#### SECTION 1-605: COST OF USE

Use of the library shall be free for the residents of the City. The librarian may exclude from the library and reading rooms any person who shall willfully violate or refuse to comply with the rules and regulations established for the government thereof.

#### SECTION 1-606: DAMAGED AND LOST BOOKS

Any person who injures or fails to return any book taken from the library shall forfeit and pay to the library not less than the value of the book in addition to any replacement cost and penalty which the Library Board may assess.

#### SECTION 1-607: BOOK REMOVAL

It shall be unlawful for any person not authorized by the Library Board to take a book from the library without the consent of the librarian or an authorized employee of the library. Any person removing a book from the library without properly checking it out shall be deemed to be guilty of a misdemeanor.

#### SECTION 1-608: MONEY COLLECTED

Any money collected by the library shall be turned over monthly by the librarian to the city treasurer along with a report of the sources of the revenue.

## ARTICLE VII - POLICE DEPARTMENT

### SECTION 1-701: ARREST JURISDICTION

The City has entered into interlocal agreements with area police agencies regarding arrest jurisdiction and pursuit procedures. These interlocal agreements are incorporated herein by reference.

### SECTION 1-702: REMOVAL, DEMOTION AND SUSPENSION OF CITY POLICE OFFICERS; PROCEDURES

1. Any City police officer including the police chief, may be removed, demoted, or suspended with or without pay at any time by the mayor as provided in Section 1-703 of the Bennington Municipal Code. Such action shall be implemented upon the written accusation and notice of the police chief and/or mayor. The written accusation and notice shall state the reasons for the action, the action to be taken, the effective date of the action to be taken, and the procedures for appeal. The written accusation and notice shall be presented to the police officer in person, and he/she shall have an opportunity at that time to present any information or documentation and to discuss the accusation and notice with the police chief and/or mayor. The police officer may have an attorney or representative present at that time. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of any police officer in cases of gross misconduct, neglect of duty, or disobedience of orders.

## SECTION 1-703: APPEAL PROCEDURE FOR REMOVED, DEMOTED OR SUSPENDED POLICE OFFICERS

1. In the event of removal, demotion, or suspension with or without pay the City police officer or police chief shall have the right to appeal such action to the City Council. Such appeal shall be made within fifteen days of the date that the action was taken by filing a written application for a hearing before the City Council. Such written application shall be made to the city clerk, and if such application is made the city clerk shall immediately notify the mayor of the receipt of such application. Upon notice of the filing of such application, the mayor shall call a special meeting of the City Council not less than ten days and not more than twenty days of receipt of the written application to consider such application.

2. Written notice of the date and time of the special City Council meeting at which the application shall be heard, shall be provided by the city clerk to the police officer at least five business days prior to the hearing. Both the police officer and the individuals imposing the action shall have the right at the hearing to be heard and to present evidence to the City Council for its consideration. The police officer may have an attorney or representative at the hearing. The police officer and the individual imposing the action or their respective attorneys or representatives may record the hearing.

3. 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 action. The failure of the City Council to act within thirty days or the failure of a majority of the City Council members to vote to reverse or modify the action shall be construed as a vote to uphold the action. The decision of the City Council shall be based upon its determination that, under the facts and evidence presented at the hearing, the action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska.

4. This section does not apply to a City police officer during his/her probationary period.

(Neb. Rev. Stat. § 17-107) (Am. by Ord. No. 381, 3/9/09; Ord. No. 480, 6/10/19)

## ARTICLE VIII - PLANNING COMMISSION

### SECTION 1-801: MEMBERS; OFFICERS`

The Planning Commission shall consist of seven regular members whose terms shall be staggered and who shall represent, insofar as is possible, the different professions or occupations in the City and shall be appointed by the mayor, by and with the approval of a majority vote of the members elected to the City Council. Two of the regular members may be residents of the area over which the City is authorized to exercise extraterritorial zoning and subdivision regulation. When there are a sufficient number of residents in the zoning and subdivision regulation area, one regular member of the commission shall be a resident from such area. If it is determined by the City Council that a sufficient number of residents reside in the area subject to extraterritorial zoning and subdivision regulation and no such resident is a regular member of the commission, the first available vacancy on the commission shall be filled by the appointment of such an individual. For purposes of this section, "a sufficient number of residents" shall mean 200 residents.

The term of each regular member shall be three years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before the City Council, be removed by the mayor with the consent of a majority vote of the members elected to the City Council for inefficiency, neglect of duty or malfeasance

in office or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired portion of the term by the mayor. (Neb. Rev. Stat. §19-926)

#### SECTION 1-802: DUTIES

The members of the Planning Commission shall be governed by the by-laws adopted by them for the orderly administration of the Comprehensive Plan adopted by the City on September 11, 2000.

### ARTICLE IX – TREE BOARD AND FLOWER AND LANDSCAPING COMMITTEE

#### SECTION 1-901: DEFINITION

For the provisions of this article, the word "vegetation" shall include trees, bushes, shrubs, grass, hedges, flowers and weeds.

#### SECTION 1-902: CREATION AND ESTABLISHMENT OF TREE BOARD AND FLOWER AND LANDSCAPING COMMITTEE

1. There is hereby created a Tree Board for the City of Bennington which shall consist of five members who are appointed by the mayor, with the approval of the City Council. Three members of the Board shall be residents of the City, and two members of the Board may be residents of the City's extraterritorial zoning jurisdiction. Board members' terms shall be three years, which shall end on the second Monday of December, unless reappointed by the mayor, with the approval of the City Council. Provided, however, that after the effective date of the Ordinance amending this Section 1-902, the members of the Tree Board who are thereafter appointed or reappointed shall serve initial terms of either one, two, or

three years as are designated in conjunction with their appointment or reappointment, so that the terms of the Tree Board members are staggered and result in only one or two members' terms expiring in any given year. After such initial one or two year terms are completed, the terms for those member positions shall be three years. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed for the unexpired portion of the term. Members of the Board shall serve without compensation. The Tree Board shall work under the direction of the Public Works Director and shall only perform or undertake such work or actions as are authorized by the Public Works Director. It shall be the duty of the Public Works Director to enforce the provisions of this article..

The Tree Board will work through the Public Works Director to identify for removal, to remove and replace dead, damaged or dying trees, and to study, investigate, counsel and develop and/or update annually and administer a written plan for the care, replacement, maintenance, and removal or disposition of trees and shrubs in City parks, along City streets and in other City public areas. Such plan will be presented annually to the City Council and upon its acceptance and approval shall constitute the official comprehensive City Tree Plan. The Tree Board, when requested by the City Council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.

2. There is hereby created a Flower and Landscaping Committee for the City of Bennington which shall consist of five members who are appointed by the mayor, with the approval of the City Council. Three members of the Committee shall be residents of the City, and two members of the Committee may be residents of the City's extraterritorial zoning jurisdiction. Committee members' terms shall be three years, which shall end on the second Monday of December, unless reappointed by the mayor, with the approval of the City Council. Provided, however, that after the effective date of the Ordinance amending this Section 1-902, the members of the Committee who are thereafter appointed or reappointed shall serve initial terms of either one, two, or three years as are designated in conjunction with their appointment or reappointment, so that the terms of the Committee members are staggered and result in only one or two members' terms expiring in any given years. After such initial one or two year terms are completed, the terms for those member positions shall be three years. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed for the unexpired portion of the term. Members of the Committee shall serve without compensation. The Committee shall work under the direction of the Public Works Director.

The Flower and Landscaping Committee will work under the direction of the Public Works Director to plan, develop and maintain landscaping and flower garden projects in City parks, City street right-of-ways and other City property, as authorized by the Public Works Director. The City will assist in the development and

maintenance of these projects as funds, resources and time allow. City assistance may include funds necessary to match grants, the purchase of shrubs or flowering plants, and labor to help build, landscape, plant, weed and routinely water vegetation. This work will be coordinated through the Public Works Director who will seek additional assistance from community organizations to volunteer their time and efforts toward beautifying the City.

#### SECTION 1-903: RIGHT OF ENTRY, EXAMINATION

The Public Works Director or his/her designees shall have the right to examine any and all vegetation in the City for the purpose of determining whether the same are diseased, dead, hazardous or noxious and may enter upon any private property where necessary to conduct an examination. The examination shall include the right to take samples of such vegetation for laboratory testing purposes.

#### SECTION 1-904: VEGETATION ON PUBLIC PROPERTY; RESPONSIBILITY FOR MAINTENANCE

The owner, agent or occupant of any land abutting a street, highway or alley shall be responsible for and shall keep the vegetation located within the right-of-way abutting the street, highway, or alley trimmed, cut, pruned and sprayed in such a manner as will remove any hazard to life or property, and shall water, fertilize, and otherwise care for the vegetation, including trees, bushes, shrubs, grass and hedges, to maintain them in a healthy, vigorous, growing condition.

The owner, agent or occupant shall also be responsible for maintenance of sidewalks and driveways which are damaged as a result of roots from vegetation which project under and raise the sidewalk or driveway and constitute a hazard to life and property. The owner, agent or occupant must confer with the Public Works Director before cutting, removing or otherwise altering any roots from trees which cause damage to sidewalks or driveways as cutting, removing or altering of roots may cause structural damage to or weaken the tree to such an extent that the tree would topple upon persons or property.

#### SECTION 1-905: DANGEROUS TREE PROHIBITED

It shall be unlawful for any property owner, agent or occupant to permit to stand upon the property any dead tree, any dead part of a tree, any stump, and totally diseased or structurally weak tree or any structurally weak part of a tree.

#### SECTION 1-906: CLEARANCE OF LIMBS AND BRANCHES OVER MAJOR STREETS

It shall be unlawful for any property owner, agent or occupant to permit the limbs, branches and/or foliage of any vegetation upon such property to project into or extend over any designated major street in such a manner that there shall be a clearance of



less than 14 feet in height between the street surface and the limbs, branches, and/or foliage.

**SECTION 1-907: CLEARANCE OF LIMBS AND BRANCHES OVER MINOR STREETS, COLLECTOR STREETS OR ALLEYS**

It shall be unlawful for any property owner, agent or occupant to permit the limbs, branches, and/or foliage of any vegetation upon such property to project into or extend over any minor streets, collector streets or alleys in such a manner that there shall be a clearance of less than 12 feet in height between the surface of the street and such limbs, branches, and/or foliage.

**SECTION 1-908: CLEARANCE OF LIMBS AND BRANCHES OVER SIDEWALKS**

It shall be unlawful for any property owner, agent or occupant to permit the limbs, branches, and/or foliage of any vegetation upon the property to project into or extend over any sidewalk in such a manner that there shall be a clearance of less than eight feet in height between the sidewalk and such limbs, branches, and/or foliage.

**SECTION 1-909: EXTENSION OF LIMBS AND BRANCHES INTO ANOTHER PERSON'S PROPERTY**

It shall be unlawful for any property owner, agent, or occupant to permit the limbs, branches, and/or foliage of any vegetation upon the property to project into or extend over any other person's property if such extension endangers any building or property located on the other person's private property.

**SECTION 1-910: REMOVAL OF DEAD OR DISEASED TREES FROM STREET RIGHT-OF-WAY**

It shall be unlawful and is hereby declared to be a nuisance for any property owner, agent or occupant to permit, allow, or maintain any dead or diseased trees within the abutting right-of-way of streets within the corporate limits of the City. Notice and an order 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 the owner, agent or occupant as provided in this article. Removal of such dead or diseased trees by the City if the owner, agent or occupant fails to comply with the order, and the levy and assessment of the costs and expenses of the work, shall be done as provided in this article.

**SECTION 1-911: NOTICE TO REMOVE NON-COMPLYING VEGETATION**

Upon the discovery of any vegetation in violation of the provisions of this article, the

Public Works Director or his/her agent shall notify the owner, agent or occupant of the violation and shall order the owner, agent or occupant to remove the vegetation or to bring the vegetation into compliance with the provisions of this article. Notice shall be communicated to the owner, agent or occupant by personal service or certified mail to the last known address of the person, or if no last known address can be found, then notice shall be communicated by posting notice on the property for a period of ten consecutive days. Such notice shall include notice of the right to a hearing and the manner in which it may be requested as provided in Section 1-912. Notice of this order shall also be given to the mayor on the same day that notice of the order is communicated to the owner, agent or occupant..

#### SECTION 1-912: APPEAL TO CITY COUNCIL

Any person who has been served with an order issued by the Public Works Director or designee may appeal to the City Council within thirty days from the date of the order. If the person served with an order fails to appeal within this thirty day period, then the order shall become final. The person served with an order shall file a notice of appeal with the City Council, alleging in this appeal each ground and reason for the appeal. The appeal must be addressed to the city clerk and must be mailed by certified mail or personally served upon the city clerk. The date of personal service or the date appearing on the certified mail receipt shall be deemed the date of filing of the appeal. The City Council shall then fix a reasonable time for the hearing of the appeal and shall decide the same at such hearing or at the next monthly meeting of the City Council. At the hearing, any person may appear in person or by agent or attorney.

#### SECTION 1-913: ACTION BY CITY

If, after thirty days of receipt of such notice the owner, agent or occupant does not request a hearing or fails to comply with the order, or if an appeal is requested and held and the City Council denies the appeal and the violation continues, the street superintendent shall have the authority to abate and remove such nuisance and violation by having the vegetation removed or otherwise brought into compliance with the provisions of this article.

#### SECTION 1-914: CITY COSTS A LIEN

All or any portion of the costs and expenses incurred by the City under the provisions of Sections 1-910 and 1-913 shall be levied and assessed in the same manner as other special taxes for improvements are levied and assessed, against the property so benefited.

#### SECTION 1-915: APPEAL OF ASSESSMENT TO DISTRICT COURT

Any special assessment may be appealed to the District Court by complying with Sections 19-2422 to 19-2425, Revised Statutes of Nebraska, 1943, as amended.

## SECTION 1-916: OTHER PROCEDURES SAVED

It is not intended by this article to repeal, abrogate, annul or in any way impair or interfere with appeals or appeal procedures established by other provisions of the law.

## SECTION 1-917: ARBORIST'S 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 \$50.00 annually in advance; provided, however, that no license shall be required of any public service company or city employee doing such work. Before any such license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of \$1,000,000 for bodily injury and \$1,000,000 property damage, indemnifying the City for any person injured or damaged resulting from the pursuit of endeavors as herein described. (Ordinance No. 207)

## ARTICLE X – COMMUNITY DEVELOPMENT AGENCY

### SECTION 1-1001: MEMBERS; POWERS

There is hereby created in and for the City an agency to be known as the "Community Development Agency of the City of Bennington, Nebraska," which shall consist of the mayor and City Council, exercising the powers of such agency in accordance with Neb. Rev. Stat. §18-2101.01. Pursuant to Neb. Rev. Stat. §18-2101.01, such agency shall exercise all of the powers and authority provided for in Neb. Rev. Stat. §18-2101 to §18-2144, and §18-2147 to §18-2153, as now existing, as amended, and as hereafter amended, and as determined appropriate from time to time by the mayor and City Council and determined by resolution or ordinance of said mayor and Council from time to time.

(Added August 8, 2005, Ord. No. 318)

## ARTICLE XI – CITY RECREATIONAL TRAILS

### SECTION 1-1101: RULES AND REGULATIONS

The following rules and regulations are adopted by the City to govern the administration, use, operation, maintenance and protection of recreational trails under control of the City. Any person who:

1. camps, picnics, hikes, backpacks or engages in any other unauthorized activity on the recreational trail on land not designated as a camping, picnicking, hiking, backpacking or other similar area by the City, or fails to observe the posted conditions governing use of such land, or

2. lights any type of fire, uses any fireworks, smokes tobacco in any form, or leaves unattended or unextinguished any fire of any type in any location within the trail system, when not permitted by the City, or

3. brings upon, possesses, grazes, maintains or allows to run at large any pet, domestic animal or poultry in the trail system when not permitted by the City, or

4. hunts, fishes, traps, harvests fur, or uses firearms, bow and arrow, or any other projectile weapon or device in the trail system when not permitted by the City, or

5. swims, bathes, boats, wades, uses any flotation device, or engages in any other water-related recreational activity in the trail system when not permitted by the City, or

6. without the permission of the City, damages, destroys, uses or removes any public, real or personal property in the trail system, constructs or installs any privately owned structure in the trail system, or enters or remains upon all or any portion of the trail system when appropriate signs or public notices prohibiting such activity have been erected or displayed, or

7. abandons any motor vehicle, trailer or other conveyance in or on the trail system, or

8. sells, trades or vends any goods, products or commodities of any type in the trail system when not permitted by the City, or

9. cuts down or removes in any way any tree, shrub, bush or plant,

shall be guilty of a Class V misdemeanor which, according to law, is punishable by a maximum fine of \$100.00.

## SECTION 1-1102: ADDITIONAL RULES AND REGULATIONS

The following rules and regulations shall apply to all persons entering, using, visiting or who are otherwise within the boundaries of the trail system controlled by the City.

1. Hours of operation:

a. The trails will be open daily between the hours of 5:00 a.m. and 11:00 p.m.

b. The City may establish a reasonable use schedule for all portions of a trail area and close to public use all or any portion of a trail area, when necessary for

the protection of an area for the safety and welfare of persons and property, by posting of appropriate signs.

2. Permitted activities:

a. The following activities are permitted on the trail system: walking, jogging, biking, roller skating, in-line skating, skateboarding and cross-country skiing.

3. Dogs, cats and pets:

a. Dogs, cats and other pets are prohibited on the trail system unless they are crated, caged, or on a leash of no more than six feet in length.

b. Dogs, cats or other pets running at large and observed in the act of killing, injuring or molesting humans or wildlife may be disposed of by any city employee or law enforcement officer, in the interest of public safety and the protection of wildlife.

c. All equestrian activity is prohibited on the trail area without prior written authorization by the City.

4. Other livestock:

a. Grazing or ranging domestic animals or poultry is prohibited without prior written authorization by the City.

5. Motorized vehicles:

a. All motorized vehicles shall be prohibited on the trail area except wheelchairs operated by the mobility impaired, emergency vehicles and equipment, and city maintenance or school vehicles.

6. Intoxication; consumption of alcohol:

a. Consumption and/or possession of alcoholic beverages within the trail system owned and operated by the City is prohibited.

7. Disorderly conduct:

a. Disorderly conduct, as defined in the Nebraska state statutes, is prohibited.

8. Traffic (trail users):

- a. Pedestrians have the right-of-way.
- b. Trail users shall keep to the right and walk or ride in single file, whenever practical.
- c. Trail users shall announce their presence and their intention to pass (on the left side).
- d. Trail users shall pull off to the side of the trail when stopped.
- e. Trail users shall obey all posted signs.
- f. Bikers shall slow to a safe speed when approaching or passing pedestrians.

9. Sanitation:

- a. All garbage, papers, cans, bottles, waste materials, and rubbish of any kind must be deposited in containers designated for the disposal thereof or removed from the area.
- b. Draining or dumping of refuse or wastes from any source within the trail system is prohibited.
- c. Polluting or contaminating in any manner any watershed, water supplies or water used for drinking purposes is prohibited.
- d. Depositing any body waste in or on any portion of the trail or other public structure except into fixtures provided for that purpose is prohibited.
- e. Using city refuse containers or other refuse facilities for dumping household or commercial garbage or trash brought as such from private property is prohibited.

10. Vending:

a. Vending, including mobile vendors, of various goods and services, products and commodities is prohibited.

b. The sale or distribution of printed matter within the trail area without prior written authorization from the City Council or mayor is prohibited, except that printed matter may be personally handed to individuals willing to accept it.

11. Firearms, explosives or fireworks:

a. The use or possession of explosives, firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, and explosive devices of any kind, is prohibited unless in the possession of a federal, state or local law enforcement officer or authorized city employee. Fireworks are also prohibited without written prior authorization by the City.

## 12. Standards:

a. The standards established in these regulations are in furtherance of the preservation and protection of the natural, scenic, historic, pastoral and fish and wildlife values, and provide for the enhancement of the recreational values of the trail area.

b. Use and development of property will be in conformance with applicable federal, state and local laws, regulations and ordinances.

c. Development, improvement, and use of the property will not materially detract from the scenic, natural, historic, pastoral and wildlife values of the area.

d. All new utilities will be underground when feasible.

e. No structures or other improvements will be constructed in or encroaching upon streambeds, banks and floodplains of live or intermittent streams. Streambeds, banks and floodplains will not be disturbed, except as may be necessary to construct, operate and maintain irrigation, fisheries, utilities, roads and similar facilities or improvements. Any such necessary encroachment will avoid impeding water flow, sedimentation of streams, or entrance of deleterious materials into streams.

## SECTION 1-1103: EXCEPTIONS TO REGULATIONS

1. Nothing in the foregoing shall be construed as prohibiting the City or its duly appointed agents or employees from the conduct of their assigned duties in the administration, maintenance and development of areas owned or controlled by the City.

2. In the event of natural disaster, state or national emergency, civil disorder, accident or other situation wherein the conduct of activities otherwise permitted under these regulations may constitute a hazard to the public health, safety or welfare, or inhibit rescue, recovery, post-disaster or development operations, management personnel of the City are herewith specifically empowered and directed to take such measures at their disposal to preserve the public health, safety and welfare and to expedite rescue, recovery and operations to include the temporary suspension of any or all activities contemplated in these regulations or any area or portion of any area owned or controlled by the City and the temporary closure of any such area.

3. The City reserves the right to amend or change the rules and regulations for the trail area as deemed necessary.

(Added October 10, 2005, Ord. No. 317)



## ARTICLE XII - PENAL PROVISION

### SECTION 1-1201: VIOLATION; PENALTY

Anyone violating any of the terms and conditions of any of the foregoing chapters and articles shall be deemed guilty of a misdemeanor and shall be fined in a sum of not more than \$500.00 for each offense, recoverable with costs, or by imprisonment in the county jail for a term not to exceed 30 days. Each day such violation continues may be considered a separate offense.

## CHAPTER II MISDEMEANORS

### ARTICLE I - MISDEMEANORS

- 2-101 DISTURBING THE PEACE
- 2-102 DISCHARGE OF SLINGSHOTS, PAINTBALL GUNS, BLOW  
GUNS, AIR RIFLES OR SIMILAR INSTRUMENTS
- 2-103 LITTERING
- 2-104 TRASH
- 2-105 APPLIANCES IN YARD
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**CHAPTER II MISDEMEANORS**

ARTICLE I - MISDEMEANORS

SECTION 2-101: DISTURBING THE PEACE

It shall be unlawful for any person to disturb the peace and quiet of any person, family, neighborhood or public assembly by making loud or boisterous noise.

SECTION 2-102: DISCHARGE OF SLINGSHOTS, PAINTBALL GUNS, BLOW GUNS, AIR RIFLES OR SIMILAR INSTRUMENTS

It shall be unlawful for any person to discharge a slingshot, paint ball gun, blow gun, air rifle, an arrow from a bow, or other like instruments capable of launching a dangerous projectile therefrom at any time or under any circumstances within the City or within a one-half mile radius of the City where the projectile from the piece could reach the city limits of the City. Nothing herein shall be construed to apply to officially sanctioned public celebrations if the person so discharging the firearm has written permission from the City Council, nor shall such provision apply to the discharge of firearms at a cemetery to honor a military veteran. (Repeals Ordinance 253)

#### SECTION 2-103: LITTERING

Any person who deposits, throws, discards or otherwise disposes of any litter on any public or private property or in any waters commits the offense of littering unless:

1. Such property is in 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
2. The litter is placed in a receptacle or container installed on such property for such purpose.

The word "litter" as used in this section shall mean all waste material susceptible to 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 the material's function or origin.

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. Neb. Rev. Stat. §17-123.01, 28-523)

#### SECTION 2-104: TRASH

It shall be unlawful for any person to willfully, maliciously or negligently place or throw upon the premises of another any filth, garbage, leaves, papers or other matter.  
(Ref. Neb. Rev. Stat. §28-523)

#### SECTION 2-105: APPLIANCES IN YARD

It shall be unlawful for any person to permit any household appliance to be stored in the open on private or public property.  
(Ref. Neb. Rev. Stat. §18-1720)

#### SECTION 2-106: OBSTRUCTION OF PUBLIC WAYS

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

#### SECTION 2-107: OBSTRUCTING WATER FLOW

It shall be unlawful for any person to stop or obstruct the passage of water in a street gutter, culvert, water pipe or hydrant.

### ARTICLE II - CURFEW

#### SECTION 2-201: CURFEW HOURS

It shall be unlawful for any person under the age of 18 years to loiter, idle, wander, stroll, play or be in or upon the public streets, public places and public buildings, places of amusement and entertainment, vacant buildings, vacant lots or otherwise operate any bicycle or other vehicle, in, upon, over or through the streets of other public places of the City between the hours of 10:00 P.M. of any day until the hour of 6:00 A.M. the next day, unless such person is accompanied by a parent, guardian or other adult person having the legal care and custody of said minor person or unless the minor person

is upon an emergency errand or legitimate business directed by his/her parents, guardian or legal custodian, except as hereinafter provided.

#### SECTION 2-202: CURFEW HOURS EXTENDED

Nothing herein contained shall prohibit said minor persons from attending special school functions or adult supervised entertainment conducted by any school, church or fraternal organization which continue beyond the curfew hours as set out in Section 2-201 above. In all such cases the hours herein prohibited shall be extended for those minors attending said special social function or entertainment one hour after the closing of said special function.

#### SECTION 2-203: VIOLATION; PARENTAL LIABILITY

It shall be unlawful for the parent, guardian or other adult person having the care and custody of minors under the age of 18 years to allow or permit said minor person to do any of the acts or things prohibited by Section 2-201 or 2-202.

#### SECTION 2-204: ENFORCEMENT; POLICE AUTHORIZATION

Every member of the police force while on duty shall be authorized to detain any such minor willfully violating the provisions of this ordinance, and upon apprehension of said minor shall forthwith notify by telephone or other appropriate means the parents or legal guardians or person in custody of said minor child.

#### SECTION 2-205: PENALTIES

Any violation of the foregoing provisions of this article shall constitute a misdemeanor and shall be punishable by a warning for the first offense and a fine of \$10.00 for the second offense. A third and any subsequent violation shall constitute a violation of Section 2-203 and a complaint shall be filed against the parents of said child for violation of such section. (Ordinance 278)

### ARTICLE III – DOGS AND CATS

#### SECTION 2-301: DEFINITIONS

When used in this ordinance, the following words and phrases have the following meanings:

*At large:* A dog or cat shall be deemed to be at large, running at large or permitted to run at large when it is off or away from the premises of the owner, possessor or keeper, or when the dog or cat is not in a receptacle or enclosed automobile or on a leash, chain or cord.



*City:* The area within the corporate limits and within one mile of the corporate limits of the City of Bennington.

*Dog:* A canine animal.

*Cat:* A feline animal.

*Owner:* Any person who owns, keeps, possesses or harbors a dog or cat.

#### SECTION 2-302: RUNNING AT LARGE

It shall be unlawful for any person who owns, keeps or harbors any dog or cat to allow the same to run at large in or upon the private premises of others or upon the streets, highways and other public places of the City.

#### SECTION 2-303: RESTRAINT

It shall be the duty of every owner to keep a dog or cat restrained by a leash, chain or cord or otherwise confined in or upon the owner's premises in same enclosure.

#### SECTION 2-304: IMPOUNDMENT

Any dog or cat which is at large may be impounded by a person or persons appointed by the City Council of the City of Bennington.

#### SECTION 2-305: DISTURBANCE OF THE PEACE

No person shall own, keep, harbor, maintain or permit on any parcel of land or premises under his/her control any dog or cat which by loud, continued or frequent barking, howling or yelping, shall annoy or disturb the peace and comfort of the inhabitants of any neighborhood or interfere with any person or persons in the reasonable and comfortable enjoyment of life or property; provided, however, this section shall not apply to a veterinary clinic or medical laboratory.

#### SECTION 2-306: DOG LICENSES AND RABIES VACCINATION CERTIFICATE REQUIRED

No person shall keep, own or harbor any dog in the City unless a license has been obtained from the City office. A certificate that the dog has had a rabies shot pursuant to Neb. Rev. Stat. §§ 71-4401 through 71-4412, 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 presented. The initial license fee for each neutered male dog or spayed female dog is \$20.00, and the fee for each intact male or female dog is \$25.00.

After the initial license is obtained, each dog shall be licensed annually. If the annual license is obtained before June 1 of the subsequent year, the fee for the dog shall be as specified above. If the annual renewal license is obtained after June 1, then the fee for each neutered male dog or spayed female dog shall be \$30.00, and the fee for each intact male or female dog shall be \$35.00.

Every service dog as defined by Neb Rev. Stat. § 49-801(19) as amended, shall be licensed as specified herein, but no license fee shall be charged. Upon the retirement or discontinuance of the dog as a service dog, the owner of the dog shall be liable for the payment of the license fee as specified herein.

Licenses shall not be transferable and no refund shall be allowed in the case of death, sale, or other disposition of the licensed dog. (Ordinance 313; Amended October 12, 2009, Ord. No. 388)

#### SECTION 2-307: DOG TAGS

Upon receiving a tag for a dog under the provisions of this ordinance, it shall be the duty of the owner to attach the tag to a collar or harness, which shall be worn by the dog at all times. If a dog is found without a tag, then the City may, in its discretion, appoint a person to impound the dog.

#### SECTION 2-308: PAYMENT OF IMPOUNDMENT FEES

Persons appointed by the City Council to impound dogs or cats are authorized to take any dog or cat to the Humane Society for holding purposes of five calendar days. The charges of the Humane Society, which may change from time to time, must be paid by the owner of such dog or cat before it is released. The amount charged by the Humane Society shall be paid to the city office during normal office hours by the owner of the dog or cat. Written permission shall then be given to the owner to retrieve the animal from the Humane Society.

#### SECTION 2-309: CAT LICENSES AND RABIES VACCINATION CERTIFICATE REQUIRED

No person shall own, keep or harbor any cat in the City unless a license has been obtained from the City office. Each cat shall be licensed after it attains the age of two months or within 30 days of acquisition by the owner. A certificate that the cat has had a rabies shot pursuant to Neb. Rev. Stat. §§ 71-4401 through 71-4412, 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 presented. The initial license fee for each neutered male cat or spayed female cat is \$12.00, and the fee for each intact male or female cat is \$15.00.

After the initial license is obtained, each cat shall be licensed annually. If the annual license is obtained before June 1 of the subsequent year, the fee for the cat shall be as specified above. If the annual renewal license is obtained after June 1, then the fee for each neutered male cat or spayed female cat shall be \$24.00, and the fee for each intact male or female cat shall be \$30.00.

Licenses shall not be transferable and no refund shall be allowed in the case of death, sale, or other disposition of the licensed cat.

#### SECTION 2-310: CATS; COLLAR NOT REQUIRED

A cat is not required to wear a collar; however, the owner of the cat shall make every effort to identify the cat as having been licensed and registered as provided by this ordinance.

### ARTICLE IV – KENNELS AND CATTERIES

#### SECTION 2-401: KENNELS; DEFINED, LICENSE REQUIRED

Every person engaged in the commercial business of buying, selling, breeding or boarding dogs, or who owns, harbors or keeps three or more dogs shall be classified as a kennel and shall obtain an annual license to do so from the City Council. Said license shall be obtained within 30 days of acquisition of said number of dogs and on or before March 15th of each year thereafter. (Ordinance No. 249)

#### SECTION 2-402: CATTERY; DEFINED, LICENSE REQUIRED

Any person engaged in the commercial business of buying, selling, breeding or boarding, or who owns, harbors or keeps three or more cats shall be classified as a commercial cattery and shall obtain a license therefor.

Any person not engaged in the commercial business of breeding, buying, selling or boarding of cats but who boards, buys, sells, keeps or breeds five or more cats shall obtain a license which shall be designated as "noncommercial." Each individual cat shall also be licensed when a noncommercial license is obtained.

Said license shall be obtained within 30 days of acquisition of said number of cats and on or before March 15th of each year thereafter.

#### SECTION 2-403: UNLICENSED KENNELS AND CATTERIES; NUISANCE

It is hereby declared that it is and shall be a nuisance for any person, corporation, partnership or other entity to maintain, keep, conduct or operate any kennel or cattery within the zoning limits of the City without first obtaining a license therefor.

#### SECTION 2-404: LICENSE; APPLICATION FOR

Any person or legal entity seeking a kennel or cattery license shall make written application to the City Council. Such application shall state in detail the following:

1. The name and address of applicant;
2. The name and address of the location of the kennel or cattery;
3. The breed, color, age, number and gender of animals to be held in such kennel; and
4. Such other information as may be required by the City Council; and shall be accompanied by a certificate and fee as described below.

#### SECTION 2-405: CERTIFICATE REQUIRED

In order to obtain a license, the owner of any kennel or cattery shall present to the City Council a certificate stating compliance with all laws and regulations pertaining to dog kennels or catteries from the County Health Department and the Nebraska Humane Society.

Inspection of the premises of a kennel or cattery to determine compliance with this article may be made by an authorized city or health department employee, city officer or agent of the State upon giving reasonable notice.

#### SECTION 2-406: FEES

The fee for a kennel or cattery license shall be \$30.00 per year and shall be paid at the time of making application therefor. In the event an owner fails to acquire a license under the provisions of this article within the time required, he/she shall pay a charge of \$20.00 in addition to the fee required by this article.

#### SECTION 2-407: DENIAL OF LICENSE

No kennel or cattery shall be maintained nor shall a license be issued to a kennel or cattery that creates a nuisance in the immediate neighborhood through noise, odor or unsanitary conditions.

Any person may by affidavit file a complaint of excessive noise, odor or ordinance violation personally with the city clerk, and such complaint may result in the loss of the holder's commercial or noncommercial license.

### ARTICLE V - ANIMALS GENERALLY

#### SECTION 2-501: ANIMALS AND FOWLS BANNED FROM CITY

It shall be unlawful for any person to keep or maintain within the corporate limits any horse, mule, sheep, cow, goat or swine, including Chinese pot-bellied pigs, chickens, turkeys, geese, ducks or other fowls except by written permission of the City Council.  
(Ref. Neb. Rev. Stat. §17-121)

#### SECTION 2-502: CRUELTY; DEFINITIONS

"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.

"Animal" shall mean any vertebrate member of the animal kingdom except man. The term shall not include an uncaptured wild animal.

"Cruelly mistreat" shall mean to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald or otherwise set upon any animal.

"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.

"Humane killing" shall mean the destruction of an animal by a method which causes the animal a minimum of pain and suffering.

"Law enforcement officer" shall mean any member of the Nebraska State Patrol, a county or deputy sheriff, any member of the city police force, or any other public official authorized by the City to enforce state or local animal control laws, rules, regulations and/or ordinances.

(Ref. Neb. Rev. Stat. §28-1008)

#### SECTION 2-503: CRUELTY TO ANIMALS

A person commits cruelty to animals if, except as otherwise authorized by law, he/she intentionally or recklessly:

1. Subjects any animal to cruel mistreatment; or
2. Subjects any animal in his/her custody to cruel neglect; or
3. Abandons any animal; or
4. Kills or injures any animal belonging to another. (Ref. Neb. Rev. Stat. §28-1009)

#### SECTION 2-504: CRUELTY TO ANIMALS; LAW ENFORCEMENT OFFICER; POWERS, IMMUNITY

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.

Any law enforcement officer who has reason to believe than an animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner as prescribed by law.

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. Neb. Rev. Stat. §28-1012)

#### SECTION 2-505: ENCLOSURES

All pens, cages, sheds, yards or any other areas or enclosures for the confinement of 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 neighborhoods in which the said enclosures are located.

#### SECTION 2-506: RUNNING AT LARGE

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 such animal to be ridden, driven or run at large upon any of the public ways or property, or to be tethered or staked out in such a manner so as to allow such animal to reach or pass into a public way or to be upon the property of another within the corporate limits of the City.  
(Ref. Neb. Rev. Stat. §16-235)

#### SECTION 2-507: FOWLS; RUNNING AT LARGE

It shall be unlawful for any person to allow poultry, chickens, turkeys, geese or any other fowls to run at large within the corporate limit, except in enclosed places on private property.  
(Ref. Neb. Rev. Stat. §16-235)

#### SECTION 2-508: WILD ANIMALS

No person shall keep or permit to be kept on his/her property any wild animals except such animals kept for exhibition purposes by circuses and educational institutions.

### ARTICLE VI - WEEDS, JUNK CARS, LITTER AND DANGEROUS BUILDINGS REGULATIONS

#### SECTION 2-601: DEFINITIONS

"Litter" shall include but not be limited to:

1. Trash, rubbish, refuse, garbage, paper, rags and ashes;
2. Wood, plaster, cement, brick or stone building rubble;
3. Grass, leaves and worthless vegetation;

4. Offal and dead animals; and
5. Any machine(s), vehicle(s) or parts of any machine or vehicle which has lost its identity, character, utility or serviceability as such through deterioration, dismantling or the ravages of time, is inoperative or unable to perform its intended functions or is cast off, discarded or thrown away or left as waste, wreckage or junk.

"Weeds" shall include but not be limited to bindweed, puncture bine, leafy spurge, Canada thistle, perennial peppergrass, Russian knapweed, Johnson grass, nodding or musk thistle, quack grass, perennial sow thistle, horse nettle, bowl thistle, buckthorn, hemp plant and ragweed.

"Dangerous building" as used in this article is hereby defined to mean and include:

1. Any building, shed, fence or other structure which is dangerous to the public health because of its condition and which may cause or aid in the spread of disease or injury to the health of its occupants or those of neighboring structures;
2. Any building, shed, fence or other structure which, because of faulty construction, age, lack of proper repair or any other cause, is especially liable to fire and constitutes or creates a fire hazard;
3. Any building, shed, fence or other structure which, by reason of faulty construction or any other cause, is liable to cause injury or damage by collapsing or by a collapse or fall of any part of such structure;
4. Any building, shed, fence or other structure which, because of its condition or because of lack of doors or windows, readily admits birds and animals or is an attraction for children or other persons to enter.

#### SECTION 2-602: PREVENTION OF STAGNANT WATER

The owner or occupant of a lot or piece of ground within the City or its one-mile jurisdiction is required to drain or fill all lots or pieces of ground so as to prevent stagnant water or any other nuisance accumulating thereon.

#### SECTION 2-603: CONTROL OF WEEDS AND GRASSES

The owner or occupant of a lot or piece of ground within the City or its one-mile jurisdiction is required to keep the lot or piece of ground and the adjoining streets and alleys free of any growth of 12 inches or more in height of weeds, grasses or worthless vegetation.

#### SECTION 2-604: LITTER NOT ALLOWED



No owner or occupant of any lot or piece of ground within the City or its one-mile jurisdiction may throw, deposit or allow accumulation of litter on any lot or piece of ground.

#### SECTION 2-605: WEEDS, GRASSES AND LITTER; NUISANCE

It is declared to be a nuisance to permit, allow or maintain any growth of 12 inches or more in height of weeds, grasses or worthless vegetation or to litter or cause litter to be deposited or remain on any lot or piece of ground within the city limits or within its one-mile jurisdiction.

#### SECTION 2-606: NUISANCE; PROCEDURE

If any nuisance is found to exist, the City Council or its duly authorized representative or agent shall give notice to abate and remove such nuisance to the owner or the owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the City Council or fails to comply with the order to abate and remove the nuisance, the City may have such work done and may 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.

#### SECTION 2-607: NUISANCE; REQUEST FOR HEARING

The request for a hearing with the City Council must be given in writing to the city clerk within five days after notice to abate and remove such nuisance is given. Such request shall then be heard by the Council at its next regularly scheduled meeting. If such request for hearing is made to the city clerk, such notice delays abatement until after the hearing at the next regularly scheduled City Council meeting.

#### SECTION 2-608: SPECIAL ASSESSMENT; APPEAL

Any special assessment may be appealed to the District Court by complying with §19-2422 through §19-2425 R.R.S. Nebr. 1943, as amended.

#### SECTION 2-609: DANGEROUS BUILDINGS DEFINED

Any buildings or structures which have any or all of the following defects are hereby declared to be unsafe or dangerous buildings or structures and a public nuisance:

1. Those having walls or other vertical structural members that list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside the middle third of its base;
2. Those showing 33% or more of damage or deterioration of the supporting member or members, exclusive of the foundation;

3. Those with 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. Those 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 of the people of the City;
5. Those which have become 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. Those 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. Those having inadequate facilities for egress in the case of fire or panic, or those having insufficient stairways, elevators, fire escapes, or other means of communication;
8. Those having parts thereof which are so attached that they may fall and injure persons or property;
9. Those that are unsafe, unsanitary, or dangerous to the health, safety, or general welfare of the people of the City because of their condition;
10. Those having been inspected by the County Health Department or a professional engineer appointed by the City of Bennington which are, after inspection, deemed to be in violation of any provision of the Health Department rules and regulations or which are structurally unsafe or unsound as found by the inspection of the professional engineer;
11. Those existing in violation of any provision of this article, any provision of the Fire Prevention Code, any provision of the county health rules and regulations or other applicable provisions of the ordinances of this City, including but not limited to the building code adopted by the City.

## SECTION 2-610: STANDARDS

The following standards shall be followed in substance in determining whether the structure or building should be repaired, vacated, or demolished:

1. If the unsafe or dangerous building or structure can reasonably be repaired so that it will no longer exist in violation of any of the terms or provisions of this article, it shall be ordered to be repaired.

2. If the unsafe or 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 an unsafe or dangerous building or structure cannot be repaired so that it will no longer exist in violation of the terms or provisions of this article, it shall be demolished. In all cases where the unsafe or dangerous building is a fire hazard existing or erected in violation of the applicable fire codes and regulations, or any other provision of an ordinance of this city, or statute of the state, it shall be demolished.

## SECTION 2-611: UNSAFE, DANGEROUS BUILDINGS; NUISANCES

All unsafe or dangerous buildings or structures within the terms of this article are hereby declared to be nuisances and shall be repaired, vacated, or demolished as provided above.

## SECTION 2-612: BUILDING INSPECTOR

The building inspector, his/her authorized representatives, county health official, or professional engineer shall, at the direction of the City Council:

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 or unsafe 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 or unsafe building or structure within the terms of this article;
3. Report to the City Council the results of the inspection;
4. Appear at all hearings and testify as to the condition of the unsafe or dangerous building or structure.

## SECTION 2-613: NUISANCE; PROCEDURE

If the building inspector or his/her representatives, the county health official or a professional engineer designated by the City Council finds that a building or structure is unsafe or dangerous and a nuisance, the Council shall:

1. Notify the owner, occupant, lessee, mortgagee, agent or other persons having an interest in the building or structure that it has been found to be an unsafe or dangerous building. The notice will indicate whether the owner must vacate, repair or demolish the building or structure.
2. Set forth in the notice a description of the building or structure deemed unsafe or dangerous, accompanied by a statement of the particulars which make the building or structure unsafe or dangerous and an order requiring the same to be put in such condition as to comply with the terms of this article within such length of time, not exceeding 30 days, as is reasonable;
3. Direct the building inspector to place a sign on the building or structure found to be unsafe or dangerous on its exterior near the main entrance which shall set forth that the building or structure is unsafe or dangerous for occupancy and use.

## SECTION 2-614: FAILURE TO COMPLY

In case any owner, occupant, lessee, mortgagee, agent or other person having an interest in the building or structure shall fail, neglect, or refuse to comply with the notice by or on behalf of the City to repair, rehabilitate or demolish and remove a building or structure which is unsafe or dangerous and a public nuisance, the City may proceed with the work specified in the notice to the property owner. A statement of the cost of such work shall be transmitted to the City Council, which is authorized to levy the cost as a special assessment against the property. Such special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments under Nebraska statutes. Or the City Council may collect the cost from the owner of the property and enforce the collection by civil action in any court of competent jurisdiction.

(Amended 6-11-18, Ord. No. 462)

## SECTION 2-615: DISPUTES

In the event that the owner, occupant, lessee, mortgagee, agent or other person having an interest in the building or structure disagrees with or disputes the information contained in the notice, such person shall notify the city clerk with a written statement that sets forth the reasons for the disagreement or dispute and the relief requested. This written request shall be made within 14 days of mailing of the notice. If written notice is received by the city clerk within 14 days, a hearing shall be held before the City Council at its next regularly scheduled monthly meeting. The clerk shall notify the person requesting the hearing, in writing, of the time, place, and date of the regular monthly meeting and shall place the name of the person on the agenda of such meeting.

The hearing before the City Council shall be shall be informal and not governed by the Nebraska Rules of Evidence. Such hearing shall be quasi-judicial in nature and its decision shall be based on the evidence presented at the hearing. The person requesting the hearing may be represented by legal counsel or other representative, may present witnesses and offer evidence, and may examine and copy, at his/her own expense, and not less than three business days before the hearing, the records of the City regarding the inspection and notice. The City Council need not make a written finding of fact and may make its pronouncement orally at the hearing. The decision of the City Council shall be final unless appealed. Failure of the person to attend the hearing shall relieve the City Council of any further procedures before action is taken as set forth in a notice.

## SECTION 2-616: APPEAL

Any person aggrieved by the decision of the City Council may appeal the decision to the District Court of Douglas County. This appeal shall and must be taken within 30 days of the pronouncement of the Council's decision.

## SECTION 2-617: IMMEDIATE HAZARD

In the event the building constitutes an immediate hazard to the life or safety of any persons and must be demolished to protect their health or safety, the building inspector or

a professional engineer designated by the City Council shall report such facts to the Council, who shall follow the procedures set forth in the statutes of the State of Nebraska. The City, by and through the City Council, may immediately contract for the immediate demolition of the unsafe or dangerous building without requiring bids. The cost of such emergency vacation and demolition of unsafe or dangerous buildings or structures shall be levied, equalized, and assessed, as are other special assessments. (Ordinance 210)

## ARTICLE VII – NOISE GENERATION REGULATIONS

### SECTION 2-701: USE, OCCUPANCY AND PERMITS

Except as otherwise provided herein, no land, building or structure in any zoning district shall be used or occupied in a way that creates excessive noise or vibration, and occupiers and users must conform to the regulations and specifications of this and other sections of this article.

The City may require any person within the city limits to submit an application for a building permit or certificate of occupancy certifying that any proposed use will be and is capable of complying with the applicable performance standards.

#### SECTION 2-702: SPECIFICATIONS

The City hereby adopts the American National Standard, Specification for Sound Level Meters, ANSI S1.4-1971 (R 1976), published by the American National Standards Institute, Inc. The provisions of that standard shall be controlling and shall be the specification for sound level meters within the jurisdictional area of the City.

#### SECTION 2-703: CALIBRATION

The sound level meter shall be maintained at calibration and good working order. A calibration check shall be made of the system at the time of any noise measurement.

#### SECTION 2-704: MEASUREMENT OF NOISE

The following provisions regulate noise generation by any use or occupant within a specific zoning district:

1. *Scale.* All noise measurement shall be measured in units of the frequency-weighted sound level [dB(A)], in accordance with the American National Standards Institute specifications for sound level meters (S1.4-1971).
2. *Point of Measurement.* Sound level measurement for all districts other than residential shall be taken at the boundary line between the zoning district in which the use or occupant is located and the adjacent less-intensive zoning district. Sound level measurements for residential districts shall be taken at the property line of each use or occupant. If the use is located across a public street from a less intensive zoning district, the measurement shall be taken at the front, side or back property line of the use.
3. *Instrument of Measurement.* Measurements shall be made with a sound level meter and octave band filter, maintained at calibration and good working order.

#### SECTION 2-705: MAXIMUM PERMITTED SOUND LEVELS

1. *Sound levels.* Table 1 displays the maximum permitted sound levels generated by uses or occupants in specific zoning districts, taken at the point of measurement set forth in the section above.

Hours of Operation	Zoning District Adjacent to Measured Use		
	Highway	Commercial	
	Commercial	Industrial	Residential
Daytime: 7:00 a.m. to 9:00 p.m.	85dB(A)	70dB(A)	60dB(A)
Nighttime: 9:00 p.m. to 7:00 a.m.	80dB(A)	65dB(A)	55dB(A)

2. *Adjustments.* Maximum permitted sound levels may be adjusted subject to the following conditions.:

- A. The permitted sound level may be exceeded by five dB(A) for a cumulative period not to exceed 30 minutes of a given hour during daytime hours.
- B. The permitted sound level may be exceeded by ten dB(A) for a cumulative period not to exceed 15 minutes of a given hour during daytime hours.
- C. If the ambient noise level measurement exceeds the maximum permitted sound level, the maximum permitted sound level shall be increased to equal the ambient noise level.

3. *Exemptions.* The following uses and activities shall not be considered in determining compliance with these standards and shall be exempt from these regulations:

- A. Noises not directly under the direct control of the property user.
- B. Noises emanating from construction and maintenance activities between the hours of 7:00 A.M. and 9:00 P.M.
- C. Noise of safety signals, warning devices or emergency pressure relief valves.
- D. Transient noises from moving sources, including automobiles, trucks, airplanes and railroads.
- E. Activities conducted on public parks or public and private schools.
- F. Occasional outdoor events, provided such events are conducted pursuant to an appropriate license or permit issued by the proper department or agency. Such events may not occur on a recurring schedule.

#### SECTION 2-706: PENALTY

Any person who violates any of the provisions of this article or who violates or fails to comply with any order made thereunder shall be punished by a fine of \$500.00. The imposition of one penalty for any violation shall not excuse or permit it to continue; and all such persons shall be required to correct or remedy such violation within 30 minutes. Continuing violations shall constitute separate offenses.

#### SECTION 2-707: APPEALS

1. *Variance Procedures.* Unless otherwise provided, the owner or operator of any use which violates any performance standards may file an application for a variance to the Zoning Board of Appeals. The applicant shall document all actions taken to comply with these performance standards and shall state the reasons why he/she is unable to come into full compliance.

2. *Criteria for Variances.* In acting upon an application for a variance, the Zoning Board of Appeals shall consider the following criteria:

- A. The degree of nuisance caused by the violation.
- B. The uses of surrounding properties affected by the violation.
- C. The amount of time required to study the violation and increase the level of compliance.
- D. Economic considerations, including an analysis of costs and benefits produced by full compliance.
- E. The health, safety and welfare of the public. (Ordinance 280)



## SECTION 2-801: SCOPE OF ARTICLE VIII

The provisions of this Article VIII shall apply to all outdoor private, residential, and family swimming pools, as herein defined, within the city limits of the City of Bennington.

## SECTION 2-802: PRIVATE SWIMMING POOL DEFINED

Private swimming pool is hereby defined and shall include all in-ground, above-ground, and on-ground outdoor private, residential, and family swimming pools which are used or intended to be used for the purposes of swimming and recreation, solely by the owner or lessee and his or her family, and by his or her guests, invitees, permittees or friends invited to use it without payment of any fee, containing water over twenty-four inches (24") or more in depth, but shall not include covered spas, hot tubs or whirlpools.

## SECTION 2-803: PERMITS REQUIRED; SUBMISSION OF PLANS

Before initial work is commenced on the construction or placement of a private swimming pool, an application for plumbing and building permits, accompanied with one (1) set of construction drawings, one (1) plot plan, and one (1) surveyor's certificate, shall be submitted to the City.

## SECTION 2-804: WATER PURIFICATION TURNOVER CYCLE

The pump, filters, chemical feeders, together with all piping and valves, if applicable, shall be designed to completely treat the entire volume of water in the private swimming pool in eighteen (18) hours or less.

## SECTION 2-805: SETBACK

The walls of any private swimming pool shall be located at least four feet (4') from any lot line, but in no event shall any private swimming pool be located in the front or side yards of any property.

## SECTION 2-806: ENCLOSURE

1. Every in-ground or below grade private swimming pool shall be completely enclosed by a fence or wall not less than five feet seven inches (5'7") in height, which shall be so constructed as not to have openings, holes, or gaps larger than four inches (4") in any dimension except for doors and gates; and if a picket fence is erected or maintained, the horizontal dimension shall not exceed four inches (4"). Above-ground and on-ground private swimming pools shall have a four foot (4') fence. A dwelling or accessory building may be used as part of such enclosure.
2. All gates or door openings through such enclosure shall be equipped with a self-closing and self-latching device located at least forty-five inches (45") above

grade level for keeping the gates or doors securely closed at all times, except that the doors of any dwelling which forms a part of the enclosure need not be so equipped.

#### SECTION 2-807: SAFETY OF SWIMMERS

All reasonable precautions shall be taken to protect the users and swimmers in private swimming pools from injury or accident. Convenient means of ingress and egress shall be provided and water depth and any irregularities of the bottom shall be clearly indicated. Safety appliances such as life buoys life hooks, bamboo poles, or ropes and equipment including first aid kits shall be provided and readily accessible in such private swimming pools.

#### SECTION 2-808: COMMERCIAL ACTIVITIES

Commercial undertakings at a private swimming pool including sales of food, drinks, novelties, or merchandise is hereby prohibited.

#### SECTION 2-809: APPLICATION

The provisions of this Article VIII shall include all private swimming pools, as defined herein, regardless of the date such private swimming pool was constructed or placed on the property and shall be applicable to all persons in possession of land as owner, purchased, lessee, tenant, or licensee upon which is situated such a private swimming pool. (Ordinance 403)

### ARTICLE IX – SEXUAL PREDATOR RESIDENCY RESTRICTIONS

## SECTION 2-901: DEFINITIONS

For the purposes of this Article IX of Chapter II of the City of Bennington Municipal Code, the following words shall have the meanings ascribed to them.

Child care facility means a facility licensed pursuant to the Child Care Licensing Act.

Residence shall mean a place where the person regularly sleeps, where the person has established his/her home, where he/she is habitually present, and to which when he/she departs he/she intends to return. A residence may include more than one location and may be mobile or transitory. Residency may be shown by, among other evidence, receipt of mail at the premises of identification of the premises as a residence on a driver's license, vehicle registration, or other document.

School means a public, private, denominational, or parochial school which meets the requirements for accreditation or approval prescribed in Chapter 79 of the Nebraska Revised Statutes.

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 as amended, and who has victimized a person eighteen years of age or younger.

## Section 2-902: RESIDENCY RESTRICTIONS; PENALTIES; EXCEPTIONS

- A. It is unlawful for any sexual predator to reside within 500 feet from a school or child care facility.
- B. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the residence to the nearest outer boundary line of the school or child care facility.
- C. A person who violates this Section shall be punished as provided in this Chapter II of the Municipal Code.
- D. A person residing within 500 feet of a school or child care facility does not commit a violation of this Section if:
  - 1. The person established such residence prior to the effective date of this Section.
  - 2. The person's place of residence becomes a violation of this Section solely because of annexation into the City.
  - 3. The school or child care facility within 500 feet of the person's residence was established after the person's initial date of residence at that location.
  - 4. The person resides within a prison or a correctional or treatment facility operated by the state or a political subdivision.

## ARTICLE X- PENAL PROVISION

## SECTION 2-1001: VIOLATION; PENALTY

Anyone violating any of the terms and conditions of any of the foregoing chapters and articles shall be deemed guilty of a misdemeanor and shall be fined in a sum of not more than \$500.00 for each offense, recoverable with costs, or by imprisonment in the county jail for a term not to exceed 30 days. Each day such violation continues may be considered a separate offense.

## CHAPTER III            MOTOR VEHICLES

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**CHAPTER III**

**MOTOR VEHICLES**

ARTICLE I - TRAFFIC REGULATIONS

### SECTION 3-101: TRUCK ROUTES

The City Council may, by resolution, designate certain streets as restricted for vehicles weighing in excess of ten tons and it shall be unlawful for persons operating vehicles to travel on streets other than those designated for such vehicles, except to travel to and from their personal residence and/or to pick up or deliver goods, wares, or merchandise. In such an event, the operator of such vehicle shall return to such truck routes as soon as possible in traveling through or about the City. The City Council shall cause notices to be posted or shall erect signs indicating the streets so designated as restricted routes.

### SECTION 3-102: ENGINE BRAKING

It shall be unlawful for any person within the city limits of the City to make or cause to be made loud or disturbing noises with any mechanical device operated by compressed air and used for purposes of assisting braking on any semi-tractor; provided, however, it shall be permitted to use engine brakes in an emergency situation. Proper notices shall be posted by the City notifying the public of such prohibition. (Repeals Ordinance 296)

### SECTION 3-103: DRIVING IN SIDEWALK SPACE

No motor vehicle, including motorcycles or scooters, shall be driven on any sidewalk or within any sidewalk space except (A) on a permanent or temporary driveway and (B) for snow removal purposes.  
(Ref. Neb. Rev. Stat. §60-6,178)

### SECTION 3-104: SIGNS, SIGNALS

The City Council may, by resolution, provide for the placing of stop signs, restricted parking signs or other signs, signals, standards or mechanical devices in any street or alley for the purpose of regulating or prohibiting traffic and parking 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. The placement of such regulatory sign shall be prima facie evidence of the restricting resolution.

### SECTION 3-105: SPEED LIMITS; GENERALLY

No person shall drive a vehicle on any street at a speed greater than is reasonable and prudent under the conditions then existing, nor at a rate of speed such as to endanger life and limb of any person, nor in any case in any residential district within said city at a speed greater than 25 miles per hour. No person shall drive a vehicle at a rate of speed greater than 20 miles per hour in the business district. No person shall operate a motor vehicle within the city limits at a speed greater than is reasonable and proper, having regard for the traffic, use and condition of the streets, or at such speeds as to endanger the life, limb or property of any person. Such speed limits shall be indicated by appropriate posted signs.

#### SECTION 3-106: SPEED LIMITS; NEAR SCHOOL

It shall be unlawful for the driver of any vehicle, when passing premises on which school buildings are located and which are used for school purposes, during school recess or while children are going to or leaving school during the opening or closing hours, to drive such vehicle at a rate of speed in excess of 20 miles per hour past such premises, and such driver shall stop at all stop signs located at or near such school premises.  
(Ref. Neb. Rev. Stat. §60-6,190)

#### SECTION 3-107: SPEED LIMITS; SPECIFICALLY

No person shall operate a motor vehicle on, over or upon that section of 156th Street from the south city limits to the north city limits at a rate of speed greater than 25 miles per hour.

#### SECTION 3-107A: SPEED LIMITS; SPECIFICALLY STATE HIGHWAY N-36 WITHIN THE CORPORATE LIMITS

The speed limit for the portion of State Highway N-36 within the corporate limits of the City of Bennington, specifically the portion of State Highway N-36 from approximately 1600 feet west of 160<sup>th</sup> Avenue to approximately 850 feet east of Ashwood Drive, is hereby set and established at 55 miles per hour, and no person shall operate a motor vehicle on, over or upon said portion of State Highway N-36 at a rate of speed greater than 55 miles per hour.  
(Amended 5-11-18, Ord. No. 455)

#### SECTION 3-108: GLASS; POINTED OBJECTS

No person shall throw, cast, lay or place upon any street any thorns, nails, tacks, glass, bottles, window glass or other articles made of or containing glass. In case of an accident causing the breaking of any glass upon any street, the owner or person in charge of such glass or the person responsible for such breakage shall at once remove or cause the same to be removed from the street.

#### SECTION 3-109: POLICE; TRAFFIC OFFICERS



The city police may at any time detail officers, to be known as "traffic officers," at street intersections. All traffic officers shall be vested with the authority to regulate and control traffic at the intersections to which they are assigned. It shall be their duty to direct the movement of traffic and prevent congestion and accidents.

It shall be unlawful for any person to violate any order or signal of any such traffic officer, notwithstanding the directive of a stop sign or signal device which may have been placed at any such intersection.

#### SECTION 3-110: LOADS; SPILLING

No person, company, corporation or entity shall transport any sand, gravel, rock or refuse in any motor vehicle on any street, alley, highway or roadway within the jurisdictional limits of the City if such materials protrude above the sides of that part of the vehicle in which it is being transported unless such material is enclosed or completely covered with canvas or similar covering. No vehicle shall be driven or moved on any street, alley, roadway or highway within the jurisdictional limits of the City unless such vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom. (Ordinance 211)

#### SECTION 3-111: ENFORCEMENT; PENALTY

It shall be the duty of the city police officers to enforce the provisions of this article. Any persons violating the provisions of Section 3-101 through 3-110 shall, upon conviction, be fined not less than \$100.00 nor more than \$500.00.

## ARTICLE II - ABANDONED VEHICLES

## SECTION 3-201: ABANDONED AND TRESPASSING VEHICLES PROHIBITED

No person, firm, partnership, association, corporation or organization of any kind shall abandon any vehicle, as defined by Neb. Rev. Stat. § 60-1901, within the City. A motor vehicle shall be deemed to be an abandoned vehicle if left unattended:

1. With no license plates or valid In Transit stickers issued pursuant to the Motor Vehicle Registration Act affixed thereto, for more than six hours on any public property;
2. For more than 24 hours on any public property, except a portion thereof on which parking is legally permitted;
3. For more than 48 hours, after the parking of such vehicle shall have become illegal if left on a portion of any public property on which parking is legally permitted;
4. For more than seven days on private property if left initially without the permission of the owner, or after permission of the owner is terminated.
5. For more than thirty days in the custody of the City law enforcement agency after the agency has sent a letter to the last-registered owner per Neb. Rev. Stat. § 60-1903.01.
6. If removed from private property by the City law enforcement agency as a trespassing vehicle pursuant to this article. No person in charge or control of any private property, whether as owner, tenant, occupant, lessee or otherwise, shall allow any partially dismantled, non-operating, wrecked, junked or discarded vehicle to remain on such property longer than seven continuous days. Any vehicle described in this paragraph shall be deemed to be an abandoned vehicle for purposes of this article.

For purposes of this article, "public property" shall mean any public right of way, street, highway, alley, park or other City, state or county owned property, and "private property" shall mean any privately owned property which is not included within the definition of public property.

Vehicles in an enclosed building, appropriate storage pound or depository licensed by the City or owned and being restored or repaired, with satisfactory progress being shown by the controller of the real property where said vehicle is located, are specifically excluded from this section. This article shall not apply to the premises for which a permit to operate a junkyard has been obtained, nor shall it apply to any vehicles with no license plates or valid In Transit stickers on the premises where a licensed motor vehicle dealer or a farm implement dealer conducts a business. It shall not apply to racing vehicles which are stored on licensed trailers.

“Trespassing vehicles” are any vehicle that is parked without permission on private property that is not typically made available for public parking. The City law enforcement agency is authorized to remove a trespassing vehicle from private property upon the request of the private property owner on whose property the vehicle is located and upon information indicating that the vehicle is a trespassing vehicle. After removal, the agency shall follow the procedures in this article.

A private property owner is authorized to remove or cause the removal of an abandoned or trespassing vehicle from such property and may contact a private towing service for such removal. A private towing service that tows the vehicle shall notify, within 24 hours, the designated law enforcement agency in the jurisdiction from which the vehicle is removed and provide the registration plate number, the vehicle identification number, if available, the make, model, and color of the vehicle, and the name of the private towing service and the location, if applicable, where the private towing service is storing the vehicle. A vehicle towed away under this subsection is subject to Neb. Rev. Stat. §§ 52-604.01 to 52-605 and 60-2410 by the private towing service that towed the vehicle. (Amended 6-8-20, Ord. No. 487)

#### SECTION 3-202: ENFORCEMENT

The city code enforcement officer shall remove or cause to be removed any abandoned vehicle. Such vehicle shall be impounded until lawfully claimed or disposed of, as provided in Section 3-204 hereafter; provided, any such abandoned vehicle which is located on private property shall not be removed or impounded until the city code enforcement officer has given written notice of intent to remove said abandoned vehicle five days prior thereto to the property owner upon whose property said abandoned vehicle is located. The code enforcement officer may enter upon private property at all reasonable hours for the purpose of inspecting such abandoned vehicle, posting notice thereon and/or removing or impounding such abandoned vehicle. It shall be unlawful for any person to prevent the city code enforcement officer from entering on private property for the purpose of carrying out his/her duties. Neither the owner, lessee nor occupant of the premises from which any abandoned vehicle shall be removed nor the City shall be liable for any loss or damage to such abandoned vehicle which occurs during its removal, while in the possession of the City, or as a result of any subsequent disposition.

#### SECTION 3-203: NOTICE

Except for vehicles automatically becoming the property of the City as set forth in Section 3-205 hereunder, the city code enforcement officer shall make an inquiry concerning the last registered owner of such abandoned vehicle as follows:

1. Abandoned vehicles with license plates affixed – to the jurisdiction which issued said license plates; or
2. Abandoned vehicles with no license plates affixed – to the Department of Motor Vehicles.

The city code enforcement officer shall notify the last registered owner, if any, that the vehicle in question has been recovered as an abandoned vehicle and that, if unclaimed, it will be sold at public auction after five days from the date that such notice was mailed. If the agency described in Subsections 1 or 2 of this section also notifies the city code enforcement officer that a lien or mortgage exists, such notice shall also be sent to the lien holder or mortgagee. Any person claiming such vehicle shall be required to pay the cost of its removal and storage. In the event the owner does not appear within the time prescribed herein, or in the event that the owner cannot be determined, such abandoned vehicle shall be disposed of as hereinafter provided.

(Amended 6-8-20, Ord. No. 487)

#### SECTION 3-204: DISPOSITION

The city code enforcement officer shall sell said abandoned vehicle at public auction to the highest bidder within 60 days from the date that title to an abandoned vehicle is vested in the City as provided for in Section 3-205 hereafter. Such sale and the time and place thereof shall be advertised for one week in a newspaper of general circulation in the City. Any proceeds from the sale of an abandoned vehicle, less any expenses incurred by the City, shall be held by the City without interest for the benefit of the owner or lienholders of such abandoned vehicle for a period of two years. If not claimed within such two-year period, such proceeds shall be paid into the general fund of the City.

(Amended 6-8-20, Ord. No. 487)

#### SECTION 3-205: TRANSFER OF TITLE

If an abandoned vehicle at the time of abandonment has no license plates of the current year or valid In Transit stickers issued pursuant to Neb. Rev. Stat. § 60-376 affixed and is of a wholesome value of \$250.00 or less, taking into consideration the vehicle's condition as determined by the city code enforcement officer, title shall immediately vest in the City and the city enforcement officer is not required to follow Section 3-203 herein. With respect to those abandoned vehicles governed by Section 3-203 herein, title to such vehicles, if unclaimed, shall vest in the City five days from the date the notice referred to therein is mailed or, if the last registered owner cannot be determined, when notice of that fact is received by the city code enforcement officer. Upon the sale of an abandoned vehicle at auction, the City shall furnish the purchaser with the requisite affidavit to provide to the county clerk where the vehicle was last registered that said vehicle was abandoned and became the property of the City prior to the sale.

(Amended 6-8-20, Ord. No. 487)

#### SECTION 3-206: PENAL PROVISIONS

Any person who violates any of the prohibitions or provisions of this article shall be deemed guilty of a misdemeanor. Penalties for such violation shall not exceed \$500.00 and/or imprisonment for a time not to exceed three months, in the discretion of the court.

(Ref. Neb. Rev. Stat. §60-1901 through 60-1911)

## ARTICLE III - PARKING

### SECTION 3-301: DEFINITION

A "vehicle," for purposes of this article, shall be defined to include but not be limited to any motor vehicle, car, motorcycle, boat, recreational vehicle, truck, trailer or other motorized means of transportation by land, sea or air.

### SECTION 3-302: ENFORCEMENT; POLICE CHIEF

It shall be unlawful for any person to do any act forbidden or fail to perform any act required by this article. It shall be the duty of the chief of police and his/her officers to enforce the regulations of this article.

### SECTION 3-303: REFUSAL TO OBEY

It shall be unlawful for any person to refuse or fail to comply with a lawful order or direction of a police officer while performing any duty as set out in this article.

### SECTION 3-304: OWNERSHIP

If any vehicle is found upon any street, highway, alley, or other road or upon any property in violation of any of the provisions of this article regulating the parking of vehicles, the owner or person in whose name such vehicle is registered shall be held prima facie responsible for such violation; or, if the vehicle is not registered, the person in possession of the real property on which the vehicle is located or which abuts the location of the vehicle shall be held to be prima facie responsible for such violation.

### SECTION 3-305: PARKING PROHIBITED

No person shall park a vehicle upon the front, side, or rear yards within a residential area unless such parking has been previously approved by the City Council. Any vehicle parked in violation of this section is hereby declared to be a public nuisance and may be removed as provided in Sections 3-309 through 3-315.

### SECTION 3-306: PARKING PROHIBITED; EXCEPTIONS

No person shall park a vehicle on any front, side or rear yard on residential property or on any other property wherein such use is not permitted under Ordinance 283, or upon any driveway, public street or off-street parking except where permitted under Ordinance 283, for the purpose of repairing or dismantling such vehicle. Any vehicle parked in violation of this section is hereby declared to be a public nuisance and may be removed as provided in Sections 3-309 through 3-315. This section also includes any vehicle which is registered or licensed but not operable at the time so parked, i.e. not capable of moving or being moved without intervention of external sources or forces. This

section is not meant to preclude a property owner or owner of a vehicle from parking such vehicle within a closed garage area for the purpose of storage during the time such is inoperable or for the purpose of repairing or dismantling such vehicle.

#### SECTION 3-307: PROHIBITED PARKING; NUISANCE

It shall be unlawful to park on the public streets in the City:

- (1) Any vehicle without current annual license plates and registration.
- (2) Any licensed and registered vehicle continuously in one place in the same block on any street for a period in excess of 48 hours.
- (3) Notwithstanding technical compliance with Subsection 3-307(2) via movement of a vehicle every 48 hours or less for a few feet, no licensed and registered vehicle shall be continuously parked in the same block and street and not used for travel, so as to constitute storage of a vehicle on a public street.
- (4) Any detached boat trailer, camping trailer, truck trailer, utility trailer, horse trailer, or other trailers, except when the owner or operator is performing a service for an adjacent or abutting property owner and the location of the detached trailer does not impede traffic.
- (5) Any semi-truck or any truck with an attached trailer which exceeds seven feet in width or 21 feet in length, except when being used for delivering or collecting goods, merchandise, materials or passengers and the driver is present, or when being used in connection with building, repair, service or moving operations. Any vehicle parked in violation of the Section is hereby declared to be a public nuisance and may be removed as provided in Sections 3-309 through 3-314.

(Amended 12-11-17, Ord. No. 454)

#### SECTION 3-308: TIME LIMIT; PEDDLING

It shall be unlawful for any person to park, place or keep a vehicle longer than 30 minutes in one block for the purpose of selling merchandise contained in such vehicle.

#### SECTION 3-309: VIOLATION; NOTICE

The parking of a vehicle in violation of any applicable provision of this article is hereby declared to constitute a violation of the public health, safety and welfare and is declared a public nuisance.

#### SECTION 3-310: NOTICE AND ABATEMENT

The members of the City Police Division shall affix a Notice of Nuisance and Order of Abatement on any vehicle found in violation of any applicable provision of this article. Such notice shall order the abatement of such nuisance within the time stated therein.

The person in possession or the owner of the vehicle coming under the provisions of this article shall abate the nuisance within the time provided in the Notice of Nuisance

and Order of Abatement. If the person in possession or owner of such vehicle is unable for any reason to abate such nuisance within the time provided or desires to challenge the Notice and Order to abate, he/she shall request in writing to the city clerk that he/she desires to be heard at the next regularly scheduled meeting of the City Council to give reasons why the nuisance should not be removed. This request must be given to the city clerk within five days after the Notice and Order to abate is affixed to the nuisance. Such request shall then be heard by the City Council at the next regularly scheduled City Council meeting. If such request for hearing is made to the city clerk, the clerk shall inform the chief of police to delay abatement until after the hearing at the next regularly scheduled City Council meeting. If no request for hearing is made, the chief of police shall abate said nuisance after the time for abatement has run and if the nuisance persists by instructing a towing company to tow the nuisance.

If a person in possession or owner of a vehicle is aggrieved by the decision of the City Council, then such person shall appeal to the District Court of Douglas County. During the pendency of such appeal, the chief of police shall not abate said nuisance.

Each separate period of time that a vehicle is found to be in violation of any applicable provision of this article shall constitute a separate and distinct nuisance, and a separate and distinct notice shall be affixed to such vehicle for such period of time.

#### SECTION 3-311: VIOLATION; REMOVAL OF VEHICLE

Whenever any vehicle violates any provisions of this article, the same shall be removed by a police officer by instructing a towing company to tow the nuisance to a garage or lot designated by the City Council for such purpose.

#### SECTION 3-312: TOWING FEES AND COSTS

A vehicle towed to a garage or lot under the provisions of the previous section of this article shall not be released from the garage or lot except on payment of the cost of towing, daily storage and any other administrative costs incurred by the City. Payment shall be made to the person in charge of such garage or lot by the owner or person in possession of the vehicle. A receipt for such fees shall be issued to the owner or person in possession of such vehicle.

#### SECTION 3-313: TOWING; RECORDS

It shall be the duty of the person in charge of the garage or lot to which a vehicle is towed under the provisions of this article to keep a record of the names of the owners of all vehicles towed to the garage or lot, together with the registration number of each vehicle, the nature and circumstances of each violation and the amount of fees collected under the provisions of this article. Such person shall deliver a report of each week's transactions to the chief of police by Friday of each week.

## SECTION 3-314: TOWING; FEES; PROTEST

When the owner or person in possession of any vehicle towed to a garage or lot protests to the person in charge of the garage or lot against the payment of fees as provided for by this article, the person in charge shall, upon payment of the fees, issue a receipt therefor marked "Paid Under Protest." Thereupon it shall be the duty of the owner or operator of the garage or lot to safely keep such fees and report such fact to the mayor, who shall forthwith cause a petition to be filed against the owner or person in possession of such vehicle in the District Court of Douglas County charging such person with causing or contributing to the creation of, or maintenance of, a public nuisance. If, upon trial thereof, such person shall be found not guilty of this offense, it shall be the duty of the operator or owner of the garage or lot to refund to said person the fees so paid by him/her under protest. (Ordinance 192)



## ARTICLE IV – SNOW EMERGENCIES

### SECTION 3-401: DECLARATION OF SNOW EMERGENCY

Whenever by reason of sleet, freezing rain or snowfall, a serious public hazard impairing transportation and the movement of fire, medical and police protection services exists, a snow emergency may be declared by the mayor or mayor's designee, and such snow emergency shall continue until such time as snow removal, spreading of sand or salting operations have been declared completed by the mayor or mayor's designee.

### SECTION 3-402: MAYOR'S AUTHORITY

The mayor or mayor's designee shall have the authority to declare a snow emergency when the conditions in Section 3-401 exist, and also to declare the completion of snow emergency operations.

### SECTION 3-403: ANNOUNCEMENT OF SNOW EMERGENCY

When a snow emergency is declared, the mayor or mayor's designee shall cause an announcement to be made on two or more radio or television stations or other methods of communications whose normal operating range covers the City.

### SECTION 3-404: PARKING DURING SNOW EMERGENCY

After a snow emergency is declared and is in effect, motor vehicles shall only be parked on the streets as follows:

1. On odd-numbered days (for example, January 3, 5, 7, etc.), parking shall only be on the side of the street that has an odd-numbered address (for example, 113, 115, 117 N. Molley, etc.).
2. On even-numbered days (for example, January 2, 4, 6, etc.), parking shall only be on the side of the street that has an even-numbered address (for example, 112, 114, 116 N. Molley, etc.).

The purpose of these requirements is to ensure public safety and to allow for expeditious clearing of snow and ice from streets.

The only exception to these requirements is that vehicles may be stopped in prohibited areas for no longer than three minutes for actual loading or unloading of passengers, or twenty minutes for actual loading or unloading of property, provided the driver remains in the vehicle. "No Parking" signs shall not warrant the issuance of traffic tickets during a snow emergency while persons comply with the requirements of this section.

## SECTION 3-405: VIOLATIONS

Any vehicle parked in violation of this section is declared a nuisance, a danger and an interference with snow emergency operations. The city law enforcement officers have the authority to ticket the registered owner and order the removal of any vehicle parked in violation of this ordinance. Expenses incurred in the ticketing or towing and storage of such vehicle shall be paid by the registered owner.

## ARTICLE V - PENAL PROVISION

### SECTION 3-501: VIOLATION; PENALTY

Anyone violating any of the terms and conditions of any of the foregoing chapter and articles shall be deemed guilty of a misdemeanor and shall be fined in a sum of not more than \$500.00 for each offense, recoverable with costs, or by imprisonment in the county jail for a term not to exceed 30 days. Each day such violation continues may be considered a separate offense.

## ARTICLE VI – GOLF CAR AND UTILITY-TYPE VEHICLES

### SECTION 3-601: GOLF CAR AND UTILITY-TYPE VEHICLES; ALLOWED OPERATION ON CITY STREETS

Golf car vehicles may be operated on streets within the corporate limits of the City if the operation is (i) between sunrise and sunset and (ii) on streets with a posted speed limit of thirty-five miles per hour or less. When operating a golf car vehicle as authorized under this Section, the operator shall not operate such vehicle at a speed in excess of twenty miles per hour. A golf car vehicle shall not be operated at any time on any state or federal highway but may be operated upon such a highway in order to cross a portion of the highway system which intersects a street as directed in Section 3-603 of this Article.

When operating a utility-type vehicle as authorized by this Article, the headlight and tail-light 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.  
(Amended 3-8-21, Ord. No. 496)

### SECTION 3-602: GOLF CAR AND UTILITY-TYPE VEHICLES; OPERATION REQUIREMENTS

Any person operating a golf car vehicle or utility-type vehicle as authorized under this Article shall have a valid Class O operator's license, and the owner of the golf car or utility-type vehicle shall have liability insurance coverage for the golf car or utility-type vehicle. The person operating the golf car or utility-type vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days after such a request. The liability insurance coverage shall be subject to limits, exclusive of interest and costs, as follows: Twenty-five thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.  
(Amended 3-8-21, Ord. No. 496)

### SECTION 3-603: GOLF CAR AND UTILITY-TYPE VEHICLES; HIGHWAY CROSSING

The crossing of a highway shall be permitted by a golf car vehicle only if:

1. The crossing is made only at an intersection of such highway with a City street;
2. The golf car or utility-type vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway; and
3. The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard.

#### SECTION 3-604: GOLF CAR AND UTILITY-TYPE VEHICLES; DEFINED; EXCLUDED VEHICLES

Golf car vehicles means a motorized vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, is designed and manufactured for operation on a golf course for sporting and recreational purposes, and is not being operated within the boundaries of a golf course.

Utility-type vehicle means any motorized off-highway vehicle which is seventy-four inches in width or less, is not more than one-hundred-eighty inches (including the bumper) in length, has a dry weight of two thousand pounds or less, and travels on four or more nonhighway tires.

Excluded from these definitions are motorized vehicles and conveyances commonly referred to as all-terrain vehicles, utility-type vehicles, off-road vehicles, four wheelers, gators, go-carts, miniature vehicles, other low-speed vehicles, and any designed-altered golf car vehicles which have been altered to allow them to travel at a speed greater than twenty miles per hour.

(Amended 3-8-21, Ord. No. 496)

#### SECTION 3-605: GOLF CAR AND UTILITY-TYPE VEHICLES; CITY STREET DEFINED

Street means a public way for the purposes of vehicular travel in the City and includes the entire area within the right-of-way.

#### SECTION 3-606: GOLF CAR AND UTILITY-TYPE VEHICLES; ENFORCEMENT; PENALTY

Any peace officer, including a conservation officer, may enforce the provisions of this Article. Any person convicted of violating any provision of this Article shall be punished by a fine of not more than \$100.00

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## **CHAPTER IV BUSINESS REGULATIONS**

### **ARTICLE I - BUILDING REGULATIONS**

#### **SECTION 4-101: BUILDING INSPECTOR; POWERS AND AUTHORITY**

The City Council has entered into an interlocal agreement with Douglas County, Nebraska to provide building inspection services for the City. The City incorporates herein all the rules, regulations and codes utilized by Douglas County in performing such inspections. Such building inspector shall have the power to issue permits for construction, repairs and alterations within the City and shall have the power and authority to order all work stopped on any construction, repair or alteration which violates any provision prescribed by such rules, regulations and codes as set forth herein.

#### **SECTION 4-102: 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.

#### **SECTION 4-103: BUILDING PERMITS REQUIRED; APPLICATION; VOID PERMITS; SUSPENSION OR REVOCATION**

A. It shall be unlawful to construct or alter any building or structure in the City or the area one mile beyond the corporate limits thereof, without having first procured a written permit from the building inspector. No structural construction shall commence before the building inspector issues a building permit when a permit is required. The applicant for the building permit shall obtain an application from the building inspector or the Douglas County Building Inspection Department and present the completed application and the building plans and specifications to the City building inspector. The building inspector will issue the building permit only when satisfied that the building plans and specifications comply with the applicable building codes. Except as required by the building or zoning codes, an applicant is not required to seek approval from either the Planning Commission or the City Council.

B. The applicant for the building permit is responsible for the application and the building plans and specifications being in compliance with the applicable building and zoning codes. The issuance or granting of a building permit or approval of plans and specifications shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of the building or zoning codes. No permit presuming to give authority to violate or cancel the provisions of the building or zoning codes shall be valid, except insofar as the work or use which it authorizes is lawful. Any building permit issued in error or on the basis of incorrect information supplied, or in violation of any City ordinance or regulation or any of the provisions of the building or zoning codes is void as a matter of law when issued, and the City and/or the building inspector shall not be estopped or prevented from revoking or suspending such a void permit or from cor-



recting the error or from enforcing compliance with the applicable City codes. No vested rights or rights of reliance arise or are bestowed via such a void building permit.

C. The issuance of a building permit based upon plans and specifications shall not prevent the City and/or the building inspector from thereafter requiring the correction of any error in said plans and specifications or from preventing building operations being carried on when in violation of the building or zoning codes or of any other law of the City. The City and/or the building inspector may, in writing, suspend or revoke a building permit issued in error or on the basis of incorrect information supplied, or in violation of any City ordinance or regulation or any of the provisions of the City building or zoning codes.

(Neb. Rev. Stat. §18-1743)(Amended 6-10-19, Ord. No. 479)

#### SECTION 4-104: BUILDING PERMIT; SURVEY REQUIRED

The City shall require a survey prior to the issuance of any building permit, except that accessory buildings of less than 120 square feet shall be exempt from this survey requirement but shall meet all other zoning regulations including all setback regulations. All required surveys shall not be over five years old and shall be performed by a licensed surveyor.

#### SECTION 4-105: BUILDING PERMIT; DUPLICATE TO COUNTY ASSESSOR

Whenever a building permit is issued for the erection, alteration or repair of any building within the City's jurisdiction and the improvement is \$2,500.00 or more, a duplicate of such permit shall be issued to the county assessor.

(Neb. Rev. Stat. §18-1743)(Amended 6-10-19, Ord. No. 479)

#### SECTION 4-106: BUILDING PERMIT; INSPECTION FEES; COLLECTION; SCHEDULE

The application for a building permit shall be accompanied by the required fees as set from time to time by the City Council. The city clerk shall report the collection and the amount of the same to the City Council at its request.

#### SECTION 4-107: BUILDING PERMIT; VARIANCE NOT PERMITTED

It shall be unlawful for any person to whom a permit to construct or repair a building within the corporate limits and zoning jurisdiction of the City is issued, as provided in this article, to vary in any manner from the plans and specifications submitted to the City Council in the construction or repair authorized, so that such construction or repair shall not conform to the ordinances of the City.

#### SECTION 4-108: BUILDING PERMIT; TIME OF INSPECTION

The building inspector, upon notification from the permit holder or his/her agent, shall make the following inspections of the building or structure and shall either approve that

portion of the construction as completed or shall notify the permit holder or his/her agent that the work fails to comply with the requirements of the municipal code:

1. Foundation inspection shall be made after trenches are excavated and the necessary forms erected;
2. Frame inspection shall be made after the roof, framing, fire-blocking and backing is in place and all pipes, chimneys and vents are complete; and
3. Final inspection shall be made after the building is completed and ready for occupancy.

It shall be unlawful for any person to do work or cause work to be done beyond the point indicated in each successive inspection without the written approval of the building inspector.

#### SECTION 4-109: PERMIT LIMITATION

When a permit has been issued, it shall be void under the following conditions:

1. Work shall not have begun within six months of the date thereof; or
2. Construction shall have been discontinued for a period of six months; or
3. Work shall not have been completed within two years from date of issuance.

Before such work can be resumed, a new permit shall be obtained in the same manner and form as an original permit.

#### SECTION 4-110: BOND REQUIREMENT

It shall be the duty of the owner, lessee or tenant intending the destruction of any building or improvement to post a \$10,000.00 cash bond with the city clerk prior to such destruction. This bond will be refunded upon payment of all damages to city property occasioned by such destruction and any cleanup work resulting from such destruction. In the event that a nuisance remains on the building permit site for more than six months after the issuance of the building permit, then the bond shall be forfeited and shall be applied to offset the cleanup by the City.

#### SECTION 4-111: BUILDING WITHOUT PERMIT; NUISANCE

Every building or other structure hereafter erected, remodeled or moved into or within said city without a permit therefor, as herein required, or which is not constructed, remodeled or located in accordance with the permit granted and issued therefor, shall be deemed and considered to be a public nuisance and may be abated or removed by the City at the expense of the owner.

## ARTICLE II - LIQUOR REGULATIONS

### SECTION 4-201: TERMS, DEFINED

Unless the context otherwise requires, the words and phrases defined in Neb. Rev. Stat. §53-103, or as hereafter amended or revised, shall be adopted for the purpose of construing this article; and said words and phrases are hereby incorporated by reference the same as though copied at full length herein.

### SECTION 4-202: LICENSE REQUIRED

No persons shall manufacture for sale, sell, keep for sale, barter or exchange under any pretext any alcoholic liquor within this city unless said person shall have in full force and effect a license therefor as provided by the Nebraska Liquor Control Act as amended. A violation of this section shall constitute a misdemeanor, and any persons convicted of such shall be fined in any sum not to exceed that permitted by Nebraska law and assessed the court costs of prosecution.

(Ref. Neb. Rev. Stat. §53-168.06)

### SECTION 4-203: LICENSE APPLICATION; RETAIL LICENSING STANDARDS

The City Council adopts the following licensing standards and criteria for consideration by the Liquor Control Commission of any applicant for a retail alcoholic liquor license, for the upgrading of a license to sell alcoholic liquor or for the expansion or change in location of the premises, in accordance with the Nebraska Liquor Control Act, Neb. Rev. Stat. §53-132 (3)(a) and Section 7 of LB 911, 89th Legislature, Second Session, 1986:

1. The adequacy of existing law enforcement resources and services in the area.
2. Existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises, potential traffic and parking problems, and the proximity and availability of on-street and off-street parking.
3. Zoning restrictions.
4. Sanitation or sanitary conditions on or about the proposed licensed premises.
5. The existing population and projected growth, both city-wide and within the area to be served.
6. Existing liquor licenses, the class of such licenses and the distance and time of travel to such licenses.
7. The nature and needs of the neighborhood or community where the proposed premises are located as well as its projected growth.

8. Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.  
(Ref. Neb. Rev. Stat. §53-134)

**SECTION 4-204: SALE TO MINORS AND INCOMPETENTS PROHIBITED**

No persons shall within this city sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person who is physically or mentally incapacitated by the consumption of such liquors.

No minor shall have in his/her possession alcoholic liquor in any tavern, public place, street or alley in this city or inside a vehicle while upon any street, alley or public place in this city.

No minor shall obtain or attempt to obtain alcoholic liquor, by misrepresentation of age or any other method, in any tavern or other public place where liquor is sold in this city.  
(Ref. Neb. Rev. Stat. §53-180)

**SECTION 4-205: HOURS OF SALE**

It shall be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the City except during the hours provided herein:

<b><i>Alcoholic Liquors (except Beer and Wine)</i></b>	
Monday through Saturday	
Off Sale	6:00 A.M. to 1:00 A.M.
On Sale	6:00 A.M. to 2:00 A.M.
Sunday	
Off Sale	6:00 A.M. to 1:00 A.M.
On Sale	12:00 Noon to 2:00 A.M.
<b><i>Beer and Wine</i></b>	
Monday through Saturday	
Off Sale	6:00 A.M. to 1:00 A.M.
On Sale	6:00 A.M. to 2:00 A.M.
Sunday	
Off Sale	6:00 A.M. to 1:00 A.M.
On Sale	6:00 A.M. to 2:00 A.M.

No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than 15 minutes after the time fixed herein for stopping such sales on 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. (Ordinance 404)

#### SECTION 4-206: RESTRICTIONS ON PLACE OF CONSUMPTION

No person shall drink or consume alcoholic liquors on any street or alley in this city or inside any vehicle on any street or alley of this city or in any place open to the general public, other than premises having an on-sale liquor license. (Ref. Neb. Rev. Stat. §53-186, 53-186.01)

#### SECTION 4-207: OCCUPATION TAX

There is hereby levied on all businesses in the City which sell alcoholic liquors an annual occupation tax in the following amounts:

1. Each Class "A" Beer On Sale Only License shall be One Hundred Dollars (\$100.00) plus an occupation tax of Two Hundred Dollars (\$200.00) for a total of Three Hundred Dollars (\$300.00)

2. Each Class "B" Beer Off Sale Only License shall be One Hundred Dollars (\$100.00) plus an occupation tax of Two Hundred Dollars (\$200.00) for a total of Three Hundred Dollars (\$300.00)

3. Each Class "C" Retail Liquor License shall be Three Hundred Dollars (\$300.00) plus an occupation tax of Six Hundred Dollars (\$600.00) for a total of Nine Hundred Dollars (\$900.00).

4. Each Class "D" Retail Package Liquor License shall be Two Hundred Dollars (\$200.00) plus an occupation tax of Four Hundred Dollars (\$400.00) for a total of Six Hundred Dollars (\$600.00).

5. Each Class "I" Liquor License shall be Two Hundred and Fifty Dollars (\$250.00) plus an occupation tax of Five Hundred Dollars (\$500.00) for a total of Seven Hundred and Fifty Dollars (\$750.00).

6. Each Special Designated License shall be Forty Dollars (\$40.00) for each day identified in the Special Designated License plus an occupation tax of Eighty Dollars (\$80.00) for each day identified in the Special Designated License. The amount of such liquor license fee and occupation tax set forth above shall be deposited with the city treasurer at the time the application for license is made, whether such application be filed with the city clerk or the Nebraska Liquor Control Commission. The city treasurer shall hold such occupation tax as a trust fund until the application is finally passed on, and if the application is refused and license denied, then the amount thereof shall be returned to the applicant without interest. The license tax year shall commence on May 1 of each year and shall end on April 30th the next succeeding year, except that the license year for a Class "C" license shall commence on November 1<sup>st</sup> of each year and

shall end on the following October 31<sup>st</sup>; provided, during any license year no license shall be issued unless the occupation tax for the full license year shall have been deposited with the city treasurer as provided above, regardless of the time when the application for license shall be made, and no reduction shall be made in the amount of the occupation tax regardless of the time when the application for license shall have been made and regardless of the time when such license is issued. The City Treasurer shall credit such occupation tax fees to the general fund of the City. Upon the failure of any applicant to pay such occupation tax as provided for by this section, it shall be mandatory upon the Mayor and City Council to pass a resolution denying the application for a license or requesting the Liquor Control Commission to deny such application. Such resolution shall state the reason therefore and shall be forwarded to the Nebraska Liquor Control Commission. (Ordinance 322; Amended September 14, 2009, Ord. No. 386)

#### SECTION 4-208: PREREQUISITES TO DELIVERY OF LICENSE

Retail licenses issued or renewed by the Nebraska Liquor Control Commission for licensees within this city shall be delivered to said licensee by the city clerk, but he/she shall not deliver any such license to a licensee who does not exhibit receipts showing the following payments:

1. The occupation tax levied under Section 4-207 of this code;
2. The license fee;
3. The publication fee for giving notice of the hearing before the City Council on any application for license; and
4. The publication fee of the automatic renewal notice provided for in this code, if a renewal.

#### SECTION 4-209: ACTION ON APPLICATION FOR LICENSE

Upon receipt from the Nebraska Liquor Control Commission of the notice and copy of the application provided for in Neb. Rev. Stat. §53-131, the city clerk shall present it at the next meeting of the mayor and the City Council, who shall, by resolution, fix a time and place at which a hearing will be had and evidence taken under oath from any person desiring to be heard on the propriety of the issuance of the license in question.

Notice of the time and place of such hearing shall be published in a legal newspaper in this city one time, not less than three nor more than seven days before the time of hearing. The hearing shall be held not more than 21 days after the date of receipt of the notice and copy of the application by the city clerk. After said hearing, the mayor and City Council shall, by resolution, spread at large in the minute record of their proceedings, recommend either the issuance or the refusal of said license. The city clerk shall thereupon mail to the Nebraska Liquor Control Commission by first class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice. (Ref. Neb. Rev. Stat. §53-131, 53-132, 53-134)

## SECTION 4-210: RENEWAL OF LICENSE

The city clerk shall cause to be published in a legal newspaper in this city one time between January 10th and January 30th of each year, individual notice of the right of automatic renewal of each retail liquor and beer license for which provisions are made in Neb. Rev. Stat. §53-124(5), R.R.S. Neb. 1943 in the following form:

### NOTICE OF RENEWAL OF RETAIL LIQUOR LICENSE

Notice is hereby given that pursuant to Section 53-135.01, the liquor license may be automatically renewed for one year from May 1, 20\_\_\_\_, for the following retail liquor licensee, to-wit:

(Name of Licensee)  
(Address of licensed premises)

Notice is hereby given that a written protest to the issuance of automatic renewal of license may be filed by any resident of the City of Bennington on or before February 10, 20\_\_\_\_, in the office of the city clerk; that in the event protests are filed by three or more such persons, hearing will be had to determine whether continuation of said license should be allowed.

(NAME)  
(CITY CLERK)

The city clerk shall file or cause to be filed with the Nebraska Liquor Control Commission proof of publication of said notices on or before February 6th of each year.

## SECTION 4-211: PROTESTS AGAINST RENEWAL

In the event written protests are filed with the city clerk by three or more residents of this city against the automatic renewal of a license, the city clerk shall present the same to the mayor and City Council at their next meeting and they shall thereupon, by resolution, direct the licensee to submit an application in the same manner as he/she would be required to do for an original license, and the city police chief shall forthwith serve said resolution on said licensee by delivering to him/her personally a true and certified copy thereof. Upon receipt by the city clerk from the Nebraska Liquor Control Commission of the notice and copy of application, the same procedure shall be followed as is provided for in the case of an application for an original license.

## SECTION 4-212: CATERING LICENSE

The holder of a Class C, Class D, or Class I license issued under subsection (5) of Section 53-124 R.R.S. Neb., or a brewpub license, may obtain an annual catering license as prescribed in this section. Any such licensee desiring to obtain a catering license shall file an application with the Liquor Control Commission.

Upon receipt from the Commission of the notice and copy of the application as provided in Section 53-124.12 R.R.S. Neb., the City Council shall fix a time and place at which a hearing will be held and at which time the City Council shall receive evidence, under oath, either orally or in writing, from the applicant and any other person concerning the propriety of the issuance of such license. Such hearing shall be held not more than 45 days after the receipt of the notice from the Commission. The City Council may examine, or cause to be examined, under oath, any applicant; examine, or cause to be examined, the books and records of any such applicant; to hear testimony; and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the City Council may authorize its agent, the city clerk or the city attorney, to act on its behalf.

Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in the City one time not less than seven nor more than 14 days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the City Council in support of or in protest against the issuance of such license may do so at the time of the hearing.

The City Council shall, after the hearing provided in subsection (2), approve or deny the application within 45 days of receipt of such application from the Commission, and shall cause to be spread at large in the minute record of its proceedings a resolution approving or denying such application. The city clerk shall thereupon mail or deliver to the Commission a copy of the decision to approve or deny the application.

Any resolution denying an application rendered by the City Council shall be in writing or stated in the record and shall be accompanied by findings. The findings shall consist of concise statements of the conclusions upon each contested issue. The applicant shall be notified of the decision in person or by mail. The City Council, with respect to catering licensees within its corporate limits, may cancel a catering license for cause for the remainder of the period for which such license is issued. Any person whose catering license is canceled may appeal to the District Court.

(Ref. Neb. Rev. Stat. §53-124.12)

#### SECTION 4-213: SALE, DISTRIBUTION AND DISPLAY OF TOBACCO PRODUCTS

It shall be unlawful, within the corporate limits of the City of Bennington, to:

1. Sell, permit to be sold, or offer for sale tobacco or tobacco products in any form except original factory-wrapped packages, or individual cigarettes.
2. Give away, hand out, or otherwise distribute free samples of tobacco or tobacco products, or coupons that can be redeemed for free samples of tobacco or tobacco products.



3. Sell, permit to be sold, or offer for sale tobacco or tobacco products by means other than vendor-assisted access, or to display tobacco or tobacco products in a manner allowing customers access to tobacco or tobacco products without vendor assistance, provided, that this subsection shall not prohibit tobacco vending machines that are otherwise permitted pursuant to the immediately following subsection.
4. Tobacco or tobacco products may be dispensed from a vending machine or similar device when such machine or device is located in an area, office, business, plant, or factory which is not open to the general public or on the licensed premises of any establishment having a license issued under the Nebraska Liquor Control Act for the sale of alcoholic liquor for consumption on the premises which such machine or device is located in the same room in which the alcoholic liquor is dispensed. (Ordinance 363)

## ARTICLE III - PEDDLERS

### SECTION 4-301: PEDDLER; DEFINED

The term “peddler” shall include any person traveling by foot, motor vehicle or other type of conveyance from dwelling to dwelling, carrying, conveying or transporting candies, foods, magazines or other merchandise, offering and exposing the same for sale, or making sales and delivering such articles to purchasers, or taking orders for sales for future delivery, whether or not such person has, carries or exposes for sale a sample of the subject of such sale, or whether or not such person is collecting advance payment on such sales, or offering to furnish or perform services to be furnished now or in the future.

The term “peddler” shall also include any person selling candies, foods, magazines or other merchandise from any location within the City unless the sales are conducted within a permanent business establishment which has on file with the city office a current certificate of occupancy permit. A permanent business establishment is not a peddler when it displays merchandise on the site where it is located. The term “peddler” shall also include mobile refreshment trucks and food trucks. (Ordinance 297, Ordinance 502)

### SECTION 4-302: PERMIT REQUIRED

It shall be unlawful for any person to engage in the business as a peddler within the corporate city limits without first having obtained a permit.

### SECTION 4-303: APPLICATION FOR PEDDLER PERMIT

Applications for peddler permits shall be filed with the City Clerk. The following information shall be required:

1. Name, address, date of birth, social security number and photo of applicant.
2. Brief description of the nature of the business and the merchandise to be sold or services to be provided.
3. If employed, the name and address of employer.
4. The length of time (not to exceed one year) for which the right to do business as a peddler is desired.
5. Temporary business location, if applicable.
6. Copy of health department permit, if applicable.
7. Copy of State of Nebraska sales tax permit, if applicable.
8. Photo ID badge, if applicable.
9. Certificate of Insurance (see §4-311).
10. Consent of adjacent businesses, if applicable (see §4-311).
11. Street closing permit obtained from city office and City Council, if applicable (see §4-314).

#### SECTION 4-304: INVESTIGATION AND ISSUANCE OF PERMIT

Upon receipt of an application, the application shall be referred to the city police department, which shall investigate the statements contained on the application and determine if they are true and correct. If, as a result of the investigation, the police department finds that the statements in the application are materially untrue or incorrect, or if it is found that the applicant or its representative has been convicted of a felony or violation of any municipal ordinance or state or federal law involving moral turpitude within the past ten years, the police department shall indicate on the application its disapproval and the reasons for the same. The application shall then be returned to the city clerk, who shall notify the applicant that the application is disapproved and that no permit will be issued.

If the investigation by the police department does not result in disapproval, the application shall be referred to the City Council for review to determine if a permit may be issued. The City Council shall determine, in its discretion, whether a permit may be issued and shall require the applicant to obtain a state sales use tax permit, if applicable, before a permit is issued.

All peddler permits shall be issued by the City Council, and the permit shall show the name and address of the permittee, the kind of goods to be sold or services to be furnished or performed, the date of issuance, the location (if applicable), and the length of time for which the permit is valid. Peddlers going door to door will also be required to obtain a photo identification badge, at their expense, which they shall carry at all times.

#### SECTION 4-305: QUALIFICATIONS OF APPLICATION FOR PERMIT

No permit shall be issued to a person applying for a peddler's permit who is under the age of 16 years unless the applicant first obtains an employment certificate as required by state law.

Any person whose permit has been revoked pursuant to Section 4-317 of this article shall not be eligible for the issuance of a new permit for six months from the date of revocation.

#### SECTION 4-306: PERMITS NONTRANSFERABLE

Permits issued under this article are nontransferable, and no permit shall be used at any time by any person other than the person to whom it was issued.

#### SECTION 4-307: ENFORCEMENT, DUTY OF POLICE

It shall be the duty of the city police department to enforce the provisions of this article. The chief of police shall report all citations and convictions for violations of this article to the City Council.

#### SECTION 4-308: HOURS RESTRICTED

It shall be unlawful to make door-to-door in-person calls as a peddler to prospective customers before 8:00 A.M. or after 6:00 P.M. of any day of the week unless requested to do so by the prospective customer.

#### SECTION 4-309: EXHIBITION OF PERMIT

Peddlers without vehicles or stands shall exhibit their permits at the request of any police officer or city official or at the request of any prospective customer. Peddlers with vehicles or stands shall exhibit their permits so that the permit is readily visible to any police officer, city official or customer without the necessity of a request to see such permit.

#### SECTION 4-310: EXPIRATION OF PERMIT

All permits issued under the provisions of this article shall expire on the date shown on the permit, which is based on the tax paid.

#### SECTION 4-311: CERTIFICATE OF INSURANCE

Any peddler who maintains or uses any display stand on City property or City public street right-of-way for the sale of produce, merchandise, articles or things; or who displays any produce, merchandise, articles or things on City property or City public street right-of-way, shall file with the application a certificate of insurance for property damage and public liability in the amount of \$1,000,000.00 or in an amount otherwise required by the City Council. The certificate of insurance shall specifically include the City as a secondary or additional insured. Additionally, via the application the applicant shall agree:

1. The person to whom the permit is issued, shall hold and keep the City free and harmless from any and all loss, damages or claims for damages arising from or out of the use of the space or structure mentioned;
2. The sidewalk or public way shall be maintained by the permittee so that it is safe for public use after the permitted use is completed;
3. The City shall be indemnified and held harmless from any litigation or damages growing out of the issuance of the permit or anything done under the permit;
4. The permittee shall faithfully perform and observe the requirements imposed by this article;
5. The permittee shall pay any and all taxes or other moneys which may become due pursuant to the issuance of the permit.

(Amended 8-9-21, Ord. No. 502)

## SECTION 4-312: CONSENT OF ADJACENT BUSINESS

If the applicant requests a permit for a stand or display, the applicant shall file with the application a written consent of the property owner or owners of the premises abutting the area where a stand or display will be located.

## SECTION 4-313: OBSTRUCTION OF TRAVEL

The issuance of a permit shall not authorize or permit the location of any stand or display of produce or other merchandise, articles or things in a location that obstructs or interferes with free travel on the sidewalk.

## SECTION 4-314: STREET SHOWS, EXHIBITIONS, FESTIVALS, EVENTS, BLOCK PARTIES, AND STREET CLOSING; PERMIT

Street exhibitions, displays, festivals, events, or block parties may be authorized on the streets and sidewalks of the City when the street show, exhibition, display, festival, event, or block party will not be a public nuisance or endanger the public health, safety and welfare and will be of public interest and benefit the City or neighborhood. Before any permit for such an event may be issued, the application must be approved by the City Council, a street closing permit must be obtained, and a street closing agreement must be executed and filed with the City.

(Modified August 8, 2011, Ord. No. 398)

## SECTION 4-315: STREET SHOWS, EXHIBITIONS, FESTIVALS, EVENTS, BLOCK PARTIES, AND STREET CLOSINGS; PERMIT

1. Any person desiring a permit for a street show, exhibition, display, festival, event, or block party shall make application to the city clerk. The application shall contain:

- A. The names of all participating persons and entities requesting the permit;
- B. The date and hours for which the permit is requested;
- C. The sidewalk and/or street or streets upon which the activity to be permitted shall be conducted;
- D. The purpose for which the permit is to be issued; and
- E. A description of sanitation and other health facilities that will be available to persons attending the event.

2. The application shall be signed by all participants in the activity or by a person duly authorized to sign for them.

(Added August 8, 2005, Ord. No. 315) (Modified August 8, 2011, Ord. No. 398)

## SECTION 4-316: STREET SHOWS, EXHIBITIONS, FESTIVALS, EVENTS, BLOCK PARTIES, AND STREET CLOSINGS; FEES AND CITY COST REIMBURSEMENTS.

The fees and City cost reimbursements for a permit for a street show, exhibition, display, festival, event, or block party shall be as follows:

1. A nonrefundable fee of \$50.00 to cover administrative costs of processing the application;
2. A street use fee of \$10.00 per block per hour for each block or city right-of-way to be closed by reason of the event;
3. A conversion fee of \$100.00 if a street closing requires the City to convert a one-way street to a two-way street or a two-way street to a one-way street; and
4. The cost of City police officers required, if any, to police the area during the event. The cost shall be determined based on the hourly overtime rate of the needed police officers multiplied by the number of police officers and the number of hours required to police the event. This amount shall be determined on a per-event basis with the advice and consent of the chief of police. A minimum amount of \$500.00 shall be required; and if the amount of actual time exceeds the amount paid, then the applicant shall make payment of the excess upon demand.

(Added August 8, 2005, Ord. No. 315)(Modified August 8, 2011, Ord. No. 398)

5. The costs which the City incurs for special services required by the City Attorney, City Engineer, or other City agents or personnel, in conjunction with the event, shall be reimbursed by the applicant to the City. Such costs shall be based on the associated amounts billed to or incurred by the City, and a billing statement therefore shall be sent to the applicant by the City after the conclusion of the event, and the applicant shall make payment thereof to the City within thirty days.

(Added August 8, 2011, Ord. No. 398)

#### SECTION 4-317: STREET SHOWS, EXHIBITIONS, FESTIVALS, EVENTS, BLOCK PARTIES, AND STREET CLOSINGS; APPROVAL

Before any permit shall be issued under the provisions of this article, it shall be approved by the City Council with the advice of the chief of police. The permit may be approved if the City Council finds that:

1. The conduct of the event will not substantially interrupt the safe and orderly movement of other pedestrian or vehicular traffic contiguous to its location;
2. The conduct of the event will not require the diversion of so great a number of city police officers to properly police the area as to prevent normal police protection of the City;
3. The concentration of persons in the area would not unduly interfere with proper fire and police protection of, or ambulance service to and around, such areas;
4. The conduct of the event is not reasonably likely to cause injury to persons or property;
5. Adequate sanitation and other required health facilities are or will be made available in or adjacent to any public assembly areas, at the cost of the applicant;

6. There are sufficient parking places near the site of the event to accommodate the number of vehicles reasonably expected;

7. No permit application for the same time and location has already been granted or has been received and will be granted.

8. No event is scheduled for elsewhere in the City where the police resources required for that event are so great that the deployment of police services for the proposed street show would have an immediate and adverse effect on the welfare and safety of persons and property.

(Added August 8, 2005, Ord. No. 315)

9. The event will not be a public nuisance or endanger the public health, safety, or welfare, and will be the public interest and benefit to the City or neighborhood. (Added August 8, 2011, Ord. No. 389)

10. Main Street on Saturday and Friday nights, shall not be closed or eligible for any event requiring a permit under this article, which is a private or individualized fundraiser, or which is not conducted by a Bennington community organization for community betterment purposes. (Added August 8, 2011, Ord. No. 389)

11. Block parties must be events where all residents on the involved block are invited to attend and welcome to participate. Block parties shall not be allowed for graduation parties, birthday parties, garage sales, private parties, rallies, or similar private events or activities. No more than one permit shall be granted in any calendar year for the same block or blocks. (Added August 8, 2011, Ord. No. 389)

#### SECTION 4-318: STREET SHOWS, EXHIBITIONS, FESTIVALS, EVENTS, BLOCK PARTIES, AND STREET CLOSINGS; CERTIFICATE OF INSURANCE AND STREET CLOSING AGREEMENT

Before a permit to conduct a street show, exhibition, display, festival or block party on the streets and sidewalks may be issued, the applicant requesting the permit for the event shall file with the City a certificate of insurance for property damage and public liability in the amount of \$1,000,000.00, or in amount otherwise required by the City Council, and shall execute and file with the City a street closing agreement.

#### SECTION 4-319: STREET SHOWS, EXHIBITIONS, FESTIVALS, EVENTS, BLOCK PARTIES, AND STREET CLOSINGS; PERMIT EXPIRATION

Permits for street shows, exhibitions, displays, festivals, events, or block parties under the provisions of this article shall be valid for a period not exceeding 24 consecutive hours.. (Added August 8, 2005, Ord. No. 315)(Modified August 8, 2011, Ord. No. 389)

## SECTION 4-320: STREET SHOWS, EXHIBITIONS, FESTIVALS, EVENTS, BLOCK PARTIES, AND STREET CLOSINGS; EXTENSION

Permits for street, exhibitions, displays, festivals, events, or block parties issued under this article may be extended for additional periods not exceeding 24 hours upon application, which application shall be treated and processed as a new application for a permit.

(Added August 8, 2005, Ord. No. 315)(Modified August 8, 2011, Ord. No. 389)

## SECTION 4-321: PERMIT, REVOCATION OF

1. Permits issued under the provisions of this article may be revoked by the City Council after notice and hearing for any reason, including but not limited to:

- A. Fraud, misrepresentation, or false statement contained in the application for permit;
- B. Fraud, misrepresentation, or false statement made in the course of carrying on the permittee's business as a peddler;
- C. Any violation of this article;
- D. Conviction of any felony or violation of any municipal ordinance, state or federal law involving moral turpitude.

2. Notice of the hearing for revocation of the permit shall be given in writing and shall state the grounds of complaint and the time and place of the hearing. The notice of revocation shall be mailed to the permittee at his/her last known address.

## SECTION 4-322: APPEALS

Any person aggrieved by the action of the police department or City Council in denial of an application for a permit as provided in Section 4-304 of this article or in a decision with reference to the revocation of a permit as provided in Section 4-316 shall appeal to the District Court.

## SECTION 4-323: EXCEPTIONS

The provisions of this article shall not apply to:

1. Officers or employees of the City, county, state or federal government or any subdivision thereof when on official business, or in conjunction with any city-sponsored event.
2. Any person selling or offering for sale merchandise or services in conjunction with a charitable solicitation.
3. Any persons canvassing residents within the City for religious, political or other noncommercial purposes.



#### SECTIN 4-324: STREET VENDORS

No person or entity shall sell anything from any wagon, push cart, booth, stall, stand, platform, scale, merchandise machine, or similar structure or device on any street or easement of any street within the City.

#### SECTION 4-325: PEDDLER PERMIT FEES

Before a peddler's permit is issued, the applicant shall pay an occupation tax based on the duration of the permit. The occupation tax shall be:

One week	\$ 50.00
One month	100.00
Six months	600.00
One year	1,000.00

#### SECTION 4-326: FARM AND GARDEN PRODUCE STANDS

The selling of any farm or garden produce or fruits or vegetables grown within this State, from any vehicle, display, or stand in the City shall require a peddler permit and application in accordance with Section 4-303 of this Code, plus a schedule of proposed display dates.

For any such produce sales location on City property or City public street right-of-way, the certificate of insurance and other requirements of Section 4-311 of this Code shall apply and shall be fulfilled by the applicant.

The fees to be paid by the applicants for such peddler permits for produce sales are:

\$10.00 per day or \$100.00 for the entire time period between Memorial Day and Labor Day of each year.

\$5.00 per year for City residents.  
(Amended 8-9-21, Ord. No. 502)

#### SECTION 4-327: PENALTIES

Any violation of any provision or failure to perform any act required of the applicant shall be punished by a fine of an amount not exceeding \$500.00, or by imprisonment not to exceed six months, or both such fine and imprisonment, in the discretion of the court. Each day in any such violation or failure to perform any act shall constitute a separate offense.

(Amended August 8, 2005, Ord. No. 315, Amended 8-9-21, Ord. No. 502)

## ARTICLE IV – LOTTERY

### SECTION 4-401: PARTICIPATION; RESTRICTIONS

No person under 19 years of age shall play or participate in any way in the lottery established and conducted by the City.

Nothing shall prohibit the following persons from playing in the lottery established and conducted by the City Council: (1) any member of the City Council, a municipal official, or the immediate family of such member or official; (2) the lottery operator with whom the City Council contracts to conduct its lottery, or his or her immediate family, employees, or agents; or (3) any person having any ownership interest in a sales outlet location or any employee thereof, provided such persons are nineteen years of age or older.

For purposes of this section, “immediate family” shall mean a person who is related to the member, official, or operator by blood, marriage, or adoption and resides in the same household of the member, official, or operator; or who resides with a member, official, or operator as a dependent for federal income tax purposes.

(Ref. Neb. Rev. Stat. §9-646)

## ARTICLE V – MOVING BUILDINGS

### SECTION 4-501: TERMS DEFINED

"Building" is a structure designated, built or occupied as a shelter or roofed enclosure for persons, animals or property and used for residential, business, mercantile, storage, industrial, institutional, assembly, educational or recreational purposes. A structure with the following dimensions or less shall not fall within this definition: 10 feet wide, 20 feet long, and, when in a position to be moved, 15 feet high.

### SECTION 4-502: PERMIT REQUIRED

No person shall move any building over, along or across any highway, street or alley in the City without first obtaining a permit from the city clerk.

### SECTION 4-503: APPLICATION

Any person seeking issuance of a permit hereunder shall file an application for such permit with the city clerk. Upon approval of the City Council, the city clerk shall then issue the said permit.

1. *Form.* The application shall be made in writing upon forms provided by the city clerk and shall be filed in the office of the city clerk.
2. *Contents.* The application shall set forth:
  - A. A description of the building proposed to be moved, giving street number, construction materials, dimensions, number of rooms and condition of exterior and interior;
  - B. A legal description of the lot from which the building is to be moved, giving the lot, block and tract number, if located in the City.
  - C. A legal description of the lot to which the proposed such building is to be removed, giving lot, block and tract number, if located in the City.
  - D. The portion of the lot to be occupied by the building when moved;
  - E. The highways, streets and alleys over, along or across which the building is proposed to be moved;
  - F. Proposed moving date and hours;

G. Any additional information which the City Council shall find necessary to a fair determination of whether a permit should be issued.

3. *Accompanying Papers.*

A. Tax Certificate. The owner of the building to be moved shall file with the application sufficient evidence that the building and lot from which it is to be removed are free of any encumbrances and that all taxes and any city charge against the same are paid in full.

B. Certificate of Ownership or Entitlement. The applicant, if other than the owner, shall file with the application a written statement of bill of sale signed by the owner or other sufficient evidence that he/she is entitled to move the building.

C. Liability Policy. The applicant shall file with the application a certificate of insurance providing coverage for both personal injury and property damage which might occur during the moving of said building. The minimum amount of coverage allowable shall be \$500,000.00 property damage coverage and \$1,000,000.00 personal injury coverage. The City Council may require coverage in greater amounts if deemed to be necessary.

4. *Fee.* The application shall be accompanied by a permit fee in the amount of \$100.00, which shall be paid over by the city clerk to the city treasurer, who shall credit it to the general fund.

SECTION 4-504: INTERFERENCE

Whenever it shall be necessary for any permittee in moving a building to interfere with any electric, telephone or telegraph poles or wires, the public service company or companies owning, using or operating such poles or wire shall, upon such notice as is provided in their respective franchises, or if no provisions for notice is made therein, then upon 48 hours' notice, be present and assist or, if necessary, remove such poles and wires. The expense of said removal, as estimated, shall be paid in advance by applicant unless it is otherwise provided in said companies' franchises.

Whenever the moving of any building necessitates interference with any water main or sewer main belonging to the City, notice in writing of the time and route of such building moving operations shall be given to the city clerk, who shall immediately notify the city official in charge of such affected utility.

SECTION 4-505: DUTIES OF PERMITTEE

Every permittee under this ordinance shall:

1. Move a building only over streets designated for such use in the written permit.
2. Notify the city clerk in writing of a desired change in moving date and hours as proposed in the application.
3. Notify the city clerk in writing of any and all damage done to property belonging to the City within 24 hours after the damage or injury has occurred.
4. Cause red lights to be displayed during the night time on every side of the building, visible while standing on the street, in such a manner as to warn the public of the obstruction, and shall erect and maintain barricades across the streets in such a manner as to protect the public from damage or injury by reason of the removal of the building.
5. Remove the building from the city streets after four days of such occupancy, unless an extension is granted by the mayor and the City Council.
6. Comply with the building code, the fire zone, and any zoning ordinances now existing or hereinafter adopted and all other applicable ordinances and laws, if any, upon relocating the building in the City.
7. Remove all rubbish and materials and fill all excavations to existing grade at the original site within ten days from the removal of the building so that the premises are left in a safe and sanitary condition.
8. See that the sewer line is plugged with a concrete stopper, the water shut off, and the meter returned to the city water office and notify the gas and electric service companies to remove their services.

#### SECTION 4-506: NO GENERAL LICENSE

There shall be no license issued or general permit given to anyone to move buildings at will or generally within the City.

## ARTICLE VI – TOBACCO PRODUCTS

### SECTION 4-601: SALE, DISTRIBUTION AND DISPLAY

It shall be unlawful within the corporate limits of the City of Bennington to:

1. Sell, permit to be sold, or offer for sale tobacco or tobacco products in any form except original factory-wrapped packages, or individual cigarettes.
2. Give away, hand out, or otherwise distribute free samples of tobacco or tobacco products, or coupons that can be redeemed for free samples of tobacco or tobacco products.
3. Sell, permit to be sold, or offer for sale tobacco or tobacco products by means other than vendor-assisted access, or to display tobacco or tobacco products in a manner allowing customers access to tobacco or tobacco products without vendor assistance, provided that this subsection shall not prohibit tobacco vending machines that are otherwise permitted pursuant to the immediately following section.

### SECTION 4-602: VENDING MACHINES

Tobacco or tobacco products may be dispensed from a vending machine or similar device when such machine or device is located in an area, office, business, plant, or factory which is not open to the general public or on the licensed premises of any establishment having a license issued under the Nebraska Liquor Control Act for the sale of alcoholic liquor for consumption on the premises when such machine or device is located in the same room in which the alcoholic liquor is dispensed.

(Passed 6/12/07, Ord. No. 363)

## ARTICLE VII – PENAL PROVISION

### SECTION 4-701: VIOLATION; PENALTY

Anyone violating any of the terms and conditions of any of the foregoing chapter and articles shall be deemed guilty of a misdemeanor and shall be fined in a sum of not more than \$500.00 for each offense, recoverable with costs, or by imprisonment in the county jail for a term not to exceed 30 days. Each day such violation continues may be considered a separate offense.

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**CHAPTER V PUBLIC WAYS AND PROPERTY**

**ARTICLE I - PUBLIC PROPERTY REGULATIONS**

**SECTION 5-101: MAINTENANCE AND CONTROL**

The City Council shall have the care, supervision and control of all public highways, bridges, streets, alleys, public squares and commons within the City and shall cause the same to be kept open and in repair and free from nuisances.

(Ref. Neb. Rev. Stat. §17-567)

**SECTION 5-102: OBSTRUCTIONS**

Trees and shrubs growing upon or near the lot line or upon public ground that interfere with the use or construction of any public improvements shall be deemed an obstruction under this article. Shrubbery located near a traffic intersection or pedestrian crosswalk must be trimmed and not exceed 3½ feet in height as well as be located 20 feet back from said intersection or crosswalk. Said trees, shrubs and their roots may be removed by the street superintendent at the expense of the owner of the property upon which the tree or shrub is located, should the owner fail or neglect to do so after notice. It shall be unlawful for any person, firm or corporation to obstruct or encumber any of the streets, alleys or sidewalks with fences, gates, buildings, structures or otherwise.

(Ref. Neb. Rev. Stat. §17-557.01)

**SECTION 5-103: PERMITTED OBSTRUCTIONS**

Any person engaging in the erection, construction, reconstruction, wrecking or repairing of any building or the construction or repair of a sidewalk along any street shall make written application to occupy the public street space with such building materials and equipment as long as is necessary; provided, no permit shall be granted for the occupancy of the sidewalk space or more than one-third of the roadway of the public space adjacent to the real estate on which said building is to be constructed, erected, reconstructed, wrecked or repaired; and provided further, a suitable passageway for pedestrians shall be maintained within the public space included in the permit, which shall be protected and lighted in the manner required by the City Council.

**SECTION 5-104: MUNICIPAL PROPERTY; SALE AND CONVEYANCE**

Except as provided in subsection 4 of this section, the power of the City to convey any real and personal property owned by it, including land used for park purposes and pub-

lic 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 such real and personal property and the manner and terms thereof, except that such real and personal property shall not be sold at public auction or by sealed bid when:

1. Such property is being sold in compliance with the requirements of federal or state grants or programs;
2. Such property is being conveyed to another public agency; or
3. Such property consists of streets and alleys.

The City Council may establish a minimum price for such real and personal property at which bidding shall begin or shall serve as a minimum for a sealed bid.

After the passage of the resolution directing the sale, notice of all proposed sales of real and personal property described in subsection 1 of this section and the terms thereof shall be published once each week for three consecutive weeks in a legal newspaper published in or of general circulation in the City; provided, if a remonstrance against such sale, signed by registered voters thereof equal in number to 30% of the registered voters of the City voting at the last regular municipal election held therein, be filed with the City Council within 30 days after the third publication of the notice, such property shall not then, nor within one 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 next 30-day period, but the filing shall be considered timely if filed or post-marked on or before the next business day. Real estate now owned or hereafter owned by the City may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, such property shall be conveyed strictly in accordance with the conditions of Neb. Rev. Stat. §18-1001 to 18-1006.

Following (1) passage of the resolution directing a sale, (2) publishing of the notice of the proposed sale, and (3) passing of the 30-day right of remonstrance period, the property shall then be sold. Such sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. The city clerk shall, upon passage of such ordinance, certify the name of the purchaser to the county register of deeds in which the county is located.

This section shall not apply to the sale of real and personal property if the authorizing resolution directs the sale of an item or items of real and personal property having a total fair market value of less than \$5,000.00. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the City for a period of not less than seven days prior to the sale of the property. Confirmation of the sale by passage of an ordinance may be required. (Ref. Neb. Rev. Stat. §17-503, 17-503.01)

**SECTION 5-105: ACQUISITION OF PROPERTY; CONSTRUCTION;**

## ELECTIONS, WHEN REQUIRED

The City is authorized and empowered to (1) purchase, (2) accept by gift or devise, (3) purchase real estate upon which to erect, and (4) erect a building or buildings for an auditorium, fire station, municipal building or community house for housing city 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 City.

Except as provided below, before any such purchase can be made or building erected, the question shall be submitted to the electors of the City at a general municipal election or at an election duly called for that purpose, or as set forth in Neb. Rev. Stat. §17-954, and be adopted by a majority of the electors voting on such question.

If the funds to be used to finance the purchase or construction of a building under this section are available other than through a bond issue, then either:

1. Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the City and no election shall be required to approve the purchase or construction unless within 30 days after the publication of the notice a remonstrance against the purchase or construction is signed by registered voters of the City equal in number to 15% of the registered voters of the City voting at the last regular municipal election held therein and is filed with the City Council. 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. If a remonstrance with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the City 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 year following the election, be purchased or constructed; or

2. The City Council may proceed without providing the notice and right of remonstrance required in subsection 1 of this section if (1) the property can be purchased below the fair market value as determined by an appraisal, (2) there is a willing seller and (3) the purchase price is less than \$25,000.00. The purchase shall be approved by the City Council after notice and public hearing as provided in Neb. Rev. Stat. §18-1755.

(Ref. Neb. Rev. Stat. §17-953 and 17-953.01)

## SECTION 5-106: SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCESS

The City Council may, by ordinance, create a special improvement district for the purpose of replacing, reconstructing or repairing an existing street, alley, water line, sewer line, or any other such improvement.

Except as provided in Neb. Rev. Stat. §19-2428 to 19-2431, the City Council shall have the power to assess, to the extent of such benefits, the costs of such improvements up-

on the properties found especially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement districts, the City Council shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law.

#### SECTION 5-107: IMPROVEMENT DISTRICT; LAND ADJACENT

Supplemental to any existing law on the subject, a city may include land adjacent to such city when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The City Council shall have the 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 Neb. Rev. Stat. §19-2428 to 19-2431.

#### SECTION 5-108: ACQUISITION OF REAL PROPERTY

When acquiring an interest in real property by purchase or eminent domain, the City shall do so only after the City Council has authorized the acquisition by action taken in a public meeting after notice and public hearing.  
(Ref. Neb. Rev. Stat. §18-1755)

#### SECTION 5-109: ACQUISITION OF PROPERTY; APPRAISAL

The City shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value of \$100,000.00 or more unless an appraisal of such property has been performed by a certified real estate appraiser.  
(Ref. Neb. Rev. Stat. §13-403)

## ARTICLE II - STREETS

### SECTION 5-201: NAMES AND ADDRESSES; DISPLAY; VIOLATION AND PENALTY

1. The City Council may at any time, by ordinance, rename any street or provide a name for a new street. Upon the erection of any new building or buildings, it shall be the duty of the city clerk to assign the proper address to said building or buildings and give notice to the owner(s) or occupant(s) of the same.

2. It shall be the duty of the owner or occupant of each new or existing building to cause the proper street address to be displayed on the front of such building with conspicuous and legible numbers which are plainly visible from the street or road fronting the property. Such numbers shall contrast with their background and shall be a minimum of four inches (4") high and with a minimum stroke width of one-half inch ( $\frac{1}{2}$ "). If the building sits back from the street or road such a distance that the address numbers cannot be readily seen, then the address numbers shall be increased in size or they shall be posted in such a manner that they can be readily seen from the street or road.

3. Anyone violating any of the terms and conditions of this section shall be deemed guilty of a misdemeanor and shall be fined in a sum of not more than \$500.00 for each offense, recoverable with costs. Each day that such violation continues may be considered a separate offense.

(Amended 8/14/06, Ord. No. 335)

### SECTION 5-202: CROSSINGS

Under the supervision of the street commissioner, the City Council may order and cause street, avenue and alley crossings to be constructed, and the same shall be constructed of such materials as the City Council shall deem necessary. When a petition for the construction of any such crossing is filed by an interested resident in the office of the city clerk, said city clerk shall refer such application to the street supervisor, who shall investigate and recommend to the City Council allowance or rejection as final action by the City Council on such application.

### SECTION 5-203: 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 street commissioner authorizing such excavation. Excavation in streets and alleys shall be made in such a manner as to impede travel as little as possible. Warning lights shall be maintained on

all unfinished work at night from dark until sunrise, and sufficient barricades shall be in place at all times until the work is completed, to prevent any persons from injury in coming upon or crossing such work. After completion of any job or work, all surplus material must be removed at once from the streets and alleys.

#### SECTION 5-204: DRIVING STAKES

It shall be unlawful for any person to drive any peg or stake of any kind into the pavement in any street or alley without first procuring the written consent of the street commissioner.

#### SECTION 5-205: 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 and using said pavement as a mixing board for said material.

#### SECTION 5-206: 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.

#### SECTION 5-207: EAVE AND GUTTER SPOUTS

It is hereby declared unlawful for any person to erect or maintain any dwelling house or business building within the limits of the City where the said dwelling or building abuts on any sidewalk or street without providing proper guttering and eave spouts to receive the waste waters that collect on the said sidewalks and streets. All eave spouts erected on any dwelling house or business building shall be constructed to drain into the alleys or shall be buried beneath the sidewalks and drain into the streets wherever it is found to be impossible to drain said eave spouts into the alley.

#### SECTION 5-208: HEAVY EQUIPMENT

It shall hereafter be unlawful for any person or persons 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, 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 City Council is hereby authorized and empowered to choose the

route over which the moving of such vehicles, structures or machines will be permitted and allowed. Provided, 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.  
(Ords. 308-309)

#### SECTION 5-209: WIDENING, OPENING, VACATING

The City Council shall have the power to open, widen or vacate any street, alley or lane within the limits of the City and to create, open and improve any new street, alley or lane. In the event of such action, the damages sustained by the affected property owner shall be determined by the City Council. To ascertain such damages, the City Council shall notify, by certified mail, the affected parties of such anticipated action and the parties' right to file claims for damages. Such notice shall set a date for filing claims for such damage and notify the affected parties of a hearing date when such claims filed will be considered by the Council. If any claims are filed, the Council shall hold a special meeting to consider such claims and determine the damages, if any. Any party may appeal the decision of the City Council to the District Court of Douglas County, Nebraska, for further consideration. Such appeal must be filed within 30 days of the Council's determination. In the event that no claims are filed, it will be determined that no damages will result from the action of the City Council and no damages will be paid.

(Ref. Neb. Rev. Stat. §17-558, 17-559, 76-704 through 76-724)

#### SECTION 5-210: UTILITY LINES, WIRES, ETC.

Poles, wires, gas mains, pipe lines and other appurtenances of public service companies shall be located or erected over, upon or under the streets, alleys and common grounds after a proper application shall have been made to the city clerk in writing and permission in writing shall have been given by the City Council. Public service companies heretofore or hereafter granted right of way for the erection and maintenance of poles, conduits, gas mains, pipe lines and wires for the purpose of transacting their business upon, under or over the streets, alleys and public grounds shall at all times, when requested by the City Council, erect, locate or relocate their poles, wires, gas mains, pipe lines and other appurtenances to such places and in such manner as shall be designated by the City Council. Such poles, wires, gas mains, pipe lines and other appurtenances shall be removed or relocated by said companies at their own expense when requested to do so by the City Council. Whenever it becomes necessary for the City Council to request such relocation for the public safety and convenience, the City Council shall order said relocation by resolution and the city clerk shall notify any company or companies affected. Within 24 hours after receiving notice, said companies shall cause the poles, wires, gas mains, pipe lines or other appurtenances to be removed at their own expense. The City Council shall designate another location, as close as possible, where said poles, wires, gas mains, pipe lines or other appurtenances may be reset or placed. All poles, wires, gas mains, pipe lines or other appurtenances shall be reset, placed or erected in such manner that they will not interfere



with the water system, sewer system, or poles, wires, and mains of any public utility located on the same street or alley, or with travel, buildings constructed or hereafter to be constructed. Whenever possible, all poles, wires, gas mains, pipe lines or appurtenances shall be confined to the alleys of the City. No water pipe, underground electric line or telephone conduit shall be laid in the same trench with sewer pipe in any street, alley or public grounds in the City or nearer than three feet to any sewer pipe. No underground electric line shall be laid in the same trench with any water pipe, sewer pipe or telephone conduit in any street, alley or public grounds or nearer than three feet to any such pipes or conduit.

#### SECTION 5-211: IMPROVEMENT OF STREETS ON CORPORATE LIMITS

The mayor and City Council shall have the power to improve any street or part thereof which divides the City's corporate area from the land adjoining it. When creating an improvement district including land adjacent to the City, 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. Neb. Rev. Stat. §17-509)

#### SECTION 5-212: IMPROVEMENT OF MAIN THOROUGHFARES

The mayor and City Council shall have the power by a 3/4 vote of the City Council 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 City 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 City Council shall contract therefor 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. Neb. Rev. Stat. §17-512)

#### SECTION 5-213: CUTTING CURB; PERMIT REQUIRED

1. 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 obtaining a written permit from the street commissioner. Before any permit is issued by the street commissioner, the applicant for such permit shall:

- A. Deposit with the city treasurer a sum set by the City Council for paving, curb or sidewalk to be cut. The deposit shall be retained by the City for the purpose of replacing the paving, curb or sidewalk until the work is completed to the satisfaction of the street commissioner. In the event of a disagreement of proper closing between the applicant and the street commissioner, the City Council shall be the final authority on all matters under this ordinance.
- B. Execute a bond to the City with a good and sufficient surety or sureties in the amount of \$10,000.

- C. Inform the street commissioner of the place and time such cutting shall be done, and it shall be the duty of the street commissioner to inspect the place of entry into the paving, sidewalk or curb before the same is cut.

2. 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 City Council or the street commissioner. When the applicant is ready to close the opening made, he/she shall inform the street commissioner, who shall supervise and inspect the work done in closing the opening. Unless specifically authorized by the street commissioner, all closing shall be done in concrete. It shall be the discretion of the City Council to order the street commissioner to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit.

## ARTICLE III – SIDEWALKS

### SECTION 5-301: DUTY OF PROPERTY OWNERS; LIABILITY

Every owner of any lot, lots or piece of land within the limits of this city shall at all times keep and maintain the sidewalks along and contiguous to said lot, lots or pieces of land, as the case may be, in good and proper repair and in a condition reasonably safe for all travelers thereon. In case the owner or owners of any lot, lots or land abutting on any street or avenue or part thereof shall fail to construct or repair any sidewalk in front of his/her/their lot, lots or land within the time and in the manner as directed and required by this article after having received due notice to do so, the said owner(s) shall be liable for all damages and injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the mayor and City Council shall have power to cause such sidewalks to be constructed or repaired and assess the cost thereof against such property. (Ref. Neb. Rev. Stat. §17-557.01)

### SECTION 5-302: NEW SIDEWALK; NOTICE

The City Council may, by resolution, order the construction of a sidewalk on any lot or piece of ground within the City. Notice of the City Council's intention to construct said sidewalk shall be given by the city clerk by publication of notice one time in a legal newspaper of general circulation in the City. A copy of said notice shall be personally served upon the occupant in possession of such property. When personal service is not possible, said notice shall be sent by first class mail to such premises 20 days prior to the commencement of construction. The notice required in this section shall be prepared by the city attorney in accordance with the provisions of this section. Such service shall include a form of return evidencing personal service or mailing as herein required. Said notice shall notify the owner of the premises of the passage of the resolution ordering him/her to construct or cause to be constructed a sidewalk within 30 days after the date of publication and further that if he/she fails to construct the sidewalk or cause the same to be done within the time allowed, the City 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 City shall, before levying any special assessment

against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the 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. Neb. Rev. Stat. §17-522, 17-523)

#### SECTION 5-303: REPAIRING SIDEWALK; NOTICE

Whenever the City Council or committee on streets and walks or the street superintendent shall deem it necessary that any sidewalk shall be repaired, the owner of the lot or piece of land along and contiguous to which such sidewalk is situated shall be notified to repair the same within 20 days from and after the giving of such notice. Oral notice to the owner shall be deemed sufficient. If the owner is not found by the street superintendent, then a written notice left in the house situated on such lot or piece of ground or posted upon said premises shall be sufficient, and the 20 days shall begin to run from the leaving or posting of such notice, as the case may be.

#### SECTION 5-304: RECONSTRUCTING SIDEWALKS; NOTICE

Whenever the City Council shall deem it necessary that an old sidewalk shall be replaced or reconstructed, it shall order the same to be done and the street superintendent shall give notice in the manner and form provided in Section 5-303 of this article to replace or reconstruct the same within 20 days from and after such notice.

#### SECTION 5-305: FAILURE TO CONSTRUCT, RECONSTRUCT OR REPAIR

After notice has been given as provided in this article, if any such owner shall neglect or refuse or shall have failed to construct, repair, replace or reconstruct any sidewalk within the time limit in the notice given in such case and whose duty it is made by this article to construct, repair or rebuild such walks, the street superintendent or other officer empowered herein to act shall proceed at once without further notice to such owner or person to have such sidewalks constructed, repaired, rebuilt or reconstructed, as the case may be, and the expense of such work shall be assessed to such lot or piece of land and collected as provided by law.

#### SECTION 5-306: CONSTRUCTION BY PETITION

If the owners of the record titles representing more than 60% of the front footage of the directly abutting property subject to assessment for sidewalk improvements petition the City Council to make the same, the City Council 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 improve-

ments, the City Council may order permanent sidewalks built in accordance with this article upon the freeholder making, executing and delivering to the City an agreement to the effect that (1) 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 (2) the petitioner gives and grants to the City 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 City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the 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.

#### SECTION 5-307: CONSTRUCTION BY OWNER

Any person desiring to construct, or cause to be constructed, any sidewalk shall do so only as herein provided. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit. Said owner shall make application in writing for a permit and file such application in the office of the city clerk. The permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed. The utilities superintendent shall issue the desired permit unless good cause shall appear why said permit should be denied; provided, if it is desired to construct the sidewalk at any other than the regularly prescribed location, grade or elevation, the street superintendent shall submit the application to the City Council, which shall determine whether the permit should be granted or 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 City. All sidewalks shall be built and constructed on the established grade or elevation, and if there is no established grade, then on the grade or elevation indicated by the street superintendent.

#### SECTION 5-308: DUTY TO REMOVE SNOW, SLEET AND ICE; PENALTY

1. *Definitions:* (A) "Occupant" includes the person(s) actually occupying the lot, land or real estate, whether tenant, lessee or owner. (B) "Owner" includes the person(s) holding the legal title to the lot, land or real estate.

2. *Removal Required.* It shall be the duty of the occupant, as well as the owner, of any lot, land or real estate in the City to clear all ice and snow from the sidewalks adjoining the lot, land or real estate within 24 hours after the cessation of any storm or fall of snow. It shall be unlawful to place snow and ice on any alley or street from private sidewalks, driveways, parking lots, roofs or other private property.

3. *Removal by City.* If any sidewalk in front of any lot, land or real estate within

the City shall not be cleared of ice or snow by the occupant or owner as required by this section, the designee of the City Council may cause the sidewalk to be cleared immediately, and shall thereafter report the cost and expense to the City Council. The City Council shall then levy a special tax on the lot or land which is sufficient to pay the costs and expenses of removal of ice or snow. The special tax shall be due and payable at the date of the levy and shall become delinquent 50 days after the date of the levy, and from and after becoming delinquent shall bear interest at the rate of 1% per month until paid. The special tax shall be collected in the same manner as for other special assessments if payment is not made before the special tax becomes delinquent.

4. *Injuries to Persons or Property.* If any person is injured in body or property because of neglect, failure or refusal of any occupant or owner to clear the sidewalks abutting the premises of snow or ice, the owner shall be liable to the City for any amount of damages and costs recovered by the injured party against the City, and the City may sue and recover the same at law.

#### SECTION 5-309: DUTY TO REMOVE BRANCHES AND SHRUBBERY ENCROACHING THEREON; PENALTY

It shall be the duty of the occupant of each lot or parcel of ground in said city to keep the sidewalk adjacent thereto free from overhanging branches and free from limbs to a height of 8 feet and to keep such sidewalk free from encroaching hedges or shrubbery; and no tree, shrubbery or hedge shall be permitted closer than 18 inches to the sidewalk. It shall be the duty of the occupant of each lot or parcel of ground abutting on any intersection to trim and or remove any shrubbery, sign or other obstacle which obstructs the view for a distance of ten feet from such intersection. Any such occupant or owner who fails to remove the overhanging branches and limbs or other encroachments within five days after receiving written notice to do so, upon conviction shall be fined in any sum not exceeding \$500.00 and shall pay the costs of prosecution and the costs of the removal of such encroachments.

(Ref. Neb. Rev. Stat. §17-557.01)

## ARTICLE IV - CONSTRUCTION OF PRIVATE DRIVES

### SECTION 5-401: APPLICATION FOR CONSTRUCTION OF PRIVATE DRIVE

Before any person, firm or corporation constructs a private drive onto any public street or alley, an application shall first be made to the zoning administrator for a permit for such construction. Such application shall be accompanied by a fee of \$25.00 and the zoning administrator shall act upon such application within 5 days of receipt of the application.

### SECTION 5-402: APPLICATION REQUIREMENTS

All driveway applications shall contain the following information:

1. The addition, block and lot which the driveway is to serve;
2. The location of the proposed driveway with reference to adjacent lot lines;
3. The width of the driveway and type of street surface to which the driveway will connect.

### SECTION 5-403: ISSUANCE OF PERMIT

In the event that the zoning administrator determines that such application is in due and proper form and that the same complies with this article and would not divert water onto another person's property, he/she shall issue a permit for construction of such requested driveway.

### SECTION 5-404: PENALTIES

Any person, firm or corporation violating the terms of this article and who constructs a driveway onto a city street or alley without first securing a permit therefor shall be deemed guilty of a misdemeanor and shall be fined in a sum not to exceed \$500.00, and each day's maintenance of the same shall constitute a separate offense.

## ARTICLE V – CITY PARK REGULATIONS

### SECTION 5-501: PARKING AND STORAGE RESTRICTIONS IN CITY PARKS

1. It shall be unlawful for any person to park any vehicle upon any City park parking lot or drive, between the hours of 12:00 a.m. and 4:00 a.m.
2. It shall be unlawful for any person to park any vehicle upon any City park parking lot or drive, between the hours of 4:00 a.m. and 12:00 a.m., unless the driver is involved in an activity in the park.
3. It shall be unlawful for any person to park any truck-tractor, semitrailer, commercial vehicle, or trailer upon any City park parking lot or drive at any time, unless the driver of the truck-tractor, semitrailer, commercial vehicle, or trailer is present and engaged in loading, unloading, or delivering materials to facilities or buildings in the park.
4. It shall be unlawful for any person to park, place, or store any athletic field or lawn maintenance/mowing equipment or machinery, or any outdoor storage container, also known as an intermodal shipping container, conex box, ISO box, and/or c-crate, in or upon any City park or any City park parking lot or drive at any time, unless a person who is then engaged in the use of such athletic field or lawn maintenance/mowing equipment or machinery is present.
5. The provisions of this Section 5-501 shall not apply to City vehicles and City athletic field or lawn maintenance/mowing equipment or machinery.  
(Amended 9-14-20, Ord. No. 491)

### SECTION 5-502: PARKING RESTRICTIONS ON NORTH 158<sup>TH</sup> STREET

1. The entrance to the City park known as the Doug Nelson Athletic Complex is North 158<sup>th</sup> Street from Second Avenue to the gate of the park, and it serves



the public interests that parking be restricted on both sides thereof as hereinafter provided in this Section 5-502.

2. No parking on the west side of North 158<sup>th</sup> Street from Second Avenue to the gate of the Doug Nelson Athletic complex shall be allowed at any time and shall be posted with No Parking signs.
3. No parking on the east side of North 158<sup>th</sup> Street from Second Avenue to the gate of the Doug Nelson Athletic Complex shall be allowed from April 1<sup>st</sup> to October 1<sup>st</sup>, and shall, during such dates, be posted with No Parking signs which shall be removed each year after October 1<sup>st</sup>.

#### SECTION 5-503: VIOLATION; TOWING AND/OR REMOVAL; PENALTY

Vehicles parked and any athletic field or lawn maintenance/mowing equipment or machinery, and any outdoor storage container, also known as an intermodal shipping container, conex box, ISO box, and/or c-crate, parked, placed or stored in violation of Section 5-501 shall be towed and/or removed at the owner's expense and shall also be subject to the penalties of Section 5-504.

(Amended 9-14-20, Ord. No. 491)

#### SECTION 5-504: USE RESTRICTIONS FOR DESIGNATED ACTIVE CITY PARKS AND RESERVED ATHLETIC FACILITIES.

1. The City owns and maintains designated active parks and athletic facilities which are reserved for use for the organized practices and competitive events of authorized local youth sports organizations only and are not open to use by the general public or to use by non-local youth sports organizations or teams. The City's designated active parks and athletic facilities are so reserved and not open to general public use, because these authorized local youth sports organizations have greatly contributed to and assisted the City with the improvement and maintenance of the of the designated City parks and reserved City athletic facilities via volunteer work and labor, performing maintenance and repairs, providing equipment and supplies, and making improvements to and monetary investments in the designated active City parks and reserved City athletic facilities.
2. The baseball field and facilities at Pruess Field are designated active parks and reserved athletic facilities, and the use thereof shall be limited to the organized practices and competitive events conducted by authorized local youth sports organizations only, which are the Bennington Baseball Club and the Bennington School District, and such are closed to use by the general public. The City shall

cause this designated active park and reserved athletic facilities to be posted with signs which state that they are not open for public use.

3. The baseball and softball athletic fields and facilities at the Bennington Athletic League Complex are designated active parks and reserved athletic facilities, and the use thereof shall be limited to the organized practices and competitive events conducted by the Bennington Athletic League and such are closed to use by other youth sports organizations and teams. When not in use by the Bennington Athletic League, these designated active parks and reserved athletic facilities are available for the unorganized use of community youth and their parents. The City shall cause these designated active parks and reserved athletic facilities to be posted with signs which state that they are not open for use by unauthorized youth sports organizations and teams.
4. The soccer fields at Johns-Bohn Park and portions of Tim Ohrt Park when in use by the Bennington Soccer Club, are closed to use by the general public and closed to use by non-local youth sports organizations and teams. The t-ball field at the Bennington Athletic League Complex when in use by the Bennington Athletic League, is closed to use by the general public and closed to use by non-local youth sports organizations and teams. The City shall cause these designated active parks and reserved athletic facilities to be posted with signs which state that they are not open to public use during scheduled practices or games.
5. Any person violating this Section shall first be directed to leave the premises, and upon refusal to leave may be cited for violating this Section. Anyone cited for violating this Section will be subject to the penalties of Section 5-505 of the Bennington Municipal Code.

#### SECTION 5-505: VIOLATION; PENALTY

Anyone violating any of the terms and conditions of any of the foregoing articles and sections of this Chapter V shall be deemed guilty of a misdemeanor and shall be fined in a sum of not more than \$500.00 for each offense, recoverable with costs, or by imprisonment in the county jail for a term not to exceed 30 days. Each day such violation continues may be considered a separate offense.

## ARTICLE VI – ARTERIAL STREET IMPROVEMENT PROGRAM (ASIP)

### SECTION 5-601: PURPOSE

In order to provide adequate, safe, and modern street infrastructure to serve the ongoing growth and economic development of the City of Bennington (“City”), the City has determined that an Arterial Street Improvement Program (“ASIP”) is necessary to fund the design and construction of street improvements and appurtenances within the City and its zoning jurisdiction. This Program will provide a mechanism for collecting, managing and expending certain funds, as hereinafter more fully described, to pay for the design and construction costs of such street improvements. Street improvements and appurtenances which are identified or proposed to be partially or wholly funded by the Program shall be designated as ASIP Fund Projects.

(Adopted 3-9-20, Ord. No. 485)

### SECTION 5-602: ASIP FUND AND ELIGIBLE ASIP FUND PROJECTS

The City will establish an ASIP Fund into which all of the collected ASIP fees shall be deposited by the City Clerk. This ASIP Fund will be subject to the City’s annual budget and audit processes. Any funds derived from the City’s ASIP shall be available for the City to contribute to street improvements and appurtenances for any street (a) designated by the Bennington Comprehensive Plan as an arterial, collector, or parkway, (b) identified in the City’s One and Six Year Street Improvement Plan, (c) proposed within the City and/or the City’s zoning jurisdiction, or (d) identified as a priority ASIP Fund Project by a resolution adopted by the City Council. Proposed ASIP Fund Projects within the City and its zoning jurisdiction may be constructed in cooperation with Douglas County or another political subdivision through an interlocal cooperation agreement or with a private developer through a subdivision agreement.

(Adopted 3-9-20, Ord. No. 485)

### SECTION 5-603: ASIP FEES

In addition to any other applicable City permit fees, ASIP fees shall be charged and collected by the City Clerk or designee in conjunction with building permits for primary

structures within the City's zoning jurisdiction, but not in the City's corporate limits. Such fees shall be collected in full at the time that the first building permit for a primary structure is issued for a lot or parcel of record.

ASIP fees shall be as follows:

1. For all new agricultural construction, including single family dwellings and buildings for uses permitted in the Transitional Agriculture Zoning District, a fee of 0.825% of the building permit valuation shall be charged at the time the building permit is issued.
2. For all new residential construction, including single family dwellings, town homes, and duplexes, a fee of 0.825% of the building permit valuation shall be charged at the time the building permit is issued.
3. For new mobile home pads, a fee in the amount of \$1,250.00 per unit shall be charged when the site is permitted.
4. For new multi-family residential construction, a fee in the amount of \$5,500.00 per development acre shall be charged when the building permit is issued.
5. For new civic, public, office, and commercial construction, a fee in the amount of \$5,500.00 per development acre shall be charged when the building permit is issued.
6. For new industrial construction, a fee in the amount of \$5,500.00 per development acre shall be charged when the building permit is issued.

For the purposes of this Section, the term "development acre" shall mean each individual acre of land located within the lot lines of the lot or parcel of record for which the permit is sought, but shall specifically exclude any land located within any public street right-of-way, any dedicated land such as public parks, and any out lots. The ASIP fee will be collected for each development acre within the lot or parcel of record where the primary building is to be constructed.

(Adopted 3-9-20, Ord. No. 485, Amended 5-8-23, Ord No. 517)

#### SECTION 5-604: ASIP FUND PROJECTS

The City Engineer shall annually report to the City Council on the status of the ASIP Fund and on the status of any then pending ASIP Fund Projects. Such annual report shall also identify future potential priority ASIP Fund Projects, based on the City's and/or Douglas County's One and Six Year Street Improvement Plans and any previously adopted City Council resolution identifying priority ASIP Fund Projects. The City Engineer may also choose to convene stakeholder groups consisting of developers, representatives of developers, Douglas County, representatives of Sanitary and Improvement

Districts, and associations that represent local home builders, as appropriate, to provide input on the selection of ASIP Fund Projects. Stakeholders, as a group, may request a meeting with the City Engineer once per fiscal year to discuss ASIP Fund Projects. Such a request shall be made in writing to the City Engineer. Any annual meeting requested by a group of stakeholders shall be open to any other stakeholders, as deemed appropriate by the City Engineer, and shall be at a date, time, and place established by the City Engineer. The City Engineer will budget said ASIP Fund Projects on an annual basis for City Council approval. The City shall have sole discretion in deciding ASIP Fund Project priorities, and in the expenditure of ASIP Funds on all ASIP Fund Projects. (Adopted 3-9-20, Ord. No. 485)

#### SECTION 5-605: EXPENDITURE OF ASIP FUNDS

The City may expend ASIP Funds as follows:

1. Revenue may be accumulated in the ASIP Fund until there are sufficient funds to pay for, in whole or in part, one or more ASIP Fund Projects.
2. Bonds may be issued to pay for the costs of ASIP Fund Projects and ASIP Funds may be used to retire principal and interest on the bonds.
3. ASIP Fund Projects may be constructed in phases and ASIP Funds may be used to pay for construction costs as each phase is completed.
4. ASIP Funds may be used as matching funds for Federal Aid Projects.
5. If the City requests a developer or an SID to install arterial street improvements that are not adjacent or contiguous to the boundary of the development area, ASIP Funds may be used for such improvements or to reimburse the developer or SID.
6. In the event that a developer or an SID constructs arterial street improvements within the City's zoning jurisdiction, the developer or the SID may request reimbursement through the ASIP Fund. If the City Engineer determines that some or all of such improvements are eligible for ASIP Funds and that a reimbursement is warranted, the City Engineer may recommend a full or partial reimbursement from the ASIP Fund for City Council approval. In all such cases, the City shall require the developer and/or the SID, as applicable, to enter into a subdivision agreement and/or an interlocal cooperation agreement with the City to identify the use of such reimbursed ASIP Funds. (Adopted 3-9-20, Ord. No. 485)

#### SECTION 5-606: CONSTRUCTION RESPONSIBILITIES AND SUPERVISION

The City Engineer shall be responsible for the oversight of the entire construction process for ASIP Fund Projects, including right-of-way acquisition, engineering consultant selection, bidding, construction observation, and project close-out and acceptance, un-

less otherwise delegated. The City Engineer shall follow the City's standard accounting processes to drawdown ASIP Funds for ASIP Fund Projects. The City may designate a lead agency for any ASIP Fund Project with oversight by the City Engineer.

(Adopted 3-9-20, Ord. No. 485)

#### SECTION 5-607: REVIEW OF THE PROGRAM

The ASIP shall be reviewed by the City Engineer and stakeholder groups, as applicable, every three (3) years for possible amendment to ASIP Fund Project priorities and ASIP fee adjustments.

(Adopted 3-9-20, Ord. No. 485)

#### ARTICLE VII – TELECOMMUNICATIONS – SMALL WIRELESS FACILITIES

#### SECTION 5-701: FINDINGS AND PURPOSE

- A. The City Council finds that it is necessary to achieve a balance between the telecommunications needs of the City's citizens, and the orderly, safe, and aesthetic deployment of small wireless facilities by telecommunications companies. The deployment of small wireless facilities is expected to enable the provision of improved and enhanced wireless services to citizens and visitors in the City. The FCC has encouraged and required the adoption of policies supporting the deployment of small wireless facilities, in its September 27, 2018 Declaratory Ruling and Third Report and Order, WT Docket Nos. 17-79 and 17-84. Also, Nebraska Legislative Bill 184 (2019) enacted the Small Wireless Facilities Deployment Act, Neb. Rev. Stat. §§ 86-1201 to 86-1244, which imposed new limits on the local regulation of small wireless facilities. Those actions encourage the placement of such small wireless facilities in public rights of way.
- B. The City is responsible for the safe and aesthetic maintenance of its public rights of way, for the benefit of the public and for the protection of public health, safety, and welfare. Public rights of way are a finite resource, and are subject to demands from competing interests. It is necessary to govern their use in a fair, safe, and orderly manner. This includes the proposed use of public rights of way for telecommunications purposes. The City is also responsible for the processing and review of proposed telecommunications uses for properties other than public rights of way, with the objective of protecting public health, safety, and welfare.
- C. It is therefore appropriate to adopt these rules and regulations for the processing and review of applications for proposed small wireless facilities, both on public rights of way and on other properties, and for the safe, responsible, and fair deployment of small wireless facilities on public rights of way and on other properties, and to comply with and adopt provisions stated in the said September 27, 2018 FCC Order and the Nebraska Small Wireless Facilities Deployment Act.

#### SECTION 5-702: DEFINITIONS

For the purposes of this Article, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. The purpose of these definitions is to promote consistency and precision in the interpretation of this Article. The meanings and construction of words as set forth shall apply throughout this Article, unless where modified in a specific section or where the context of such words or phrases clearly indicates a different meaning or construction.

**ACTION or TO ACT** -- The City's grant of an application or issuance of a written decision denying an application.

**ANTENNA** -- Communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

**APPLICABLE CODES** -- Any uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to such codes so long as such amendments are not in conflict with federal or state law and to the extent such codes have been adopted by the City and are generally applicable in the City.

**APPLICANT** -- Any person who submits an application and is a wireless provider.

**APPLICATION** -- A written request submitted by an applicant to the City (1) for a permit to collocate small wireless facilities on an existing utility pole or support structure, or (2) for a permit for approval for the installation, modification, or replacement of a utility pole or support structure to support the installation of a small wireless facility.

**AUTHORIZATION** -- Any approval that the City must issue under this Article and applicable codes prior to the deployment of a small wireless facility, along with any associated antenna equipment and support structure, including, but not limited to, zoning approval, building permit, and permit under this Article.

**CANTENNA** -- A cylindrical shaped antenna.

**COLLOCATE or COLLOCATION** -- To install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a support structure or utility pole. Collocate or collocation does not include the installation of a new utility pole or new support structure in the right of way.

**COMMUNICATIONS FACILITY** -- Any set of equipment and network components including wires, cables, and associated facilities used by a cable operator as defined in 47 U.S.C. 522(5), as such section existed on January 1, 2019, a telecommunications carrier as defined in 47 U.S.C. 153(51), as such section existed on January 1, 2019, a provider of information service as defined in 47 U.S.C. 153(24), as such section existed on January 1, 2019, or a wireless ser-

vices provider, to provide communications services, including cable service as defined in 47 U.S.C. 153(8), as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153(24), as such section existed on January 1, 2019, wireless services, or other one-way or two-way communications service.

**COMMUNICATIONS NETWORK** -- A network used to provide communications service.

**COMMUNICATIONS SERVICE** -- A cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, a telecommunications service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, or a wireless service.

**COMMUNICATIONS SERVICE PROVIDER** -- A cable operator as defined in 47 U.S.C. 522, a provider of information service as defined in 47 U.S.C. 153, or a telecommunications carrier as defined in 47 U.S.C. 153, as such sections existed on January 1, 2019. Communications service provider includes a wireless provider.

**DECORATIVE POLE** -- A utility pole that is owned, managed, or operated by or on behalf of the City, and which is specially designed and placed for aesthetic purposes.

**DEPLOYMENT** -- Placement, construction, or modification of a small wireless facility.

**FCC** -- The Federal Communications Commission.

**FEE** -- A one-time, nonrecurring charge, to be collected upon application.

**HISTORIC DISTRICT** -- Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with Stipulation VI.D.1.a (i)-(v) of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission codified at 47 C.F.R. Part 1, Appendix C, as such regulation existed on January 1, 2019, or designated pursuant to state historic preservation law if such designation exists at the time of application.

**LAW** -- Any federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

**MAKE-READY WORK** -- All work, as reasonably determined by the City, required to accommodate a small wireless facility on a utility pole, and to comply



with all the City's applicable codes. Such work includes, but is not limited to, modification or replacement of utility poles or lines, installation of guys and anchors, rearrangement of existing equipment, inspections, reasonable consultant fees or expenses, permitting work, design, planning, construction, materials, cost of removal (less any salvage value), tree trimming (other than tree trimming performed for normal maintenance purposes), facility construction, or conduit system clearing, but does not include ordinary maintenance.

**MICROWIRELESS FACILITY** -- Any small wireless facility that is not larger in dimension than twenty-four inches in length, fifteen inches in width, and twelve inches in height and with any exterior antenna no longer than eleven inches.

**ORDINARY MAINTENANCE AND REPAIR** -- Inspections, testing's and/or repairs that maintain the functional capacity, aesthetic and structural integrity of a facility.

**PERMIT** -- A written authorization, in electronic or hard copy format required by the City to perform an action, initiate, continue, or complete installation of a small wireless facility on an existing utility pole or an existing support structure, or to install, modify, or replace a utility pole or support structure to support installation of a small wireless facility.

**PERMITTEE** -- An applicant that has received a permit under this Article, and its successors and assignees.

**PERSON** -- An individual, corporation, limited liability company, partnership, association, trust, or any other entity or organization.

**PUBLIC POWER SUPPLIER** -- A public power district or any other governmental entity providing electric service. Public power supplier includes a municipal electric utility or a rural public power supplier.

**RATE** -- A recurring charge, collected on a regular basis such as annually.

**REPLACE or REPLACEMENT** -- In connection with an existing utility pole or support structure, to replace (or the replacement of) the same with a new pole or structure in conformance with this Article and any other applicable codes, in order to address limitations of the existing pole or structure to structurally support collocation of a small wireless facility.

**RIGHT OF WAY** -- The area on, below, or above a public roadway, highway, street, sidewalk, alley, dedicated utility easement, or similar property, but not including a freeway as defined in § 39-1302, the National System of Interstate and Defense Highways, or a private easement.

**RURAL PUBLIC POWER SUPPLIER** -- A public power district, a public power and irrigation district, an electric cooperative, or an electric membership associa-

tion, that does not provide electric service to any City of the metropolitan class, City of the primary class, or City of the first class.

**SIGHT TRIANGLE ZONE** -- An area defined by a triangle with legs of thirty feet from the point at which the curbs or edges of two intersecting streets, private ways, trails, sidewalks, courts or an intersecting street, private way, trail, sidewalk or court and driveway meet.

**SHOT CLOCK** -- The period of time in which the City is required to act on an application.

**SMALL WIRELESS FACILITY** -- Any wireless facility that meets each of the following conditions: (1) The facilities (a) are mounted on structures fifty feet or less in height including the antennas, or (b) are mounted on structures no more than ten percent taller than other adjacent structures; (2) each antenna associated with the deployment is no more than three cubic feet in volume; (3) all other equipment associated with the structure, whether ground-mounted or pole-mounted, is no more than twenty-eight cubic feet in volume; (4) the facilities do not require antenna structure registration under 47 C.F.R. Part 17, as such regulation existed on January 1, 2019; (5) the facilities are not located on tribal lands, as defined in 36 C.F.R. 800.16(x), as such regulation existed on January 1, 2019; and (6) the facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b), as such regulation existed on January 1, 2019.

**SUPPORT STRUCTURE** -- Any structure such as a guyed or self-supporting tower, billboard, building, or other existing or proposed structure designed to support or capable of supporting wireless facilities other than a structure designed solely for the collocation of small wireless facilities. "Support structure" does not include a utility pole.

**TECHNICALLY FEASIBLE** -- By virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design or site location, can be implemented without a reduction in the functionality of the small wireless facility.

**UTILITY POLE or POLE** -- A pole located in the right of way that is used for wireline communications, lighting, the vertical portion of support structures for traffic control signals or devices or a similar function, or for the collocation of small wireless facilities and located in the right of way. Utility pole does not include (1) support structures, (2) any transmission infrastructure owned or operated by a public power supplier or rural public power supplier, and (3) any distribution or communications infrastructure owned or operated by a rural public power supplier.

WIRELESS FACILITY -- Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (a) equipment associated with wireless communications, and (b) radio transceivers, antennas, coaxial or fiber-optic cable, regular power supply, and small back-up battery, regardless of technological configuration. Wireless facility includes small wireless facilities. "Wireless facility" does not include (a) the structure or improvements on, under, or within the equipment which is collocated, (b) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to, or directly associated with, a particular antenna, or (c) a wireline backhaul facility.

WIRELESS INFRASTRUCTURE PROVIDER -- Any person, including a person authorized to provide telecommunications service in the State of Nebraska, when acting to build or install wireless communication transmission equipment, wireless facilities, or support structures, but that is not a wireless services provider.

WIRELESS PROVIDER -- A wireless services provider or a wireless infrastructure provider when acting as a coapplicant for a wireless services provider.

WIRELESS SERVICES -- Any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether mobile or at a fixed location, provided to the public using wireless facilities.

WIRELESS SERVICES PROVIDER -- A person who provides wireless services.

WIRELINE BACKHAUL FACILITY -- An above-ground or underground facility used to transport communications services from a wireless facility to a communications network.

## SECTION 5-703: APPLICABILITY

This Article shall apply to all deployments of small wireless facilities on rights of way or other public or private property within the City and its extraterritorial jurisdiction, as amended, annexed or extended from time to time, except as specifically excluded in this section or in this Article. With respect to deployments on rights of way which are owned by another jurisdiction, the City shall coordinate its regulation under this Article with such jurisdiction, by agreement or otherwise, so that only one of the jurisdictions regulates the same. This Article shall not apply to any facility that was in existence and authorized by an agreement with the City as of the effective date of this Article. Notwithstanding this section, the shot clock for an application shall be governed by this Article or by an existing agreement, whichever provides for a shorter shot clock. Notwithstanding this section, application fees and yearly rates shall be governed by this Article or by an existing agreement, whichever provides for smaller fees or rates. Small wireless facilities shall be governed by this Article, and not by other lease require-

ments of the City or the City's Municipal Code. This Article shall not apply to the design, engineering, construction, installation, or operation of any small wireless facility located in the interior structure or upon the site of any college or university campus, stadium, or athletic facility not owned or controlled by the City, other than to comply with applicable codes. For an application submitted to the State of Nebraska regarding a location within right of way or other property owned or controlled by the State, to the extent that the State seeks a recommendation from the City regarding such application, the City shall apply the location and design standards of section 5-711. The applicant for a location on such State right of way or other property shall provide to the City a copy of the application submitted to the State, but no application fee shall be due. This Article shall not apply to a microwireless facility that is strung on a cable between existing utility poles in compliance with the National Electrical Safety Code, which may be installed, maintained and operated without a permit or fees; provided, that standard rules regulating the excavation or closing of sidewalks or streets shall apply to the same.

#### SECTION 5-704: PERMIT REQUIRED

It shall be unlawful for any person to install, maintain, or operate a small wireless facility, unless such person shall have previously obtained a permit under this Article from the City expressly authorizing such small wireless facility. It shall be unlawful for any person to collocate a small wireless facility on or associated with an existing utility pole or support structure, unless such person shall have previously obtained a permit under this Article from the City expressly authorizing the attachment or association of that specific small wireless facility. It shall be unlawful for any person to construct, install, replace, maintain, or operate a new utility pole or support structure to which will be attached or associated a small wireless facility, unless such person shall have previously obtained a permit under this Article.

#### SECTION 5-705: APPLICATION

A. Form and content. Application for a permit under this Article shall be filed with the City's Clerk, on a form provided by the City Clerk. On or in addition to that form, an application shall include the following:

1. The applicant's name, address, telephone number, and e-mail address, including emergency contact information for the applicant.
2. The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the application.
3. A description of the proposed work and the purposes and intent of the proposed small wireless facility.

4. If applicable, written authorization from the owner of the utility pole or support structure on which the small wireless facility will be placed or attached, if not the City. For a utility pole or support structure owned or controlled by the Omaha Public Power District or other owner, the applicant shall provide proof of approval of the specific plans by that District or owner.
5. Detailed construction drawings regarding the proposed small wireless facility, and any associated equipment and utility pole or support structure. The drawings shall show the location, dimensions, elevations, equipment specifications, and attachment methods for the small wireless facility, all equipment, and the utility pole or support structure.
6. To the extent the proposed small wireless facility involves collocation on a utility pole or support structure, a structural report performed by a duly licensed engineer evidencing that the pole or support structure will structurally support the collocation (or that the pole or support structure will be modified to meet structural requirements) in accordance with applicable codes.
7. For any new above ground antenna equipment, a conceptual rendering of the equipment, including accurate visual depictions and locations, if not included in the construction drawings.
8. A full description of any make-ready work to be performed by the City in preparation for the proposed installation and use of the small wireless facility, associated equipment and utility pole or support structure.
9. The application fee as required by this Article.
10. Bond and certificate of insurance as required by this Article.
11. The application form shall include:

Language providing for the indemnification of the City by the applicant as required by this Article; and

- b. An attestation by the applicant that the small wireless facility shall be operational for use by a wireless services provider within nine months after the later of the completion of all make-ready work or the permit issuance date, unless a delay is caused by lack of commercial power or communications transport facilities to the site, in which case the deadline shall be extended for up to nine months.
- c. The applicant's signature on and submittal of the application shall constitute agreement to subsections (a) and (b) above.

B. Batching. An applicant may apply for more than one but no more than five small wireless facilities in a single application, provided that all information required by this section is provided for each separate small wireless facility. Application fees shall be paid for each small wireless facility, as provided in this Article.

Each small wireless facility within a consolidated application is subject to individual review, except that the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same application or be a basis upon which to deny the consolidated application as a whole. If an applicant applies to construct or collocate several small wireless facilities within the jurisdiction of the City, the City shall:

1. Allow the applicant, at the applicant's discretion, to file a single set of documents that apply to all of the applicant's small wireless facilities; and
2. Render a decision regarding all of the applicant's small wireless facilities in a single administrative action or proceeding.

C. Replacement or modification. A permittee shall be required to file an application and pay an application fee for the proposed replacement or modification of an existing small wireless facility, antenna equipment, or associated utility pole or support structure. In such case, the application shall include updated drawings of the facilities showing such replacement or modification. Such proposed replacement or modification shall be reviewed and acted upon by the City as if it were an initial application. This subsection (C) does not apply to the replacement of a small wireless facility with a small wireless facility that is substantially similar in weight or windage or the same size or smaller, in which case no permit, application, or fee is required.

D. Shot clock. The City shall act on a filed application, and all associated requests, on or before the expiration of the shot clock period.

1. The shot clock period for an application is the sum of:
  - a. Ninety days, plus one additional period of ten business days if requested in writing by the City prior to the expiration of the ninety days; plus
  - b. Such additional number of days of the tolling period, if any, pursuant to subsection (D)(2) below.
2. Unless a written agreement between the applicant and the City provides otherwise, the tolling period for an application, if any, is as set forth below:
  - a. If the City notifies the applicant in writing on or before the twentieth day after submission that the application is incomplete, and specifically identifies the missing documents or information, the shot clock date calculation shall

restart at zero on the date on which the applicant submits all the documents and information identified by the City to render the application complete.

- b. Subsequent findings of incompleteness shall further toll the shot clock from the time the City sends written notice of incompleteness until the time the applicant provides the missing information.
- c. If the applicant submits new or additional documents or information that include material changes not otherwise required by the City, a new application and application fee shall be submitted.

3. The shot clock deadline for an application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to this subsection (D); provided, that if the deadline calculated in this manner falls on a weekend or holiday, the deadline shall be the next business day after such date. The term "business day" means any day that is not a weekend day or holiday.

E. Permit issuance. Approval of an application authorizes the permittee to maintain and operate the small wireless facilities and any associated utility pole covered by the permit for a period of five years, subject to applicable relocation requirements and the permittee's right to terminate at any time. At the end of each such term, such permit shall be considered automatically renewed for an equivalent duration so long as the permittee complies with the criteria of this Article as of the time the permit was issued.

## SECTION 5-706: FEES

### A. Application fees.

1. An application for a permit under this Article for the collocation of a small wireless facility on an existing utility pole or support structure shall be accompanied by an application fee in the amount of \$500.00 for up to five small wireless facilities, plus \$100.00 for each additional small wireless facility.
2. An application for a permit for one new, modified, or replacement utility pole or support structure intended to support one or more small wireless facilities, and for one small wireless facility to be placed on such pole or structure, shall be accompanied by an application fee of \$250.00 per pole or structure.

B. Annual rates. A permittee who does not pay the City any occupation taxes shall pay to the City an annual rate of \$20.00 for each small wireless facility attached to a utility pole in City right of way, and an annual rate of \$250.00 for each small wireless

facility located anywhere else in City right of way or City property. A permittee who does pay the City any occupation taxes shall not be required to pay to the City an annual rate. The annual rate shall be paid by or before January 1, in advance for the ensuing year.

- C. Reimbursement of direct costs. If the applicant or permittee excavates or damages City right of way or other City property and the City repairs such excavation or damage, the applicant or permittee shall reimburse to the City the actual cost of such repair, as provided in Section 5-710.

#### SECTION 5-707: INTERFERENCE, REMOVAL, AND ABANDONMENT

A. In the event that any facility of a permittee on City right of way or City property obstructs or hinders the usual travel or public safety or obstructs the legal use of such right of way or property by utilities or other authorized users, the City may provide written notice to the permittee of such interference and of the need to resolve such interference. In the event that any such facility of the permittee causes any radiofrequency interference to any City facilities or other uses of City right of way or City property, the City may notify the permittee in writing of such interference and the need to resolve such interference. Upon service of any notice under this subsection, the permittee shall remedy such interference within ninety days or, in the case of an emergency, within such shorter time period as directed by the City. If such interference is not resolved in a timely manner, the permittee shall, at its own expense, remove its facilities from that location. In such case, the permittee may apply for the relocation of similar facilities at another location, without payment of an application fee.

- B. Within ninety days following written notice from the City, the permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its facilities, whenever the City has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance or installation of any City improvement in, under or upon the public right of way. The permittee shall be responsible to the City for any damages or penalties the City may incur as a result of the permittee's failure to remove or relocate the facilities as required in this subsection.
- C. The City retains the right and privilege to cut or move any facility of the permittee located within the public right of way or on City property, as the City



may determine in its sole discretion to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the City shall notify the permittee and give the permittee an opportunity to move its own facilities prior to cutting or removing the facilities. In all cases the City shall notify the permittee after cutting or removing the facilities as promptly as reasonably possible.

- D. The permittee may abandon its facilities at a location. The permittee shall notify the City of abandonment of any facility at the time the decision to abandon is made, but in no case shall such notification be made later than thirty days prior to abandonment. The permittee shall, within thirty days of such notice, remove its facilities at the permittee's own expense, unless the City determines and states in writing, in its sole discretion, that any part of the facilities may be abandoned in place. The permittee shall remain solely responsible and liable for all of its facilities until they are removed from the public right of way unless the City agrees in writing to take ownership of the abandoned facilities. For the purpose of this subsection, abandonment of facilities and cancellation of the related permit shall also be deemed to have occurred after such facilities are not used for a period of one year.
- E. If the permittee fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its facilities or remove any of its abandoned facilities as required in this section, the City or its contractor may do so. In such case, the permittee shall pay all reasonable costs related to such work.

#### SECTION 5-708: INDEMNIFICATION

In submitting an application and maintaining and operating its facilities, the permittee agrees to indemnify, defend and hold the City harmless from all claims, costs, damages, demands, suits, judgments, court costs and costs of defense, including attorney fees, which arise out of, in whole or in part, the permittee's acts or omissions pursuant to its permit or this Article, or which arise out of, in whole or in part, the installation, construction, operation, or maintenance of the permittee's facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by the permit or this Article. Permittee's indemnity shall not apply to any loss or damage resulting from the negligence or willful misconduct of the City or its employees, contractors, or agents. The application to be signed by the applicant shall contain the indemnification language stated in this section.

#### SECTION 5-709: INSURANCE

- A. Upon and after application, the permittee of a permit under this Article shall procure and thereafter continuously maintain for as long as any permit in its favor remains in effect, at the permittee's expense, commercial

general liability insurance per ISO form or its equivalent with a limit of at least \$2,000,000.00 per occurrence and at least \$2,000,000.00 general aggregate for bodily injury (including death) and property damage, including explosion, collapse and underground property damage. Upon receipt of notice from its insurer(s), the permittee shall provide the City with thirty days prior written notice of any prospective cancellation of the policy, unless the required coverage is immediately replaced. A certificate of insurance shall be provided with the application. The policy shall be available for review by the City upon request. The policy shall include the City as additional insured as its interest may appear under this Article.

- B. Upon and after application, the permittee of a permit located on right of way or other City property shall provide and maintain in effect a bond naming permittee as obligor, with a surety, in favor of the City, in the minimum amount of \$50,000.00, to cover all permitted sites of the permittee. The surety of the bond shall be a surety company licensed to do business in Nebraska. The bond shall be conditioned:
1. That the permittee and its successors or assigns shall indemnify, defend, and hold the City harmless from all claims, costs, damages, demands, suits, judgments, and court costs and costs of defense, including attorney fees, which arise out of, in whole or in part, the permittee's acts or omissions pursuant to its permit or this Article, or which arise out of, in whole or in part, the installation, construction, operation, or maintenance of the permittee's facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by the permit or this Article.
  2. For the maintenance of the sidewalk or public right of way.
  3. For the compliance with all applicable laws regarding the permitted facilities and the use of the City right of way or other property.
  4. For the return of the sidewalk, street, right of way or other public property to its condition prior to the permit.

#### SECTION 5-710: PERMITTEE DUTIES

As a condition of the issuance of a permit under this Article, the permittee shall perform the following duties:

- A. Small wireless facilities and associated communications facilities, utility poles and support structures shall be located, installed and maintained so that they do not materially endanger the lives, health or safety of persons, or materially interfere with any public improvements the City or other governmental entities (including any traffic control devices or signs, gas, electric, storm water, sanitary sewer or water utilities or enterprises) have in place or may deem proper to make. The location, installation or maintenance of the small wireless facili-

- ty and associated communications facilities, utility pole and support structure shall not hinder or obstruct the usual travel or public safety on right of way, or obstruct the legal use of right of way by utilities or the safe operation of their systems or provision of service.
- B. All small wireless facilities and associated communications facilities, utility poles, and support structures shall be located, installed, and used so as to cause minimum radiofrequency interference with the rights and reasonable convenience of other users of rights of way and of owners' property which adjoins rights of way, except to the extent such interference is specifically authorized by federal law.
  - C. All construction, excavation, maintenance and repair work done by the permittee shall be done in a safe, workmanlike and expeditious manner which minimizes inconvenience and danger to the City, the general public and individuals. All such construction, excavation, maintenance and repair work done by the permittee shall comply with all applicable codes and laws. The City shall have the right to inspect all construction or excavation work to ensure compliance with applicable codes, laws, and permits, and may order the permittee to perform corrective work. All right of way or other City property disturbed by permittees' activities shall be promptly restored by the permittee at its expense to its former condition, subject to inspection by the City. If the permittee fails to make required repairs, the City may give the permittee written notice of the required repairs. If after such notice the permittee fails to make the required repairs within fourteen days, the City may make the repairs, and the permittee shall pay the City the reasonable documented cost of such repairs. The City shall grant the permittee a ten day extension to perform repairs if requested by the permittee within the original fourteen day period. In the event of immediate threat to life, safety, or to prevent serious injury, the City may immediately undertake to restore the site and then notify the permittee and charge the permittee for all reasonable restoration costs.
  - D. The permittee shall install, construct, maintain and operate its small wireless facilities and associated communications facilities, utility poles, and support structures in a safe manner providing reasonable protection against injury or damage to any and all persons or property.
  - E. Unless otherwise specified in the permit, the permittee shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs and lights to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Manual on Uniform Traffic Control Devices. The permittee shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is filled and finished to the satisfaction of the City, or as otherwise directed by the City.

- F. All construction and use of the small wireless facilities and associated communication facilities, utility poles, and support structures shall comply with the permit and the approved final plans and specifications. Upon completion of installation of the small wireless facilities and associated communication facilities, utility poles and support structures, the permittee shall notify the City's Clerk within three business days of the completion of said work so that the City may conduct an inspection as provided for above. The City will perform any such inspection within five business days. Any construction that does not conform to the permit and the approved final plans and specifications shall be reconstructed or repaired to conform to the permit and the approved final plans and specification within five business days. If the construction and use of the small wireless facilities and associated communication facilities, utility poles, and support structures continues to fail to conform to the permit and the approved final plans and specifications, the City may revoke the associated permit until such time as the work is in conformance.
- G. If a new utility pole or support structure is to be built for the sole or primary purpose of supporting a small wireless facility, such pole or structure shall comply with all applicable codes.

#### SECTION 5-711: LOCATION AND DESIGN STANDARDS

The City desires to promote aesthetically acceptable and area conforming wireless facilities using the smallest and least intrusive means available to provide small wireless services to the community. All facilities in the public right of way must comply with all applicable provisions in this section.

A. All small wireless facilities shall meet the following requirements:

1. Antennas must be top-mounted or side-mounted and concealed within a radome (a structural, weatherproof enclosure that protects an antenna and is constructed of material that minimally attenuates the signal transmitted/received by such antenna) or otherwise concealed to the extent feasible. Cable connections, antenna mounts and other hardware must also be concealed. The radome or other concealment elements must be non-reflective and painted or otherwise colored to match the existing support structure.
2. Each antenna shall be no more than three cubic feet in volume. All other equipment associated with a small wireless facility, whether ground-mounted or pole-mounted, shall be no more than twenty-eight cubic feet in volume.
3. The color of the small wireless facility shall reasonably match the color of the utility pole or support structure upon which it is attached.

4. There shall be no advertising or signs on the small wireless facility, except for equipment logos, specifications, or maintenance instructions that are generally not readable from the ground or from ten feet away, and except for signage required by the FCC.
5. A small wireless facility shall be mounted at a height no more than the greater of (a) 50 feet, including the antenna, or (b) five feet above an existing utility pole in place as of the effective date of this Article and located within five hundred feet in the same right of way.
6. Antennas shall be no more than twelve inches in diameter and forty-eight inches in height.
7. If an antenna of the small wireless facility is side-mounted, it shall not protrude more than eighteen inches outside the pole, and shall not exceed the height of the pole.
8. The small wireless facility and all associated equipment mounted to the outside of a pole or support structure shall be at least eight feet above grade, excluding the disconnect switch.
9. Collocations between wireless service providers on the same support structure is required wherever technically feasible. If an applicant chooses to not collocate in areas where options are or appear to be available, the applicant must document that collocation is technically infeasible.
10. Cabling shall be located within conduit or inside the pole or support structure to as great a degree as possible, and otherwise shall be as flush to the pole or support structure as possible. Any support arms shall use flanges or channels to conceal exterior cables and passive radiofrequency gear. Shrouds, sleeves, or ninety degree connectors shall be used to prevent exposed cables.
11. A small wireless facility shall include a disconnect switch. The disconnect switch shall be no more than twelve cubic inches in size, shall be painted the same color as the pole or support structure, and shall be mounted on the pole or support structure at a maximum height of six feet above grade, unless otherwise directed by the City.
12. Unless otherwise required by the City, or for compliance with FAA or FCC regulations, small wireless facilities shall not include any lights or lighting.
13. A small wireless facility may be placed on an existing utility pole that exists within a sight triangle zone as of the effective date of this Article; provided, that any replacement pole replacing such an existing utility pole shall be relocated outside of the sight triangle zone.

B. A new or replacement utility pole for a small wireless facility, referred to in this subsection as a “new pole,” shall be subject to the following requirements:

1. The new pole shall meet the generally applicable standards for such poles as established by the owner of such poles.
2. The new pole shall comply with applicable codes of general applicability.
3. The new pole shall be reasonably similar in color, design, size, scale, material, style, and arm structure to the nearest adjacent existing poles; provided, that there shall be no new installations of wooden poles.
4. A new pole replacing an existing decorative pole shall conform to all non-discriminatory design aesthetic features of the existing decorative pole.
5. The height of a new pole shall not exceed the greater of (a) five feet above the tallest existing utility pole in place as of the effective date of this Article located within five hundred feet of the new pole in the same right of way, or (b) fifty feet above ground level.
6. The diameter of the new pole shall be no more than fourteen inches; provided, that the bottom sixty-six inches of the new pole may be no more than eighteen inches in diameter.
7. The new pole shall be in alignment with existing trees, utility poles, and streetlights.
8. The new pole shall be an equal distance between trees when possible, with a minimum of fifteen feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
9. The new pole shall be placed with appropriate clearance from existing utilities, to accommodate the passage of traffic in the right of way and any work done on or around the facilities.
10. The new pole shall be placed outside of a thirty foot clear sight triangle zone where pedestrian trails, sidewalks, and streets intersect.
11. The new pole shall be placed so as not to be located along the frontage of a Historic District.
12. The new pole shall not be placed within fifty feet of the apron of a fire station or other emergency service responder facility.

13. In accordance with existing standards for street light poles, and provided it does not result in an effective prohibition of service, a new pole shall be located no closer than one hundred fifty feet from an existing street light pole on an arterial or collector street, and no closer than one hundred feet from an existing street light pole on a local or residential street. This requirement shall not prevent the replacement of light poles that are in place as of the effective date of this Article that do not meet this spacing requirement.

14. A new pole shall not be located within seven feet of an electrical conductor unless the applicant obtains the written consent of the entity that owns or manages the electrical conductor.

C. All small wireless facilities, and all of their associated equipment, ground equipment, communications facilities, and utility poles and support structures, shall comply with the following requirements:

1. So as not to impede or impair public safety or the legal use of the right-of-way by the traveling public, ground mounted equipment must be installed below grade or concealed in a ground-mounted cabinet. Ground mounted cabinets must comply with the following design standards:
  - a. In areas with curb and gutter, ground mounted equipment shall not be located closer than four feet from the pavement or face of curb, and shall not be located closer than two feet from a sidewalk, bike lane, or shared-use path as measured to the nearest part of the equipment.
  - b. In areas with open ditches, ground mounted equipment shall be located at least one foot inside the right-of-way line.
  - c. Ground mounted equipment shall be placed outside of all sight triangle zones.
  - d. Ground mounted equipment locations shall be located a minimum of twelve feet from driveway aprons as measured parallel to the right-of-way.
  - e. Ground mounted equipment shall be consistent with any applicable design standards of the Omaha Guidelines and Regulations for Driveway Locations, Design and Construction, which are incorporated herein for these specific purposes only.
  - f. Ground mounted equipment must be secured to a concrete foundation or slab with a breakaway design allowing the equipment to dis-

connect from the foundation or slab in the event of collision or impact.

- g. Screening of ground mounted equipment with a variety of plant material may be required based on the characteristics of the surrounding area.
- h. All proposed ground mounted equipment shall be subject to the City's landscaping installation and maintenance requirements as set forth in City Zoning Regulation 7.09 and based on the surrounding context, and where required, for appropriateness of the proposed planting plan and plant specifications.

2. Such items shall not materially interfere with sight lines or clear zones for air or land transportation or pedestrians.

3. Such items shall not obstruct or hinder the usual travel or public safety on right of way, or obstruct the legal use of right of way by utilities or the safe operation of their systems or provision of service.

4. Such items shall not violate or materially interfere with compliance with the federal Americans with Disabilities Act of 1990 or similar federal or state standards regarding pedestrian access or movement.

5. Such items shall comply with applicable codes of general applicability.

## SECTION 5-712: MAKE-READY WORK

A. In its application, the applicant shall identify any make-ready work proposed to be performed by the City. Within one hundred twenty days after receipt of a completed application, the City shall provide a preliminary good faith estimate of the cost of such make-ready work to be paid by the applicant to the City. The applicant shall pay to the City the amount of the estimated cost. Make-ready work to be performed by the City shall be completed within ninety days after written acceptance of the good faith estimate by the applicant. Upon the City's completion of the make-ready work, the applicant shall pay the City, or the City shall refund to the applicant, as the case may be, the difference between the cost estimate paid and the actual cost. Total fees shall not exceed actual costs of the make-ready work. Alternatively, the City and the applicant may agree that the applicant or a party other than the City may perform the make-ready work, subject to the City's approval before and after the work.



B. The City may require replacement of the utility pole if it determines that the collocation would make the utility pole structurally unsound. The person owning the utility pole shall not require more make-ready work than required to meet applicable codes and industry standards.

#### SECTION 5-713: ASSIGNMENT

A permittee may assign its rights to a permit, small wireless facility, and associated equipment or structures it owns, to an assignee. Such assignment shall not be effective until the applicant and the assignee sign and file with the City's Clerk a notice of assignment, containing:

- A. The assignee's name, address, telephone number, and e-mail address, including emergency contact information.
- B. Exact location of all small wireless facilities and associated equipment or structures being assigned.

#### SECTION 5-714: VIOLATION; PENALTY

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Article, set forth at full length herein or incorporated by reference, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$500.00 for each offense. A new violation shall be deemed to have been committed every twenty-four hours of such failure to comply.

## **CHAPTER VI                    PUBLIC UTILITIES**

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## **CHAPTER VI                      PUBLIC UTILITIES**

### **ARTICLE I – WATER DEPARTMENT**

#### **SECTION 6-101: WATER RATES; COLLECTION**

The City has, by Ordinance No. 281, granted a franchise to the Metropolitan Utilities District, a Nebraska municipal corporation and political subdivision, dated the 3rd day of May, 2000, for operation of the City's municipal water system. The water rates, collection practices and other operational matters are governed by such franchise and all of the terms and conditions of such agreement are made a part hereof by reference.

## ARTICLE II - SEWER DEPARTMENT

### SECTION 6-201: TERMS DEFINED

"Biological oxygen demand" shall mean and include the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° C., expressed in parts per million by weight.

"Building or house 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 feet outside the inner face of the building wall.

"Building or house sewer" shall mean the extension from the building drain to its connection with the main sewer.

"Combined sewer" shall mean a sewer receiving both surface runoff and sewage.

"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.

"Industrial wastes" shall mean the liquid wastes from industrial manufacturing processes, trade or business as distinct from sanitary sewage.

"Natural outlet" shall mean any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

"pH" shall mean and include the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

"Premises" or "separate premises" shall mean one consumer or household to which the City furnishes sewer services. A separate premises may be any separate dwelling, apartment, building or structure used by any individual or household to which the City provides sewer services.

"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 inch in any dimension.

"Public sewer" shall mean a sewer in which all owners of abutting properties have equal rights and is controlled by public authority.

"Sanitary sewer" shall mean and include a sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.

"Sewage" means and includes 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.

"Sewage treatment plant" shall mean any arrangement of devices and structures used for treating sewage.

"Sewage works" shall mean all facilities for collecting, pumping, treating and disposing of sewage.

"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 15 minutes more than five times the average 24-hour concentration or flows during normal operation.

"Storm sewer" shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes other than unpolluted cooling water.

"Suspended solids" shall mean and include solids that either float on the surface of, or are in suspension, in water, sewage or other liquids, and are removable by laboratory filtering.

"Watercourse" shall mean a natural or artificial channel in which a flow of water occurs, either continuously or intermittently.

## SECTION 6-202: SEWER USE RATES; COLLECTION

1. The City has entered into an Interlocal Agreement with the Metropolitan Utilities District, a Nebraska municipal corporation and political subdivision, dated August 12, 2002 for the billing, collection, and remittance of the City's lawfully

charged sewer use fees and applicable taxes, and the billing, payment, collection, and remittance practices and all other matters set forth in such Agreement, shall apply to the sanitary sewer system users within the sanitary sewer service jurisdiction of the City and are governed by such Agreement, and all of the terms and conditions of such Agreement are made a part hereof by reference.

2. The following sewer use rates, monthly customer charges, and flow rates shall apply and be charged to and collected from the sanitary sewer system users within the sanitary sewer service jurisdiction of the City beginning January 1, 2024.

A. Residential – Includes single-family, individual multi-family units, and mobile homes:

\$24.20 per month, and an additional sum of \$3.46 per each CCF or any part thereof discharged.

B. Commercial/Industrial Users with a Water Meter Size of One Inch or Less:

\$36.27 per month and an additional sum of \$3.46 per each CCF or any part thereof discharged.

C. Commercial/Industrial Users with a Water Meter Size Greater than One Inch and Less than or Equal to Two Inches:

\$72.54 per month and an additional sum of \$3.46 per each CCF or any part thereof discharged.

D. Commercial/Industrial Users with a Water Meter Size Greater than Two Inches and Less than or Equal to Three Inches:

\$145.09 per month and an additional sum of \$3.46 per each CCF or any part thereof discharged.

E. Additional Charges for Commercial/Industrial Users:

The following charges shall be in addition to the base and usage charges for abnormal strength wastewater flow, as determined by sampling of the wastewater flow:

i. Total Suspended Solids (TSS) greater than 300 milligrams per liter:

Cost is as provided in City of Omaha Municipal Code Section 31-147(d)(1) as amended.

- ii. Biological Oxygen Demand (BOD) greater than 240 milligrams per liter:

Cost is as provided in City of Omaha Municipal Code Section 31-147(d)(2) as amended.  
(Amended 11-9-20, Ord. No. 494, Amended 12-11-23, Ord. No. 526)

#### SECTION 6-203: UNLAWFUL DISCHARGE OF WASTES

It shall be unlawful to discharge to any natural outlet within the City or within one mile of the corporate limits thereof, or in any area under the jurisdiction of said city, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article.

#### SECTION 6-204: CESSPOOLS, PRIVIES AND SEPTIC TANKS PROHIBITED

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.

#### SECTION 6-205: MANDATORY HOOKUP

The owner of all houses, buildings or properties used for human employment, recreation or other purposes situated within the City and abutting on any street, alley or right-of-way in which there is now located or may be located a public sanitary or combined sewer of the City is hereby required at his/her expense to install suitable toilet facilities therein and to connect such facilities directly within ten days after date of official notice to do so; provided that said public sewer is within 200 feet of the property line.

#### SECTION 6-206: PRIVATE SEWAGE DISPOSAL; WHEN APPLICABLE

Where a public sanitary or combined sewer is not available under the provisions of Section 6-208, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this article.

At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Section 6-205, a direct connection shall be made to the public sewer within 180 days in compliance with this article, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.

#### SECTION 6-207: PRIVATE SEWAGE DISPOSAL SYSTEM; PERMIT AND FEE REQUIRED



Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the utilities superintendent. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications and other information as deemed necessary by the utilities superintendent. In addition, the City shall be entitled to establish, charge and collect a reasonable fee for the permit and inspection required herein. The fee shall be set from time to time by resolution of the City Council and shall be paid to the City at the time the application is filed.

#### SECTION 6-208: PRIVATE SEWAGE DISPOSAL SYSTEM; PERMIT, WHEN EFFECTIVE; INSPECTIONS

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the city official in charge of the sewer system. He/she shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the city clerk when the work is ready for final inspection and before any underground portions are covered.

#### SECTION 6-209: PRIVATE SEWAGE DISPOSAL SYSTEM; SPECIFICATIONS

The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the Nebraska Department of Health and Human Services, Regulation and Licensing Division of the State of Nebraska, and the Nebraska Department of Environmental Quality Title 124, Rules and Regulations for Design, Operation and Maintenance of Septic Tanks. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities when the area of the lot is less than that recommended by above-mentioned agencies. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

#### SECTION 6-210: PRIVATE SEWAGE DISPOSAL SYSTEM; MAINTENANCE

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

#### SECTION 6-211: INSTALLATION PROCEDURE

Upon approval of an application for a sewer tap, the City shall be responsible for tapping into the municipal main at a location chosen by the City. The customer shall be responsible for the installation of the sewer line from the municipal main to the premises to be served. The City shall install all municipal mains.

In making excavations in streets, alleys or sidewalks for the purpose of installing pipe or making repairs, the paving, stones and earth must be removed and deposited in a manner that will occasion the least inconvenience to the public and provide for adequate drainage. No person shall leave an excavation made in the street, alley or sidewalk

open at any time without a barricade. After service pipes are laid, the streets, alleys and sidewalks shall be restored to good condition. If the excavation in any street, alley or sidewalk is left open or unfinished for a period of 24 hours or more, the utilities superintendent shall have the duty to finish or correct the work and all expenses so incurred shall be charged to the consumer.

All installations or repairs of pipes require two inspections by the utilities superintendent. The first inspection shall be made when connections or repairs are completed and before the pipes are covered. The second inspection shall be made after the dirt work is completed and the service is restored. It is the consumer's responsibility to notify the utilities superintendent at the time the work is ready for each inspection. All installation shall be done under the supervision and strictly in accordance with the rules, regulations and specifications prescribed by the utilities superintendent; provided that said rules, regulations and specifications have been reviewed and approved by the City Council.

#### SECTION 6-212: SANITARY SEWER CONNECTION FEES

1. Before any permit shall be issued under the provisions of this article, the applicant therefore shall pay the following appropriate fees:

LAND USE	2024	2025	2026 and thereafter
Residential, single-family and duplex uses, (cost per square foot).	\$0.64	\$0.72	\$0.83
Mobile homes used as a residence (for each mobile home pad)	Use the "all other residential uses" fee for each mobile home pad.		
All other residential uses, (for each individual family unit)	\$2,233	\$2,506	\$2,862
Commercial, industrial and institutional uses (for each acre)	\$13,334	\$15,234	\$17,453

2. The rates shown in the "2024" column shall be charged beginning on the effective date hereof, until and including December 31, 2024. The rates in each column thereafter apply between January 1 and December 31 of the respective years, except that the rates shown in the "2026 and thereafter" column will remain in effect

until such time as the fees are amended by the City. The date to be used for the calculation of sewer connection fees will be the date of initial application for a building permit.

- a. For the “residential, single-family and duplex uses” in the above table, the fee shall be calculated by multiplying the rate in the table by the total square footage of the permit, including the garage, shed, basement (finished and unfinished), and above grade house areas.
  - b. The commercial, industrial, and institutional charge shall be computed to the nearest 1/100 acre (but excluding outlots and floodway), but the fee shall in no event be less than the applicable fee for a single-family unit in the subsection above. As used herein, “institutional” refers primarily to religious assembly facilities and public and private schools. The connection fees for such institutional uses will be computed based on the acreage including the developed land, parking areas, and the land immediately adjacent to the facility which forms the usable part the property, but excluding unsewered playgrounds or sports activity areas. Commercial and industrial acreage shall be based upon the entire commercial or industrial zoned area, including any parking and outside storage areas.
  - c. If in the opinion of the city engineer or city permitting agent, a commercial or industrial connection is likely to significantly exceed the rate of flow of the peaking factor of two times 1,500 gallons per acre per day, a surcharge shall be computed based on the City of Omaha’s Carollo study. The recommendation and calculation of the fee shall be done by the City of Omaha if it concurs and transmitted to the appropriate City officials. Upon such approval, the commercial or industrial connection shall be charged the fee set out above, plus the surcharge.
3. Pursuant to a 2017 Agreement For Wastewater Service with the City of Omaha, the City is required to collect Omaha’s current sewer connection fees and forward such to Omaha, and the foregoing incorporate Omaha’s current sewer connection fees.
  4. For subdivisions and areas previously platted and where the subdivider and/or the sanitary and improvement district paid the sewer connection fees in advance, but only in the amount of Omaha’s sewer connection fees applicable at the time of platting, and without paying the City’s sewer connection fee amounts which were in excess of Omaha’s, the amount to be paid will just be that portion of the City’s sewer connection fee which are in excess of Omaha’s.
  5. The sanitary sewer connection fees provided in this Section 6-212 of the Bennington Municipal Code are in the addition to all other sewer connection or sewer use fees contained in the Bennington Municipal Code.  
(Amended 3-11-24, Ord. No. 527)

#### SECTION 6-213: INSTALLATION; PERMIT REQUIRED

Any person wishing to connect with the sewer system shall make an application in writing to the city clerk. There shall be two classes of building sewer permits: (1) residential and commercial service, and (2) for service to establishments producing industrial wastes. The application shall be made on a special form furnished by the City and shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the city supervisor. A permit and inspection fee in the amount of \$100.00 shall be paid to the City at the time the application is filed. Sewer service may not be supplied to any house or building except upon the order of the utilities superintendent and upon application and acceptance of city water service.

#### SECTION 6-214: PREMISES WHERE NO PRIVATE SEWER AVAILABLE

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 sewer line from the front building may be extended to the rear building and the whole considered as one building sewer, but the City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection.

#### SECTION 6-215: USE OF EXISTING SEWERS

Old building sewers may be used in connection with new buildings only when they are found, on examination and testing by the utilities superintendent, to meet all requirements of this article.

#### SECTION 6-216: CONSTRUCTION CODES

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. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.

Whenever possible, the 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.

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 or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the utilities superintendent before installation.

## SECTION 6-217: PROHIBITED DISCHARGES

No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff or subsurface drainage, including interior and exterior foundation drains, uncontaminated heating or cooling water or unpolluted industrial waters to any sanitary sewer.

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

## SECTION 6-218: HAZARDOUS AND PROHIBITED DISCHARGES; FLAMMABLE, TOXIC, CORROSIVE AND OBSTRUCTIVE SUBSTANCES; PRELIMINARY TREATMENT

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

1. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
2. Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, which injure or interfere with any waste treatment process, constitute a hazard to humans or animals, create a public nuisance or create any hazard in the receiving waters of the wastewater treatment plant, including but not limited to cyanides in excess of 2 mg/l as CN in the wastes as discharged to the public sewer.
3. Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.
4. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage facilities such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

5. Any waters or wastes having (A) a five-day BOD greater than 300 parts per million by weight, or (B) containing more than 350 parts per million by weight of suspended solids, or (C) having an average daily flow greater than 2% of the average sewage flow of the City, shall be subject to the review of the utilities superintendent. Where necessary in the opinion of the utilities superintendent, the owner shall provide, at his/her expense, such preliminary treatment as may be necessary to (A) reduce the biochemical oxygen demand to 300 parts per million by weight, or (B) reduce the suspended solids to 350 parts per million by weight, or (C) control the quantities and rates of discharge of such waters or wastes. Plans, specifications, and other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the utilities superintendent and no construction of such facilities shall be commenced until said approval are obtained in writing.

#### SECTION 6-219: HAZARDOUS AND PROHIBITED DISCHARGES; SPECIFIC PROHIBITIONS

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 utilities 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 or public property or constitute a nuisance. In forming his/her opinion as to the acceptability of these wastes, the utilities superintendent will give consideration to such factors as the quantities of subject 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 and other pertinent factors. The substances prohibited are:

1. Any liquid or vapor having a temperature higher than 150° Fahrenheit (65° C).
2. Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32° and 150° Fahrenheit (0° and 65° C).
3. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor 3/4 horsepower or greater shall be subject to the review and approval of the utilities superintendent.
4. Any waters or wastes containing strong acid iron pickling wastes or concentrated plating solutions, whether neutralized or not.

5. Any water 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 utilities superintendent for such materials.

6. Any waters or wastes containing phenols or other taste- or odor-producing substances in such concentrations exceeding limits which may be established by the utilities 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.

7. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the utilities superintendent in compliance with applicable state or federal regulations.

8. Any waters or wastes having a pH in excess of 9.5.

9. Materials which exert or cause:

A. Unusual concentrations of inert suspended solids such as, but not limited to, Fuller's earth, lime slurries and lime residues, or of dissolved solids such as, but not limited to, sodium chloride or sodium sulfate.

B. Excessive discoloration such as, but not limited to, dye wastes and vegetable tanning solutions.

C. Unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.

D. Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

10. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

#### SECTION 6-220: PROHIBITED DISCHARGES; UTILITIES SUPERINTENDENT'S DISCRETION

If any waters or wastes are discharged or are proposed to be discharged to the public sewers which contain the substances or possess the characteristics enumerated in Section 6-219, and which in the judgment of the utilities superintendent

dent 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 utilities superintendent may:

1. Reject the wastes;
2. Require pretreatment to an acceptable condition for discharge to the public sewers;
3. Require control over the quantities and rates of discharge; and/or
4. 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 6-225.

If the utilities 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 utilities superintendent and subject to the requirements of all applicable codes, ordinances and laws.

#### SECTION 6-221: GREASE, OIL AND SAND INTERCEPTORS; WHEN REQUIRED

Grease, oil and sand interceptors shall be provided when in the opinion of the utilities 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 utilities superintendent and shall be located as to be readily and easily accessible for cleaning and inspection.

#### SECTION 6-222: PRELIMINARY TREATMENT OR FLOW EQUALIZING FACILITIES; MAINTENANCE BY OWNER

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/her expense.

#### SECTION 6-223: CONTROL MANHOLES/ SAMPLING STATIONS; WHEN REQUIRED; INSTALLATION AND MAINTENANCE

When required by the utilities superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances 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 utilities superintendent. The manhole shall be installed by the owner at his/her expense and shall be maintained by him/her so as to be safe and accessible at all times.

#### SECTION 6-224: CONTROL MANHOLES/SAMPLING STATIONS; METHOD



All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this article shall be determined in accordance with the latest edition of *Standard Methods for the Examination of Water and Wastewater*, published by the American Public Health Association, and shall be determined at the control manhole provided or upon suitable samples taken at said control manhole. In the event 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 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 are determined from periodic grab samples.)

#### SECTION 6-225: HAZARDOUS AND PROHIBITED SUBSTANCES; SPECIAL EXCEPTIONS PERMITTED; USE FEE SURCHARGE

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

#### SECTION 6-226: INSPECTIONS

The applicant for a building sewer permit shall notify the utilities superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the utilities superintendent or his/her representative.

#### SECTION 6-227: CLASSIFICATION

For the purpose of rental fees, the City Council may classify the customers of the city Sewer Department, provided that such classifications are reasonable and do not discriminate unlawfully against any consumer or group of consumers.

#### SECTION 6-228: MANHOLES

Entrance into a manhole or opening for any purpose except by authorized persons is hereby prohibited. It shall be unlawful to deposit or cause to be deposited in any receptacle connected with the sewer system any substance which is not the usual and natural waste carried by the sewer system.

#### SECTION 6-229: DESTRUCTION OF PROPERTY

No person or persons shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the wastewater facilities.

#### SECTION 6-230: COMPLIANCE WITH ARTICLE; INSPECTIONS

The utilities superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing systems in accordance with the provisions of this article. The utilities superintendent or his/her 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.

#### SECTION 6-231: COMPLIANCE WITH ARTICLE; INSPECTIONS; INJURY LIABILITY

While performing the necessary work on private properties referred to in Section 6-230 above, the utilities superintendent or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company. The company shall be held harmless for injury or death to any city employees and the City shall indemnify the company against loss or damage to its property by city 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.

#### SECTION 6-232: COMPLIANCE WITH ARTICLE; INSPECTIONS; EASEMENTS

The utilities superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties for which the City 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. All entry and subsequent work, if any, on said easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

#### SECTION 6-233: SERVICE TO NON-RESIDENTS

Any person whose premises is located outside the corporate limits of the City and who desires to install a house or building sewer that will be connected with the city sewer system shall file a written application with the city clerk for a permit for such connection, setting forth the name of the owner, occupant or lessee of the premises, the use to which the premises is devoted and such other information as the City Council may re-

quire. The City Council may approve or deny such application in its absolute discretion. If the Council approves the application, it may do so by attaching whatever conditions to such approval as determined necessary.

#### SECTION 6-234: REPAIR AND REPLACEMENT

The City shall repair or replace, as the case may be, all pipes constituting major sewer mains. It shall be the responsibility of the customer to repair or replace all other sewer pipes and appurtenances from the main to and including the customer's property. All replacements and repairs made by the customer shall be done in the manner and with the materials approved by the utilities superintendent, provided that the same have been previously approved by the City Council.

#### SECTION 6-235: LICENSED PLUMBER

It shall be unlawful for any person, firm or corporation to engage in or conduct the business of sewer connection and house drainage, excavate any trenches for sewer pipes, open, uncover or in any manner make connection with or lay any sewer drain or attach to, modify or repair any appurtenances without complying with the rules and regulations of the utilities superintendent, provided that nothing herein shall be construed to apply to persons, firms or corporations under special contract with the City for the construction, extension or repair of the city sewer system.

#### SECTION 6-236: PLUMBER'S LIABILITY

The licensed plumber or drainlayer who connects with the public sewer shall be held responsible for any damage he/she may cause to the sewers or the public ways and property. He/she shall restore to the complete satisfaction of the utilities superintendent all streets that have been excavated and make good any settlement of the ground or pavement caused by such excavation.

## ARTICLE III - GARBAGE AND REFUSE COLLECTION

### SECTION 6-301: DUMPSTERS

1. It shall be unlawful for any person to place any commercial trash receptacle or dumpster on any city street or right-of-way within the City.

2. Commercial trash receptacles or dumpsters may be placed on the right-of-way for temporary placement not to exceed 15 days, if and only if a permit for the same is obtained before such placement. It is intended that such temporary placement shall include placement for construction purposes only. The permit shall be obtained by requesting the same through the city clerk. The applicant for the permit must provide a written statement to the city clerk showing:

- A. The name and address of the applicant;
- B. The location of the placement of the commercial trash receptacle or dumpster;  
and
- C. A statement of the number of days that the commercial trash receptacle or dumpster will be located on the right-of-way; provided, however, that the number of days shall not exceed 15 days.

The applicant must also give a cash deposit in an amount set from time to time by resolution of the City Council at the time of filing for the permit.

The application for the permit will be discussed at the next regularly scheduled City Council meeting. If approved, a permit may be issued to the applicant for the specified number of days.

3. It is also hereby declared unlawful for any person residing within any residential district within the City to place any commercial trash receptacle or dumpster in the driveway, front, side or rear yard for any purpose other than temporary placement not to exceed 15 days. In the event of temporary placement, the person must follow the permit procedures stated in paragraph 2 above.

4. It shall be unlawful for any person in any commercial or industrial area to place any commercial trash receptacle or dumpster in any driveway, front or side yard, or in any area visible from the street except for temporary placement. In the event of temporary placement, the person shall obtain a permit as outlined in paragraph 2 above. (Ordinance 276)

#### ARTICLE IV - PENAL PROVISION

##### SECTION 6-401: VIOLATION; PENALTY

Anyone violating any of the terms and conditions of any of the foregoing chapter and articles shall be deemed guilty of a misdemeanor and shall be fined in a sum of not more than \$500.00 for each offense, recoverable with costs, or by imprisonment in the county jail for a term not to exceed 30 days. Each day that such violation continues may be considered a separate offense.

## **CHAPTER VII            FIRE REGULATIONS**

### **ARTICLE I - FIREWORKS**

7-101 REGULATION OF USE, SALE, POSSESSION OF FIREWORKS  
7-102 PERMIT REQUIRED

### **ARTICLE II - PENAL PROVISION**

7-201 VIOLATION; PENALTY

## **CHAPTER VII                      FIRE REGULATIONS**

### **ARTICLE I – FIREWORKS**

#### **SECTION 7-101: REGULATION OF USE, SALE, AND POSSESSION OF FIREWORKS**

1. The sale, offer for sale, and possession of consumer fireworks in the City, as defined by Neb. Rev. Stat. § 28-1241(6), shall be governed and regulated by Neb. Rev. Stat. §§ 28-1241 to 28-1252, including any and all amendments thereto, together with any rules and regulations adopted by the State Fire Marshal for the enforcement of Neb. Rev. Stat. §§ 28-1241 to 28-1252.
2. “Fireworks” shall mean any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of consumer or special fireworks set forth by the United States Department of Transportation in Title 49, Code of Federal Regulations.
3. It shall be unlawful for any person to ignite or cause to be exploded fireworks or firecrackers of any description whatsoever, except consumer fireworks as provided by Neb. Rev. Stat. § 28-1241(6). The provisions of this section shall not

apply to any fireworks to be used for purpose of public exhibitions or display under authorization of the City Council or to fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal.

4. It shall be unlawful for any person to throw any firework or any object which explodes upon contact with another object from or into a motor vehicle; onto any street, highway, or sidewalk; at or near any person; into any building; or into or at any group of persons.
5. "Consumer fireworks" shall mean only consumer fireworks as provided by Neb. Rev. Stat. § 28-1241(6).
6. The use of any fireworks increases the risk of danger to the public health and safety. The City, however, recognizes the historic role of fireworks as a means of celebration within the United States and Nebraska and therefore allows the use of consumer fireworks upon compliance with these provisions, which are enacted to provide for the public health and safety. No person shall possess, sell, offer for sale, bring into the City or discharge any pyrotechnics commonly known as "fireworks" other than consumer fireworks. Consumer fireworks may not be discharged except from June 25 through July 4 and December 29 through January 1 and only during the hours of 10:00 a.m. through 10:00 p.m., except that on July 4 and December 31, consumer fireworks may be discharged from 10:00 a.m. through 12:00 midnight. The City Council may approve a fireworks display permit for special events, which permit shall specify the place, hours of display, fire protection requirements, and public liability insurance limits. In no event shall the possession, consumption, sale or use of alcoholic beverages be permitted on the premises designated for a special fireworks display.

(Amended 6-10-19, Ord. No. 476)

#### SECTION 7-102: PERMIT REQUIRED

1. A permit for the retail sale of fireworks within the corporate limits of the City shall be granted only to a bona fide civic or nonprofit organization located within the City. The following documentation is required, which shall be filed with the city clerk:
  - a. Application for a permit;
  - b. Payment of a fee of \$250.00; and
  - c. Evidence of liability insurance for coverage of not less than \$500,000 combined single limit.
2. The holder of a permit for the retail sale of fireworks will be required to observe all applicable state laws.



3. In order to protect the safety of the residents of the City by restricting the amount of fireworks available within the limits of the City, not more than two permits for the sale of fireworks will be granted each year.

## ARTICLE II - PENAL PROVISION

### SECTION 7-201: VIOLATION; PENALTY

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this chapter, whether set forth at full length herein or incorporated by reference, shall be deemed guilty of a misdemeanor and fined in a sum of not more than \$500.00. Each day's maintenance of the same shall constitute a separate offense.

CHAPTER VIII            MUNICIPAL PLANNING

ARTICLE I – MUNICIPAL LIMITS

8-101 ADOPTED BY REFERENCE

ARTICLE II – ZONING AND SUBDIVISION REGULATIONS

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**CHAPTER VIII                    MUNICIPAL PLANNING**

**ARTICLE I - MUNICIPAL LIMITS**

**SECTION 8-101: ADOPTED BY REFERENCE**

The official maps for zoning and city limits are included respectively in Ordinances 460 and 482 as amended, which are incorporated herein by reference.

## ARTICLE II – ZONING AND SUBDIVISION REGULATIONS

### SECTION 8-201: ADOPTED BY REFERENCE

For the purpose of setting minimum standards to promote the public health, safety, morals, convenience, order, prosperity and general welfare of the community of Bennington, Nebraska, 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, sewage, schools, parks, and other public improvements, the zoning and subdivision regulations of the City of Bennington, presented and prepared by said city are hereby adopted. The adoption of such zoning and subdivision regulations shall include any amendments thereto as may be made from time to time. Said regulations, as well as such amendments, are hereby incorporated by reference in this section as if set out in full. One copy of the zoning and subdivision regulations shall be maintained by the city clerk at the city office and available for public inspection during regular office hours.

### SECTION 8-202: FEES

1. Filing fees are intended to partially defray the administrative costs of review, processing and legal notice.

2. The following fees will be required for all subdivisions:

a. Application fee schedule:

- i. Administrative subdivision: \$250.00
- ii. Preliminary plat: \$1,225.00 plus \$12.50/lot
- iii. Revised preliminary plat: \$450.00 plus \$4.50/lot
- iv. Final plat: \$675.00 plus \$6.75/lot
- v. Replat: \$250.00 plus \$3.00/lot
- vi. Vacation of plat: \$100.00

vii. In addition, the applicant is responsible for all filing fees and any advertising costs, which shall be billed to the applicant and paid within 45 days of billing.

b. The following additional fees shall be required for all subdivisions using sanitary and improvement district (SID) financing:

i. The district shall pay to the City 1% of the estimated total construction cost of the improvements as shown on the subdivision application source and use of funds form. This amount is to be paid at the time the city engineer approves the plans and specifications for the improvements.

ii. At the time of acceptance of the work, the actual fee shall be determined on the basis of 1% of final construction costs, as verified by the city engineer. Any variance between the estimated fee payment and the actual fee payment shall be adjusted and paid by the district, or refunded to the district.

3. Application fee schedules for:

- a. Conditional use permit applications (one acre or less): \$250.00
- b. Conditional use permit (more than one acre): \$500.00
- c. Conditional use permit – signage: \$100.00
- d. Conditional use permit amendment: \$150.00
- e. Flood Plain Development permit: \$250.00
- f. Tower Development permit: \$500.00
- g. Zoning map amendment: \$500.00
- h. Zoning text amendment: \$250.00

- i. Subdivision text amendment: \$250.00
- j. Comprehensive plan amendment: \$250.00
- k. Certificate of zoning compliance: \$ 50.00
- l. Subdivision Regulations waiver: \$150.00

m. In addition to the application fees, the applicant is responsible for all advertising costs, filing fees, and engineering review costs, which shall be billed to the applicant and paid within 45 days of billing.

4. Fees for CMD:

- a. Preliminary CMD (formerly PUD) (includes rezoning):  
\$500.00 plus \$10.00/lot
- b. Final CMD: \$250.00 plus \$3.00/lot

5. Fees for Overlay and Commercial/Industrial Improvement Review:

- a. Overlay District Architectural Review: At cost
- b. Commercial/Industrial Improvement Review: At cost  
(Added June 15, 2005, Ord. No. 314)

ARTICLE III – COMPREHENSIVE DEVELOPMENT PLAN

SECTION 8-301: ADOPTED BY REFERENCE

The updated Comprehensive Development Plan for the City, including the zoning jurisdiction of the City, is hereby incorporated by reference in this section as if set out in full. One copy of such plan shall be maintained by the city clerk at the city office and available for public inspection during regular office hours.

**GENERAL INDEX**

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