

CITY OF WAVERLY, NEBRASKA

MUNICIPAL CODE



Codification Updated As Of July, 2021

CITY OF WAVERLY

MUNICIPAL CODE

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- 150.01 Building code; adopted by reference
- 150.02 Residential code; adopted by reference
- 150.03 International energy conservation code; adopted by reference
- 150.04 Plumbing code; adopted by reference
- 150.05 Mechanical Code; adopted by reference
- 150.06 Gas piping code; adopted by reference
- 150.07 Existing building code; adopted by reference
- 150.08 Property maintenance code; adopted by reference

Building Permits and Regulations

- 150.20 Building permits required
- 150.21 Insurance required
- 150.22 Fees
- 150.23 Personal alterations and additions
- 150.24 Duplicate to County Assessor

Moving of Buildings

- 150.50 Regulations
- 150.51 Deposit

- 150.70 Violations; penalty

CHAPTER 151: ZONING AND SUBDIVISION REGULATIONS

- 151.01 Zoning regulations; adopted

Subdivisions

- 151.02 Subdivision regulations; adopted
- 151.03 Comprehensive plan; adopted
- 151.04 Violation; penalty

TITLE I: GENERAL PROVISIONS

Chapter

10. GENERAL PROVISIONS

11. CITY STANDARDS

CHAPTER 10: GENERAL PROVISIONS

Section

- 10.01 Title of code
- 10.02 Interpretation
- 10.03 Application to future ordinances
- 10.04 Captions
- 10.05 Definitions
- 10.06 Rules of interpretation
- 10.07 Severability
- 10.08 Reference to other sections
- 10.09 Reference to offices
- 10.10 Reserved
- 10.11 Official time
- 10.12 Reasonable time
- 10.13 Ordinances repealed
- 10.14 Ordinances unaffected
- 10.15 Repeal or modification of ordinance
- 10.16 Section histories

- 10.99 General penalty

§ 10.01 TITLE OF CODE.

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

§ 10.02 INTERPRETATION.

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

§ 10.03 APPLICATION TO FUTURE ORDINANCES.

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

§ 10.04 CAPTIONS.

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

§ 10.05 DEFINITIONS.

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

(B) *Definitions.* For the purpose of this code, the definitions provided by Neb. Rev. Stat. § 49-801 shall apply unless otherwise defined below, and unless the context clearly indicates or requires a different meaning.

CITY, MUNICIPAL CORPORATION, or MUNICIPALITY. The City of Waverly, Nebraska.

CITY COUNCIL, COUNCIL, or GOVERNING BODY. The legislative body of the City of Waverly.

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

COUNTY. Lancaster County, Nebraska.

MAY. The act referred to is permissive.

MONTH. A calendar month.

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

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

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

SHALL. The act referred to is mandatory.

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

STATE. The State of Nebraska.

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

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

YEAR. A calendar year, unless otherwise expressed.

§ 10.06 RULES OF INTERPRETATION.

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

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

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

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

§ 10.07 SEVERABILITY.

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

§ 10.08 REFERENCE TO OTHER SECTIONS.

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

§ 10.09 REFERENCE TO OFFICES.

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

§ 10.10 RESERVED.

§ 10.11 OFFICIAL TIME.

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

§ 10.12 REASONABLE TIME.

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

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

§ 10.13 ORDINANCES REPEALED.

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

§ 10.14 ORDINANCES UNAFFECTED.

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

- (A) Vacating or setting the boundaries of streets, alleys, or other public places;
- (B) Annexing or detaching territory;
- (C) Granting or accepting easements, plats, or dedication of land to public use;
- (D) Providing for the acquisition or conveyance of real or personal property;
- (E) Authorizing or directing public improvements to be made;
- (F) Levying taxes or special assessments;
- (G) Appropriating money;
- (H) Granting franchises or special licenses; and
- (I) Providing for the issuance of bonds or other instruments of indebtedness.

§ 10.15 REPEAL OR MODIFICATION OF ORDINANCE.

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

(B) No suit, proceedings, right, liability, fine, forfeiture, or penalty instituted, created, given, secured, or accrued under any ordinance previous to its repeal shall in any way be affected, released, or discharged, but may be prosecuted, enjoyed, and recovered as fully as if the ordinance had continued in force, unless it is otherwise expressly provided and except as otherwise provided by law.

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

§ 10.16 SECTION HISTORIES.

As histories for the code sections, the specific number and passage date of the original ordinance, and the amending ordinances, if any, are listed following the text of the code section. Example:

§ 10.99 GENERAL PENALTY.

(A) Any person who violates any of the provisions of this municipal code, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding \$500. A new violation shall be deemed to have been committed every 24 hours of failure to comply with the provisions of this code.

(B) (1) Whenever a nuisance exists as defined in any part of this Code or under applicable law, the municipality may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law.

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

CHAPTER 11: CITY STANDARDS

Section

11.01 Official corporate seals

§ 11.01 OFFICIAL CORPORATE SEAL.

The official Corporate Seal of the Municipality shall be kept in the office of the Municipal Clerk, and shall bear the following inscription, "Official Seal, City of Waverly, Nebraska." The Municipal Clerk shall affix an impression of the said official seal to all warrants, licenses, permits, ordinances, and all other official papers issued by order of the Governing Body and countersigned by the Municipal Clerk. (Ref. 17-502 RS Neb.)

TITLE III: ADMINISTRATION

Chapter

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

CHAPTER 30: ELECTED OFFICIALS; ORDINANCES

Section

Mayor

- 30.01 Election; qualifications; terms
- 30.02 Powers and duties
- 30.03 Vacancy

Municipal Administrator

- 30.15 Municipal Administrator; duties

City Council

- 30.30 Elections; terms; qualifications
- 30.31 Wards
- 30.32 President; Acting President
- 30.33 Vacancy; general provisions
- 30.34 Vacancy due to unexcused absences

Standing Committees

- 30.45 Appointment
- 30.46 Chairpersons
- 30.47 Special or temporary committees
- 30.48 Membership limitations
- 30.49 Meetings; public
- 30.50 Liaison offices; appointment
- 30.51 Liaison offices; category
- 30.52 Liaison offices, general duties

Ordinances, Resolutions, and Motions

- 30.60 Grant of power
- 30.61 Introduction of ordinances
- 30.62 Procedure for resolutions and motions
- 30.63 Ordinances; style, title
- 30.64 Reading and passage of ordinances, resolutions, orders, bylaws
- 30.65 Publication or posting of ordinances
- 30.66 Certificate of publication or posting
- 30.67 Effective date; emergency ordinances
- 30.68 Amendments and revisions of ordinances

MAYOR

§ 30.01 ELECTION; QUALIFICATIONS; TERM.

(A) The Mayor shall be elected as provided in the Nebraska Election Act. The Mayor shall be a resident and registered voter of the City. (Neb. RS 17-107)

(B) The Mayor shall serve for a term of 4 years or until his or her successor is elected and qualified. (Neb. RS 32-533) (Am. Ord. 2452, 5-16-89)

§ 30.02 POWERS AND DUTIES.

(A) The Mayor shall preside at all meetings of the City Council. The Mayor may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the City Council on any pending matter, legislation, or transaction, and the Mayor shall, for the purpose of such vote, be deemed to be a member of the Council. He or she shall have superintendence and control of all the officers and affairs of the City and shall take care that the ordinances of the City and all laws governing the City are complied with. (Neb. RS 17-110; Neb. Rev. Stat. 17-614)

(B) The mayor shall have power to veto or sign any ordinance passed by the city council and to approve or veto any order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim. If the mayor approves the ordinance, order, bylaw, resolution, contract, or claim, he or she shall sign it, and it shall become effective. If the mayor vetoes the ordinance, order, bylaw, resolution, contract, or any item or items of appropriations or claims, he or she shall return it to the city council stating that the measure is vetoed. The mayor may issue the veto at the meeting at which the measure passed or within seven calendar days after the meeting. If the mayor issues the veto after the meeting, the mayor shall notify the City Clerk of these veto in writing. The clerk shall notify the city council in writing of the mayor's veto. Any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim vetoed by the mayor may be passed over his or her veto by a vote of two-thirds of the members of the council. If the mayor neglects or refuses to sign any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim, but fails to veto the measure within the time required by this section, the measure shall become effective

without his or her signature. The mayor may veto any item or items of any appropriation bill or any claims bill, and approve the remainder thereof, and the item or items vetoed may be passed by the council over the veto as in other cases. (Neb. RS 17-111)

(C) The Mayor shall, from time to time, communicate to the City Council such information and recommend such measures as, in his or her opinion, may tend to the improvement of the finances, the police, health, security, ornament, comfort, and general prosperity of the City. (Neb. RS 17-112)

(D) The Mayor shall have the power, when he or she deems it necessary, to require any officer of the City to exhibit his or her accounts or other papers, and to make reports to the Council, in writing, touching any subject or matter pertaining to his or her office. (Neb. RS 17-113)

(E) The Mayor shall have such jurisdiction as may be vested in him or her by ordinance, over all places within 5 miles of the corporate limits of the City, for the enforcement of any health or quarantine ordinance and regulation thereof and shall have jurisdiction in all matters vested in him or her by ordinance, excepting taxation, within 1/2 mile of the corporate limits of the City. (Neb. RS 17-114)

(F) The Mayor shall have the power to remit fines and forfeitures, and to grant reprieves and pardons for all offenses arising under the ordinances of the City. (Neb. RS 17-117)

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

(H) The Mayor shall receive requests for budget items from each Council Member or Council Member acting as a liaison official prior to May 1st of each year. The Mayor shall submit a proposed budget and appropriations ordinance to the President of the Council prior to June 1st of each year. Utility rates and percent of cost recovery shall be included within the proposed budget requirement submitted to the Governing Body by the Mayor.

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

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

§ 30.03 VACANCY.

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

(B) In case of any vacancy in the office of Mayor, or in case of his or her disability or absence, the President of the City Council shall exercise the office of Mayor for the unexpired term until such vacancy is filled or such disability is removed, or in case of temporary absence, until the Mayor returns. (Neb. RS 32-568)

(C) If the President of the Council assumes the office of Mayor for the unexpired term, there shall be a vacancy on the Council. (Neb. RS 17-107, 32-568)

MUNICIPAL ADMINISTRATOR

§ 30.15 MUNICIPAL ADMINISTRATOR; DUTIES.

The Municipal Administrator shall be the administrative head of Municipal Government, under the direction of the Mayor, to carry out the policies and directions which the Governing Body shall determine. In addition to the responsibilities set forth elsewhere, and not as a limitation thereof, it shall be the duty of the Municipal Administrator to: attend all meetings of the Governing Body and ensure proper implementation and compliance with all policies established by the Governing Body; timely advise the Governing Body regarding the Municipal operations and matters affecting the well-being of the Municipality; receive and deliver communications on behalf of the Municipality, Mayor, and City Council; receive and timely act upon citizen complaints; retain and consult with external professionals with approval of Mayor; supervise and provide general assistance to all Municipal boards, commissions, and committees, and attend all such meetings when so directed by the Mayor; ensure and supervise proper maintenance of all official Municipal documents and records; ensure compliance with all applicable laws, regulations, and ordinances; organize, direct, coordinate, and ensure proper implementation of all plans and programs for Municipal Departments; directly supervise and assist Municipal Departments in the general operation, meet regularly with departments to discuss performance and general administrative duties, and regularly report to the Mayor regarding such; directly supervise all Municipal office personnel; serve as the Municipal human resources director, coordinating all employment application procedures and interviews, implementing and maintaining a personnel evaluation program with the assistance of maintenance supervisor, preparing and submitting to the Mayor written performance evaluations for all City personnel at least once annually, supervising and maintaining payroll programs in compliance with all applicable laws, disciplining and terminating Municipal employees with approval of the Mayor, and ensuring proper administration of all employee benefit programs; maintain all Municipal financial records and reports; serve as City purchasing agent for all departments; directly supervise, in consultation with maintenance supervisor, the maintenance of perpetual inventories for Municipal departments; serve as Municipal ADA Compliance Officer; direct and coordinate Municipal safety and risk management activities; direct budget preparation and ensure submission of periodic budget reports to Governing Body; recommend to Governing Body the adoption of such measures and ordinances as are deemed necessary or expedient; and perform all other such duties and exercise such other powers as may be delegated to the Municipal Administrator from time to time by ordinance or resolution of Mayor and City Council. (*Ord. No. 98-17, 11/16/98; 15-05, 8/4/15*)

CITY COUNCIL

§ 30.30 ELECTION; TERMS; QUALIFICATIONS.

(A) The City Council shall consist of four members who shall be elected by ward on a nonpartisan ballot. The City shall have two (2) wards established pursuant to the precinct lines created by the Lancaster County Election Commissioner. Ward 1 shall consist of the voting precincts within the corporate limits north of Heywood Street. Ward 2 shall consist of the voting precincts within the corporate limits south of Heywood Street. Each ward shall have two members of the Council.

(B) Members of the Council shall be elected in the manner provided in the Nebraska Election Act. The term of office shall begin on the first regular meeting of the Council in December following the statewide general election. No person shall be eligible to the office of member of the Council who is not at the time of the election an actual resident of the ward for which he or she is elected and a registered voter. (Neb. RS 17-104)

(C) Members of the Council shall serve for terms of four years or until their successors are elected and qualified. (Neb. RS 32-533)

§ 30.31 WARDS.

The City shall redistrict as often as necessary using the most recent federal decennial census to ensure that each ward is substantially equal in population.

§ 30.32 PRESIDENT; ACTING PRESIDENT.

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

1. Act as liaison between the legislature and administrative areas of the City (Mayor-Council).
2. Aid the Mayor in budgetary requests in the area of Council and Committee programs and administrative costs.
3. Liaison of Council policy and procedure with the Mayor.
4. Review the agenda and requirements (see agenda).

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

(C) The President and Acting President, when occupying the place of the Mayor, shall have the same privileges as other members of the Council; and all acts of the President or Acting President, while so acting, shall be as binding upon the Council and upon the City as if done by the Mayor. (Neb. RS 17-148)

§ 30.33 VACANCY; GENERAL PROVISIONS.

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

(B) (1) Except as otherwise provided in subsection (C) or (D) of this section or Neb. Rev. Stat. 32-568, vacancies in the City Council shall be filled by the mayor and Council for the balance of the unexpired term. Notice of a vacancy, except a vacancy resulting from the death of the incumbent, shall be in writing and presented to the council at a regular or special meeting and shall appear as a part of the minutes of such meeting. The council shall at once give public notice of the vacancy by causing to be published in a newspaper of general circulation within the city or by posting in three public places in the city the office vacated and the length of the unexpired term.

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

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

(D) If vacancies exist in the offices of one-half or more of the members of the City Council, the Secretary of State shall conduct a special city election to fill such vacancies. (Neb. RS 32-569)

§ 30.34 VACANCY DUE TO UNEXCUSED ABSENCES.

(A) In addition to the events listed in Neb. RS 32-560 and any other reasons for a vacancy provided by law, after notice and a hearing, a vacancy on the City Council shall exist if a member is absent from more than five consecutive regular meetings of the Council unless the absences are excused by a majority vote of the remaining members. (Neb. RS 19-3101)

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

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

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

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

STANDING COMMITTEES

§ 30.45 APPOINTMENT.

At the first regular meeting following the organizational meeting of the City Council, held on the first regular meeting in December of each year in which a municipal election is held, the Mayor shall appoint members of those standing committees as the City Council may by ordinance or resolution create. Committee appointments shall require confirmation by a majority of a quorum of City Council members. Membership of the standing committees shall not be changed without approval of a majority of City Council members in attendance at a regular meeting of the City Council.

§ 30.46 CHAIRPERSONS.

All chairpersons of standing committees shall be appointed by the Mayor and shall be subject to confirmation by a majority of City Council members in attendance at a regular meeting of the City Council.

§ 30.47 SPECIAL OR TEMPORARY COMMITTEES.

Special or temporary committees of limited duration and purpose may be appointed by the Mayor from time to time, subject to approval of a majority of Council members present at a meeting of the City Council. The Mayor shall appoint the chairperson of any such temporary or special committee.

§ 30.48 MEMBERSHIP LIMITATIONS.

No more than half of the members of the City Council shall be appointed to any standing or special committee.

§ 30.49 MEETINGS; PUBLIC.

Meetings of all standing or special committees shall be conducted in compliance with the Open Meetings Act.

§ 30.50 LIAISON OFFICES; APPOINTMENT.

At the organizational meeting of the Governing Body appointments of Council Members shall be made to Liaison Offices. These offices are as follows:

- A. Human Services
- B. Public Health and Safety
- C. Public Works
- D. Fiscal and Economic Development

The Mayor shall nominate one (1) member of the Governing Body to each liaison office. One (1) member of the Governing Body shall not hold more than one (1) liaison office. The Council will vote on ratifications. Should the majority vote be not to ratify, the matter is automatically tabled to the next regular Council meeting. (Amended by Ord.01-02, 4/02/01)

§ 30.51 LIAISON OFFICES; CATEGORY.

The name and scope of the liaison offices shall be as follows:

- A. Human Services to include parks, recreation, mental health, health, and cemetery.
- B. Public Safety to include fire, rescue, police and emergency preparedness.
- C. Public Works to include streets, water and sewer.
- D. Fiscal and Economic Development to include financial and management planning and community economic development programming. (Amended by Ord.01-02, 4/02/01)

§ 30.52 LIAISON OFFICES; GENERAL DUTIES.

The primary responsibility of each liaison official shall be communication of specific programs, long range planning, budgetary requirements and problems to the Mayor and City Council. When a specific Standing Committee is established, the liaison official will also work to foster communications between the Standing Committee and the Mayor and Council.

During the budget preparation process, the liaison official will work with the Mayor in preparing a proposed budget.

Specific actions requested by the Mayor, Council Members, citizens, administrative staff, committees, or commissions for placement on the agenda shall be communicated to the liaison official responsible for the area in question prior to the development of Council support material.

ORDINANCES, RESOLUTIONS, AND MOTIONS

§ 30.60 GRANT OF POWER.

The City Council may make all ordinances, bylaws, rules, regulations, and resolutions, under authority of and not inconsistent with the laws of the state, as may be expedient for maintaining the peace, good government, and welfare of the municipality and its trade, commerce, and manufactories. (Neb. RS 17-505)

§ 30.61 INTRODUCTION OF ORDINANCES.

Ordinances shall be introduced by members of the City Council in one of the following ways:

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

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

(C) The Mayor may present the proposed ordinance to the City Council by reading aloud the title thereof, in the presence and hearing of a majority of the members elected to the City Council, provided the title is included on the agenda for that Council meeting and a copy of the ordinance is submitted to the City Clerk.

§ 30.62 PROCEDURE FOR RESOLUTIONS AND MOTIONS.

Formal resolutions may be introduced by any Council member, and, unless a Council member shall request full reading of the entire text thereof, shall be submitted for a vote by recitation of the resolution number assigned by the City Clerk. Motions shall be fully and distinctly stated by the person making the motion, and, upon request of any Council member, shall be restated by the City Clerk. Passage of any resolution or motion shall require concurrence of a majority of quorum of the members elected to the governing body, except that all ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the council or board of trustees. The vote on any resolution or motion shall be by roll call vote.

§ 30.63 ORDINANCES; STYLE, TITLE.

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

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

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

(A) Ordinances of a general or permanent nature shall be read by title on 3 different days unless 3/4 of the City Council vote to suspend this requirement, except that this requirement shall not be suspended for any ordinance for the annexation of territory. In case this requirement is suspended, the ordinance shall be read by title and then moved for final passage. A reading of any ordinance in full may be required by 3/4 of the City Council before enactment under either procedure set out in this section. All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the City Council. (Neb. RS 17-614)

(B) On the passage or adoption of every bylaw or ordinance, and every resolution or order to enter into a contract by the City Council, the yeas and nays shall be called and recorded. To pass or adopt any bylaw, ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the City Council shall be required. All appointments of the officers by the City Council shall be made viva voce, and the concurrence of a like majority shall be required, and the names of those, and for whom they voted, on the vote resulting in an appointment, shall be recorded. The requirements of a roll call or viva voce vote shall be satisfied by a municipality which utilizes an electronic voting device which allows the yeas and nays of each member of the City Council to be readily seen by the public. (Neb. RS 17-616)

§ 30.65 PUBLICATION OR POSTING OF ORDINANCES.

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

(A) In some newspaper published in the municipality or, if no paper is published in the municipality, then by posting a written or printed copy in each of 3 public places in the municipality; or

(B) In book or pamphlet form. (Neb. RS 17-613)

§ 30.66 CERTIFICATE OF PUBLICATION OR POSTING.

The passage, approval, and publication or posting of an ordinance shall be sufficiently proved by a certificate under the seal of the municipality from the Municipal Clerk showing that the ordinance was passed and approved, and when and in what paper

the ordinance was published, or when and by whom and where the ordinance was posted. (Neb. RS 17-613)

§ 30.67 EFFECTIVE DATE; EMERGENCY ORDINANCES.

(A) Except as provided in § 30.64 of this code and division (B) of this section, an ordinance for the government of the municipality which has been adopted by the City Council without submission to the voters of the municipality shall not go into effect until 15 days after the passage of the ordinance. (Neb. RS 19-3701)

(B) In the case of riot, infectious or contagious diseases, or other impending danger, failure of a public utility, or any other emergency requiring its immediate operation, an ordinance shall take effect upon the proclamation of the Mayor and the posting thereof in at least 3 of the most public places in the municipality. An emergency ordinance shall recite the emergency, be passed by a 3/4 vote of the City Council, and be entered of record on the Municipal Clerk's minutes. (Neb. RS 17-613)

§ 30.68 AMENDMENTS AND REVISIONS OF ORDINANCES.

No ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section so amended is repealed, except that an ordinance revising all the ordinances of the municipality and modifications to zoning or building districts may be adopted as otherwise provided by law. (Neb. RS 17-614)

CHAPTER 31: APPOINTED CITY OFFICIALS

Section

- 31.01 Appointment; removal; qualification
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- 31.20 Emergency Services Coordinator
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- 31.23 Reserved

§ 31.01 APPOINTMENT; REMOVAL; QUALIFICATION.

(A) Appointment and removal.

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

(2) The Mayor, by and with the consent of the City Council, shall appoint such a number of regular police officers as may be necessary. All police officers appointed by the mayor and council may be removed, demoted, or suspended at any time by the mayor as provided in subdivision (3) of this section. A police officer, including the chief of police, may appeal to the city council such removal, demotion, or suspension with or without pay. After a hearing, the city council may uphold, reverse, or modify the action. (Neb. RS 17-107)

(3) The city council shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay of any police officer, including the chief of police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the chief of police, upon the written accusation of the police chief, the mayor, or any citizen or taxpayer. The city council shall establish by ordinance procedures for acting upon such written accusation, including: (i) Provisions for giving notice and a copy of the written accusation to the police officer; (ii) the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; (iii) the right of the police officer or his or her attorney or representative retained by the police officer to be heard and present evidence; and (iv) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the city council for its consideration. 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 elected 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. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority,

pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders. This subsection does not apply to a police officer during his or her probationary period. (Neb. RS 17-107).

(4) The City Council may establish and provide for the appointment of members of a law enforcement reserve force as provided by law. (Neb. RS 81-1438)

(B) *Qualification for office.*

(1) Within 30 days after the date of his or her appointment, each appointive officer who is required to give bond shall qualify by filing the required bond, approved by the City Council, in the office of the City Clerk with sufficient sureties, conditioned on the faithful discharge of the duties of the office. Endorsed on the bond shall be the same oath as is required of a Council member.

(2) Within 30 days after the date of his or her appointment, each appointive officer who is not required to give bond shall qualify by taking and subscribing 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 the office, such oath to be filed in the office of the Clerk.

§ 31.02 MERGER OF OFFICES.

The City Council may, at its discretion, by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except Mayor and Council member, with any other elective or appointive office or employment so that one or more of these offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time. The offices or employments so merged and combined shall always be construed to be separate and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged or combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment, or employments so merged and combined. For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers. (Neb. RS 17-108.02)

§ 31.03 RESERVED.

§ 31.04 MUNICIPAL CLERK.

(A) The Municipal Clerk shall attend the meetings of the City Council and keep a correct journal of the proceedings of that body. After the period of time specified by the State Records Administrator pursuant to the Records Management Act, the City Clerk may transfer such journal of the proceedings of the council or board of trustees to the State Archives of the Nebraska State Historical Society for permanent preservation. (Neb. Rev. Stat. 17-605). He or she shall make, at the end of the fiscal year, a report of the business of the municipality transacted through his or her office for the year. He or she

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

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

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

(D)(1) The Municipal Clerk shall deliver all warrants, ordinances, and resolutions under his or her charge to the Mayor for his or her signature. He or she shall also deliver to officers, employees, and committees all resolutions and communications which are directed at those officers, employees, or committees. With the seal of the municipality, he or she shall duly attest the Mayor's signature to all ordinances, deeds, and papers required to be attested to when ordered to do so by the City Council.

(2) Within 30 days after any meeting of the City Council, the Municipal Clerk shall prepare and publish the official proceedings of the City Council in a legal newspaper of general circulation in the municipality, and which was duly designated as such by the City Council. This publication shall set forth a statement of the proceedings thereof and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to those job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position. The charge for this publication shall not exceed the rates provided by the statutes of the state, Neb. RS 19-1102 and 23-122. (Neb. RS 19-1102)

(3) This publication shall be charged against the general fund. (Neb. RS 19-1103)

(4) The Municipal Clerk shall then keep in a book with a proper index copies of all notices required to be published or posted by the Municipal Clerk by order of the City Council, or under the ordinances of the municipality. To each of the file copies of these notices shall be attached the printer's affidavit of publication, if the notices are required to be published, or the Municipal Clerk's certificate under seal where the same are required to be posted only. (Neb. RS 19-1102)

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

(F) The Municipal Clerk may charge a reasonable fee for certified copies of any record in his or her office as set by resolution of the City Council. He or she shall destroy municipal records pursuant to the Nebraska Records Management Act, Neb. RS 84-1201 through 84-1227, provided that the City Council shall not have the authority to destroy the minutes of the Municipal Clerk, the permanent ordinances, and resolution books, or any other records classified as permanent pursuant to the Nebraska Records Management Act.

§ 31.05 MUNICIPAL TREASURER.

(A) The City Treasurer shall be the custodian of all money belonging to the City. He or she shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefor, specifying the date of payment and on what account paid. He or she shall also file copies of these receipts with his or her monthly reports. The City Treasurer shall, at the end of every month, and as often as may be required, render an account to the City Council, under oath, showing the state of the treasury at the date of the account and the balance of money in the treasury. He or she shall also accompany these accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with any and all vouchers held by him or her, shall be filed with his or her account in the City Clerk's office. If the City Treasurer fails to render his or her account within 20 days after the end of the month, or by a later date established by the governing body, the Mayor with the advice and consent of the City Council may use this failure as cause to remove the Treasurer from office. (Neb. RS 17-606)

(B) The treasurer shall keep a record of all outstanding bonds against the City, showing the number and amount of each bond, for and to whom the bonds were issued, and the date upon which any bond is purchased, paid, or canceled. He or she shall accompany the annual statement submitted pursuant to Neb. Rev. Stat. 19-1101 with a description of the bonds issued and sold in that year and the terms of sale, with every item of expense thereof. (Neb. Rev. Stat. 17-606)

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

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

(3) The City Treasurer shall make duplicate receipts for all sums which shall be paid into his or her office, which receipts shall show the source from which those funds are derived, and shall, by distinct lines and columns, show the amount received to the credit of each separate fund, and whether the same was paid in cash, in warrants, or otherwise. The Treasurer shall deliver 1 of the duplicates to the person making the payment and retain the other in his or her office. (Neb. RS 77-2209)

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

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

(2) Publication shall be made in 1 legal newspaper of general circulation in the City. If no legal newspaper is published in the City, then publication shall be made in 1 legal newspaper published or of general circulation within the county in which the City is located. (Neb. RS 19-1103)

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

(F) The treasurer shall deposit, and at all times keep on deposit, for safekeeping, in banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing, all money collected, received, or held by him or her as city treasurer. 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, as a member of a board of public works, or as any other officer of the municipality shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds. (Neb. Rev. Stat. 17-607)

(G) When the treasurer holds funds of the City in excess of the amount required for maintenance or set aside for betterments and improvements, the mayor and council may, by resolution, direct and authorize the treasurer to invest said surplus funds in the outstanding bonds or registered warrants of the City, bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, or in interest-bearing bonds or the obligations of the United States. The interest on such bonds or warrants shall be credited to the fund out of which said bonds or warrants were purchased. (Neb. Rev. Stat. 17-608)

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

§ 31.06 MUNICIPAL FIRE/RESCUE CHIEF.

The Municipal Fire/Rescue Chief shall be appointed by the Mayor, by and with the consent of the Governing Body, after receipt of a recommendation from the Emergency Services Coordinator. The Fire/Rescue Chief shall be primarily responsible for the administration of the Municipal Fire/Rescue Department, shall work cooperatively with and at the direction of the Municipal Emergency Services Coordinator, and shall take such steps as are reasonable and necessary to ensure the Municipal Fire/Rescue Department is operated in accordance with this Code. The Municipal Fire/Rescue Chief shall serve at the pleasure of the Mayor. (Amended by Ord. No. 96-3, 2/5/96; 03-04, 7/7/03); (Neb. Rev. Stat. 17-147)

§ 31.07 RESERVED.

§ 31.08 RESERVED.

§ 31.09 RESERVED.

§ 31.10 RESERVED.

§ 31.11 RESERVED.

§ 31.12 CITY ATTORNEY.

The Municipal Attorney is the municipality's legal advisor, and as such he or she shall commence, prosecute, and defend all suits on behalf of the municipality. When requested by the City Council, he or she shall attend meetings of the City Council and

shall advise any municipal official in all matters of law in which the interests of the municipality may be involved. He or she shall draft such ordinances, bonds, contracts, and other writings as may be required in the administration of the affairs of the municipality. He or she shall examine all bonds, contracts, and documents on which the City Council will be required to act and attach thereto a brief statement in writing to all such instruments and documents as to whether or not the document is in legal and proper form when necessary. He or she shall prepare complaints, attend, and prosecute violations of the municipal ordinances when directed to do so by the City Council. Without direction, he or she shall appear and prosecute all cases for violation of the municipal ordinances that have been appealed to and are pending in any higher court. He or she shall also oversee all additional legal counsel employed to represent the City. He or she shall also examine, when requested to do so by the City Council, the ordinance records and advise and assist the Municipal Clerk as much as may be necessary to the end that each procedural step will be taken in the passage of each ordinance to ensure that they will be valid and subsisting local laws in so far as their passage and approval are concerned. The City Council shall have the right to compensate the Municipal Attorney for legal services on such terms as the City Council and the Municipal Attorney may agree, and to employ any additional legal assistance as may be necessary out of the funds of the municipality. (Neb. Rev. Stat. 17-610)

§ 31.13 DEPUTY CITY ATTORNEY.

The Deputy City Attorney shall assist the City Attorney in the prosecution of violations of municipal ordinances and shall perform other legal services for the City as may be requested by the City Attorney, Mayor, or Council. The Deputy City Attorney shall be appointed by the Mayor with the consent of the City Council. The Deputy City Attorney shall receive no fixed monthly salary but shall be paid for reasonable claims submitted by him or her for services rendered on behalf of the municipality.

§ 31.14 RESERVED.

§ 31.15 MUNICIPAL ENGINEER.

(A) The Municipal Engineer shall make all surveys, estimates, and calculations necessary to be made for the establishment of any public utilities and the costs of labor and materials therefor. He or she shall accurately make all plats, sections, and maps as may be necessary under the direction of the City Council.

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

§ 31.16 BUILDING INSPECTOR.

The Municipal Building Inspector shall conduct surveys and make inspections in any area of the municipality to determine whether all buildings and structures are in compliance with the municipal ordinances. He or she shall investigate all complaints, whether they are verbal, written, or in the form of a petition, alleging and charging that a violation of the municipal ordinances exists and that a building or structure is unfit or unsafe for human habitation. The Building Inspector is authorized upon properly identifying himself or herself to enter, inspect, survey, and investigate between the hours of 8:00 a.m. and 5:00 p.m., or at any time if an emergency exists, or if requested by the owner or occupant thereof. He or she shall keep records of all complaints received, inspection reports, orders, and complaints issued. The records shall be available for public inspection, and he or she shall prepare an annual report, including statistics based on the records kept. The Building Inspector shall have no financial interest in the furnishing of labor, materials, or appliances for the construction, alteration, or maintenance of a building, except where he or she is the owner of a building, and shall not act as an agent for any dealer of this type or as an agent for the sale, lease, or rental of any real estate. The Building Inspector shall report to the City Council as often as it may deem necessary and shall have such other duties and issue those permits as it may direct.

§ 31.17 RESERVED.

§ 31.18 MUNICIPAL PLUMBING INSPECTOR.

(A) The Municipal Plumbing Inspector, if one has been appointed, shall enforce all laws relating to the installation of plumbing and connections thereto, and shall comply with all provisions of Neb. Rev. Stat. 18-1901 to 1920 as applicable. The person chosen to fill the office of Plumbing Inspector shall be possessed of such executive ability as is required for the performance of his or her duties, and shall have a thorough knowledge of the standards of materials and methods used in the installation of plumbing equipment; shall be well versed in approved methods of construction for safety of persons and property, the statutes of the state relating to plumbing work and any orders, rules, and regulations issued by the authority thereof, and the National Standard Plumbing Code; and shall have had at least five years experience in plumbing work or in the installations of plumbing equipment, or in lieu of that experience shall be a graduate in mechanical engineering, or its equivalent, of a recognized college or university and shall have had two years of plumbing experience.

(B) When acting in good faith and without malice in the scope of his or her official duties, he or she shall not himself or herself be held personally liable for any damage that may accrue to persons or property as the result of any act required by him or her or by reason of any act or omission in the discharge of his or her duties. He or she shall, in the discharge of his or her official duties, and upon proper identification, have authority to enter into any building, structure, or premises at any reasonable hour. He or she shall perform other duties and issue any permits that the City Council may direct.

§ 31.19 DISASTER PREPAREDNESS MANAGER.

The Mayor, by and with the consent of the Governing Body, shall appoint a Disaster Preparedness Manager. The Disaster Preparedness Manager shall report to the Emergency Services Coordinator and have direct responsibility for the organization, administration, and operation of the local organization for Disaster Preparedness. The Disaster Preparedness Manager shall (1) serve as an ex-officio, unpaid member of the Emergency Management Committee; (2) serve as a liaison between the Municipality's Emergency Management Committees and the Lincoln-Lancaster County Emergency Management; (3) assume all duties and responsibilities of the Disaster Preparedness Manager as set forth in the Municipality Emergency Management Plan, such Plan as proposed by the Emergency Management Committee and adopted by the Governing Body; and (4) have such other duties as the Mayor may direct. (Ord. No. 85-2, 3/18/85) (Amended by Ord. No. 98-17, 11/16/98, 20-02, 03/24/2020; Ord. 20-02)

§ 31.20 EMERGENCY SERVICES COORDINATOR.

The Emergency Services Coordinator shall be appointed by the Mayor, by and with the consent of the Governing Body. The Emergency Services Coordinator shall serve as an ex-officio, unpaid member of the Emergency Management Committee and shall be primarily responsible for the overall administration and coordination of the providing of Emergency Services within the Municipality and in accordance with this Code, and shall supervise the Municipal Fire/Rescue Chief, the Disaster Preparedness Manager and the Severe Weather Team Leader. The Emergency Services Coordinator shall perform such duties as may be adopted, from time to time, as policy by the Governing Body and shall report to the Mayor. (Ord. No. 96-3, 2/5/96) (Amended by Ord. 03-04, 7/7/03; 20-02, 3/24/2020; Ord. 20-02)

§ 31.21 ZONING ADMINISTRATOR.

The Mayor may appoint a Zoning Administrator. In the absence of a specific appointment by the Mayor, the Building Inspector is hereby designated as Zoning Administrator. (Amended by Ord. 01-02, 4/2/01)

§ 31.22 SEVERE WEATHER TEAM LEADER.

The Severe Weather Team Leader shall be appointed by the Mayor, by and with the consent of the Governing Body, after receipt of a recommendation from the Emergency Services Coordinator. The Severe Weather Team Leader shall be primarily responsible for organizing and directing the Severe Weather Team that provides overwatch during severe weather. The Severe Weather Team Leader shall (1) report to the Emergency Services Coordinator; (2) serve as an ex-officio, unpaid member of the Emergency Management Committee; (3) serve as a liaison between the Municipality's Emergency Management Committees and the Lincoln-Lancaster County Emergency Management; (4) assume all duties and responsibilities of the Severe Weather Team Leader as set forth in the Municipality Emergency Management Plan, such Plan as proposed by the Emergency Management Committee and adopted by the Governing Body; and (5) have such other duties as the Mayor may direct. (Ord. No. 20-02, 3/24/2020; Ord. 20-02)

§ 31.23 RESERVED.

CHAPTER 32: DEPARTMENTS, BOARDS, AND COMMISSIONS

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BOARDS AND COMMISSIONS

§ 32.001 PLANNING COMMISSION.

The Governing Body shall appoint the Planning Commission which shall consist of seven (7) members who shall represent, insofar as is possible, the different professions or occupations in the Municipality and who shall be residents of the Municipality. However, one (1) of such members may be a resident of the area over which the Municipality is authorized to exercise extraterritorial zoning and subdivision regulations. The members of the Commission shall serve a three (3) year term of office unless reappointed. But if a Municipal Planning Commission has either five (5) or seven (7) members, approximately one-third (1/3) of the members of the first Commission shall serve for a term of one (1) year, one-third (1/3) for a term of two (2) years, and one-third (1/3) for a term of three (3) years. The Commission shall serve without compensation and may be required, in the discretion of the Governing Body, to give a bond in a sum set by resolution of the Governing Body and conditioned upon the faithful performance of their duties.

At the time of the Commission's first (1st) meeting in January of each year, the Commission shall organize by selecting from its membership a chairman 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 the Municipal Clerk, where they shall be available for public inspection at any reasonable time. The Planning Commission shall be funded by the Governing Body from time to time out of the General Fund. A majority of the Commission shall constitute a quorum for the purpose of doing business. Special meetings may be held upon the call of the chairman, or any three (3) members of the Commission. The Planning Commission shall hold at least one (1) regular meeting in each calendar quarter, except the municipal Governing Body may require the Commission to meet more frequently and the Chairperson of the Commission may call for a meeting when necessary to deal with business pending before the Commission. It shall be the duty of the Commission to make and adopt plans for the physical development of the Municipality, including any areas outside its boundaries which, in the Commission's judgment, bear relation to the planning of such Municipality, and including a Comprehensive Development Plan as defined in Neb. Rev. Stat. §19-903 (Reissue 1977); to prepare and adopt such implemental means as a capital improvement program, subdivision regulations, building codes, and zoning ordinance in cooperation with other interested municipal departments; consult and advise with public officials and agencies, public utilities, civic organizations, educational institutions, and citizens with relation to the promulgation and implementation of the Comprehensive Development Plan and its implemental programs; have the power to delegate authority to any such group; to conduct studies and make surveys for the Commission; make the preliminary reports on its findings; and hold public hearings before submitting its final reports. The Municipal Governing Body shall not hold its public meetings or take action on matters relating to the Comprehensive Development Plan, capital improvements, building codes, subdivision development, or zoning until it has received the recommendation of the Planning Commission, if such Commission in fact has been created and its existent; Provided, that the Governing Body may set a reasonable time within which the recommendation is to be received.

The Governing Body authorizes the Planning Commission to grant conditional uses or special exceptions to property owners for the use of their property, and approves the standards and procedures adopted by the Commission for equitably and judiciously granting such conditional uses or special exceptions. The Commission may, with the consent of the Governing Body, in its own name, make and enter into contracts with public or private bodies; receive contributions, bequests, gifts, or grant funds from public or private sources; expend the funds appropriated to it by the Municipality; employ agents and employees; and acquire, hold, and dispose of property. The Commission may on its own authority make arrangements consistent with its program; conduct or sponsor special studies or planning work for any public body or appropriate agency; receive grants, remuneration, or reimbursements for such studies or work; and at its public hearings, summon witnesses, administer oaths, and compel the giving of testimony.

The Commission shall cooperate with County, Municipal, or Regional Planning Commissions and other agencies or groups to further the local planning program and to assure harmonious and integrated planning for the area.

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

The Commission shall be responsible for making such reports and performing such other duties as the Governing Body may, from time to time, designate. No member of the Governing Body, or other Municipal official, except where otherwise specifically provided, shall serve as a member of the Planning Commission while serving any other term of office. No member of the Planning Commission shall serve in the capacity of both the chairman and secretary of the Commission. (*Amended by Ord. No. 12-07, 4/3/12*)

§ 32.002 BOARD OF ADJUSTMENT.

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

jurisdiction. Neither the Mayor nor any member of the City Council shall serve as a member of the Board of Adjustment. (Neb. RS 19-908)

(B) The members of the Board shall serve without compensation and may be required, in the discretion of the City Council, to give a bond in a sum set by resolution of the City Council and conditioned upon the faithful performance of their duties. The Board shall organize at its first meeting each year after the City Council meeting when appointments are regularly made and elect from its membership a chairperson and secretary. No member of the Board of Adjustment shall serve in the capacity of both chairperson and secretary of the Board.

(C) The Board shall adopt rules in accordance with the provisions of Neb. RS 19-901 through 19-914. Meetings of the Board shall be held at the call of the chairperson and at such other times as the Board may determine. Special meetings may be also held upon the call of any 3 members of the Board. A majority of the Board shall constitute a quorum for the purpose of doing business. The chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. It shall be the duty of the secretary to keep complete and accurate minutes of all Board meetings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact, and to keep records of the Board's examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be public record. The Board shall be responsible for making those reports and performing those other duties as the Mayor and City Council may designate. (Neb. RS 19-908)

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

(E) The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the City Council, have only the following powers: (1) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or

soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under subsection (3) of section Neb. Rev. Stat. 19-929; (2) to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; and (3) when by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under Neb. Rev. Stat. 19-910 and sections 19-901, 19-903 to 19-904.01, and 19-908 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution.

(F) No such variance shall be authorized by the board unless it finds that: (1) The strict application of the zoning regulation would produce undue hardship; (2) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (3) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (4) the granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice. No variance shall be authorized unless the board finds that the condition or situation of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

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

Appeals from a decision by the Board may be taken as provided in Neb. RS 19-912. (Neb. RS 19-910)

§ 32.003 BOARD OF HEALTH.

(1) The Governing Body shall contract with Lincoln/Lancaster County for the services of the Lincoln/Lancaster County Board of Health, for the purposes of enforcement of any ordinance which the City would require the involvement of the Board of Health. The Lincoln/Lancaster County Board of Health shall be deemed to be the Board of Health of the City of Waverly and shall have full power to act as such with respect to enforcement of any ordinance. It shall be the duty of the Board to advise the City and investigate the occurrence of nuisances within the

Municipality relating to matters which affect the health and safety of the people. The Board shall regularly inspect such premises and businesses as the Governing Body may direct. The Board shall be responsible for making such reports and performing such other duties as the Governing Body may, from time to time, designate. *(Ref. 17-121 RS Neb.) (Amended by Ord. No. 84-2, 4/23/84)*

(2) Except as provided by specific amendment, the standards and regulations set forth in Lancaster County Onsite Wastewater Treatment System Resolution R-15-0004, as amended by R-22-0014, as amended by R-22-0086 ; Lancaster County Solid Waste Resolution R-87-4308 ; Lancaster County Property Transfer Resolution R-13-0064, as amended by R-22-0013, as amended by R-22-0084 ; and Lancaster County Air Pollution Control Resolution R-13-0073, as amended by R-22-0085 ; copies of which are attached hereto and incorporated herein by this reference, and as amended from time to time, are hereby adopted by reference and incorporated into the City of Waverly ordinances and municipal code.

(3) The Interlocal Agreement (Resolution No. 23-23) between the City of Lincoln, Nebraska, on behalf of the Lincoln-Lancaster County Health Department, and the City, for the purpose of providing health regulation inspection and enforcement within the corporate limits and extra-territorial jurisdiction of the City, dated October 24, 2023, as amended, is hereby approved and adopted by the City, a copy which is attached hereto and incorporated herein by this reference. *(Amended by Ord. No. 23-16, 10/24/2023)*

§ 32.004 PARK COMMITTEE, AND RECREATION SUBCOMMITTEE.

The Mayor shall appoint the Park Committee, subject to ratification by the Governing Body. The Committee shall consist of six (6) members, including the Waverly City Council Member appointed by the Mayor. Such Council Member shall serve as a non-voting official member of the Committee and shall not propose Committee action by motion. Residency within the zoning jurisdiction of the City of Waverly shall be a prerequisite for Committee and/or sub-committee membership. In the event that any Committee or sub-committee member shall cease to maintain a residence within such zoning jurisdiction, his or her seat on the Committee and/or sub-committee shall be deemed to have been vacated. The Waverly City Council member serving on the Committee shall serve a one (1) year term of office, unless reappointed. The members of the Committee and sub-committee shall serve a three (3) year term of office, unless reappointed, and shall serve without compensation; Provided, however, that this Section shall not affect the term of office of any sitting Park Committee member at the time of its adoption. At the time of the Committee's and sub-committee's first (1st) meeting in January of each year, such Committee and sub-committee shall each organize by selecting from their number a chairperson, vice-chairperson, and secretary. It shall be the duty of each such secretary to keep the full and correct minutes and records of all meetings, and to file the same with the Municipal Clerk, where they shall be available for public inspection at any reasonable time. A majority of the voting members of the Committee shall constitute a quorum for the transaction of Committee business. The Committee shall meet at such times as their own internal rules shall provide. The Committee shall propose to the Governing Body appropriate rules and regulations for the management, use, and operation of all parks and recreational facilities belonging to the Municipality, governing

the use of such facilities other than in connection with organized recreation programs. The Committee shall, in addition, propose to the Governing Body, appropriate plans governing the development and maintenance of all parks and other physical facilities belonging to the Municipality. All actions of the Committee and its Recreation sub-committee shall be subject to the review and control of the Governing Body. The Committee shall be responsible for making such reports and performing such other duties as the Governing Body may, from time to time, designate. (*Ref. 17-952 RS Neb.*) (*Amended by Ord. No. 2-204, 12/7/81; 06-26, 12/18/06*)

§ 32.005 WAVERLY EMERGENCY MANAGEMENT COMMITTEE.

The Mayor shall appoint the Waverly Emergency Management Committee subject to ratification by the Governing Body. The Committee shall consist of at least six (6) members, and shall include one sitting City Council Member, the Waverly Emergency Services Coordinator, Disaster Preparedness Manager, Severe Weather Team Leader, Executive Member of the Rural Fire Board and the Waverly Fire Chief. The Council Member appointed to such Committee shall serve as a non-voting ex officio member of the Committee and shall not propose Committee action by motion. The members of the Committee shall serve without compensation. The Committee shall meet at such times as their own internal rules shall provide. Full and correct minutes and records of all meetings shall be kept and provided to the Municipal Clerk for filing, where they shall be available for public inspection at any reasonable time. A majority of the voting Committee members shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the Committee shall function in accordance with its own procedural rules. The Waverly Emergency Services Coordinator shall serve as the chairperson of the Committee. The chairperson shall have direct responsibility for the organization, administration, and operation of the Committee, subject to the direction and control of the Mayor. The Committee shall propose to the Governing Body appropriate rules and regulations for emergency management for the Municipality in coordination with the Waverly Emergency Management Plan of the Lincoln-Lancaster County Emergency Management. All actions of the Committee shall be subject to the review and control of the Governing Body. The Committee shall be responsible for providing such reports and performing such other duties as the Governing Body may, from time to time and at any time, designate. (Ord. No. 2-200.206, 11/16/81) (Amended by Ord. Nos. 83-5, 4/18/83; 84-1, 2/20/84; 90-4, 3/5/90; 98-8, 4/6/98, 20-02, 3/24/2020; and 23-01, 2/28/2023)

§ 32.006 COMMUNITY REDEVELOPMENT AUTHORITY.

(1) Creation. There is hereby created the Community Redevelopment Authority of the City of Waverly, Nebraska.

(2) Membership. The Mayor shall appoint, with the approval of the City Council, five (5) members who shall constitute the membership of the Authority. The Mayor shall designate the term of office for each member as provided for in Neb. Rev. Stat. Section 18-2102.01. Vacancies shall be filled for any unexpired term in the same manner as the original appointment. Members of the community redevelopment authority so appointed shall hold office until their successors have been appointed and qualified. All members of the community redevelopment authority shall serve without compensation but shall be

entitled to be reimbursed for all necessary expenses incurred. A total of four (4) members of the Authority shall constitute a quorum for the transaction of business. The Authority shall adopt rules for the transaction of its business and shall keep a record of its resolutions, transactions, findings, and determinations, which records shall be made available for public inspection during regular business hours.

(3) Officers. The Authority shall organize by electing one of its members chairperson and another as vice-chairperson.

(4) Employees. The Authority may secure the services of a director, community redevelopment administrator, or coordinator, and other officers and employees as may be desired through contract with the Department of Economic Development upon terms which are mutually agreeable.

(5) Funds. All income, revenue, profits and other funds received by the Authority shall be deposited with the City Treasurer as the ex officio Treasurer of such Authority without commingling such money with any other money under his or her control and disbursed by check or draft only upon warrants, orders, or requisitions by the Chairperson of the Authority or other person authorized by the Authority which shall state distinctly the purpose for which the same are drawn; and a permanent record shall be kept by the Authority of any such activity. (*Ord. 18-07, 06/12/2018; Ord. No. 23-13, 08/22/2023*)

UTILITY DEPARTMENTS

§ 32.045 WATER DEPARTMENT; OPERATION AND FUNDING.

The Municipality owns and operates the Municipal Water Department. The Governing Body, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Water Department may, each year, levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Water Fund and shall remain in the custody of the Municipal Treasurer.

The City Administrator shall have the authority to adopt rules and regulations for the sanitary and efficient management of the Water Department, which regulations shall be submitted to the Governing Body and ratified by resolution. Such regulations shall not become effective until ratified by published resolution of the Governing Body. The Governing Body shall set the rates to be charged for services rendered by ordinance and shall file a copy of the rates in the office of the Municipal Clerk for public inspection at any reasonable time. (*Amended by Ord. No. 01-04, 5/7/01*) (*Ref. 17-531, 17-534, 19-1305 RS Neb.*)

§ 32.046 SEWER DEPARTMENT; OPERATION AND FUNDING.

The Municipality owns and operates the Municipal Sewer System. The Governing

Body, for the purpose of defraying the cost of the operation, maintenance, and replacement (OM&R) of the Municipal Wastewater System may establish a user charge system based on estimated use and revise the charges, if necessary, to accomplish the following:

1. Maintain the proportional distribution of operation, maintenance, and replacement (OM&R) costs among users and user classes;

2. Generate adequate revenues to pay the costs of operation and maintenance, repair, and wastewater treatment facility bond retirement;

3. Apply excess revenues collected from a class of users to the costs of OM&R attributable to that class for the next year and adjust the rates accordingly. The revenue from the said user charge system use shall be known as the Wastewater System Maintenance Fund, which fund shall be maintained and accounted for by the Municipal Treasurer in accordance with the Waverly Municipal Code. The Wastewater Operator shall have direct management and control of the Sewer Department and shall faithfully carry out the duties of his or her office. He or she shall function within the policy guidelines established by the Governing Body for the operation and maintenance of the Municipal Wastewater System and shall operate the Sewer Department under the direct control of the City Administrator. He or she shall have the authority to promulgate rules and regulations for the sanitary and efficient management of the Department subject to the supervision, review and approval of the Governing Body. (Ref. 17-574, 17-925.01 RS Neb.) (*Amended by Ord. No. 87-9, 7/20/87,01-08,7/2/01*)

EMERGENCY SERVICES

§ 32.060 EMERGENCY SERVICES.

The Municipality operates and administers the Waverly Fire and Rescue Department to provide fire protection and emergency rescue services within the City's corporate limits. (Amended by Ord. 03-05, 7/7/03)

§ 32.061 ALTERNATIVE MEANS TO PROVIDE SERVICES.

In lieu of having its own Fire Department as provided in this Article, the Municipality may provide fire protection services via contract with another agency authorized to provide fire protection services as provided by Neb. Rev. Stat. 13-801 through 13-807 (Reissue 1991). (Ord. No. 96-10, 10/7/96)

§ 32.062 ALTERNATIVE MEANS TO PROVIDE SERVICES.

In lieu of having its own Rescue Squad as provided in this Article, the Municipality may provide emergency rescue services via contract with another agency authorized to provide emergency rescue services as provided by Neb. Rev. Stat. 13-303 (Reissue 1991). (Ord. No. 96-11, 10/7/96)

§ 32.063 OPERATION AND FUNDING.

The Municipality operates the Waverly Fire and Rescue Department through the Emergency Services Coordinator, the Municipal Fire/Rescue Chief, volunteer firefighters and emergency rescue squad members. The Governing Body, for the purpose of defraying the cost of the management, maintenance, and improving the Waverly Fire and Rescue Department may each year levy a tax not exceeding the maximum limits prescribed by State Law, on the actual valuation of all real estate and personal property within the Municipality that is subject to taxation. The revenue from said tax shall be known as the Fire Department Fund. The Fund shall be at all times in the possession of the Municipal Treasurer. The Municipality may enter into an agreement with the appropriate rural fire district for mutual aid, sharing of costs and authorizing the Waverly Fire and Rescue Department to provide protection and services for all the residents therein. (Amended by Ord. 03-05, 7/7/03)

§ 32.064 FIRE/RESCUE CHIEF.

The Municipal Fire and Rescue Chief shall manage the Waverly Fire and Rescue Department and it shall be his/her duty to command all firefighting/rescue activities; interview and recommend appointment of firefighters/rescue personnel; maintain departmental discipline and order; enforce rules and regulations; recommend disciplinary actions; regularly inspect readiness of personnel and equipment; participate in the formulation of departmental policies and procedures, including policies and procedures for the recruitment and retention of firefighters/rescue personnel; participate in the preparation and administration of the fire department budget; and prepare and submit necessary statistical and operation reports as are requested by the Mayor, the Governing Body, and the Emergency Services Coordinator. (Amended by Ord. 03-05, 7/7/03)

§ 32.065 FIREFIGHTERS/RESCUE PERSONNEL.

The Mayor, based upon recommendations of the Emergency Services Coordinator and the Fire/Rescue Chief, shall appoint, subject to the review and approval of the Governing Body, no more than seventy-five (75) persons as firefighters/rescue personnel to the Waverly Fire and Rescue Department. A City Council Member shall serve as a nonvoting ex officio member of the Department and shall not propose department action by motion. The members of the Department shall serve without compensation. A current list of firefighters approved by resolution by the Governing Body will be filed and maintained at the office of the City Clerk and with the Fire/Rescue Chief. All prospective firefighter/rescue members shall complete a Membership Application form approved by the City. The duly appointed firefighter/rescue members shall be considered to be employees of the Municipality for the purpose of providing them with worker's compensation and life insurance. Each firefighter/rescue member shall be entitled to a term life insurance policy for death from any cause. The policy, at the option of the individual, may be converted to a permanent form of life insurance at age seventy (70); Provided, that the firefighters/rescue members covered are actively and faithfully performing the duties of their position, including, but not limited to, traveling from any place from which they have been called to active duty, to a fire station or other place where firefighting/rescue equipment that their company or unit is to use is located, or to any emergency that the firefighters/rescue members may be officially called to participate in, attending drills, meetings, seminars, or

training related to the duties as firefighters/rescue members as may be decided by the Governing Body subject to the limitations above. Except as otherwise provided herein, the Department shall function in accordance with its own procedural rules. The Waverly Fire and Rescue Chief shall have direct responsibility for the organization, administration, and operation of the Department, subject to the direction and control of the Emergency Services Coordinator and the Mayor. The Department shall propose to the Governing Body appropriate rules and regulations for Fire and Rescue Safety for the Municipality. All actions of the Department shall be subject to review and control of the Governing Body. The Department shall be responsible for making such reports and performing such other duties as the Governing Body may from time to time designate. (Amended by Ord. No. 99-18, 6/21/99; 03-05, 7/7/03; 23-02, 3/14/23)

§ 32.066 FIRES.

It shall be the duty of the Waverly Fire and Rescue Department to use all proper means for the extinguishment of fires; to protect property within the Municipality; and to secure the observance of all ordinances, laws, and other rules and regulations with respect to fires and fire prevention. (Amended by Ord. 03-05, 7/7/03)

§ 32.067 IMPERSONATING FIREFIGHTER/RESCUE PERSONNEL.

It shall be unlawful for any person to falsely impersonate a firefighter/rescue member by wearing a badge or other apparel usually worn by a firefighter/rescue member for the purpose of obtaining any benefit whatsoever. Nothing herein shall be construed to prohibit the theatrical representation of firefighter/rescue personnel for bona fide entertainment purposes when there is no intent to defraud. (Ref. 28-609 RS Neb.) (Amended by Ord. 03-05, 7/7/03)

§ 32.068 MANDATORY ASSISTANCE.

Any official of the Waverly Fire and Rescue Department may command the assistance and services of any person present at a fire to help in extinguishing the fire, or in the removal and protection of property. In the event that a spectator refuses, neglects, or fails to assist the Waverly Fire and Rescue Department after a lawful order to do so, he/she shall be deemed guilty of a misdemeanor.

§ 32.069 FIRE INVESTIGATION.

It shall be the duty of the Waverly Fire and Rescue Department to investigate or cause to be investigated, the cause, origin, and circumstances of every fire occurring in the Municipality in which property has been destroyed or damaged in excess of fifty dollars (\$50.00). All fires of unknown origin shall be reported, and such officers shall especially make an investigation and report as to whether such fire was the result of carelessness, accident, or design. Such investigation shall be begun within two (2) days of the occurrence of such fire and the State Fire Marshall shall have the right to supervise and direct the investigation whenever he/she deems it expedient or necessary. The officer making the investigation of fires occurring within the Municipality shall immediately notify the State Fire Marshall and shall, within one (1) week of the occurrence of the fire, furnish him/her

with a written statement of all the facts relating to the cause and origin of the fire, and such further information as he/she may call for. (Ref. 81-506 RS Neb.)

§ 32.070 RESERVED.

§ 32.071 OPERATION AND FUNDING.

The City of Waverly shall oversee the Waverly Fire and Rescue for ambulance and rescue services through the Emergency Services Coordinator. The Governing Body, for the purpose of defraying the cost of the maintenance, management, and improvements relating to the Waverly Fire and Rescue Department and equipment attendant thereto, may each year levy tax not exceeding the maximum limits prescribed by State Law, on the actual valuation of all real estate and personal property within the Municipality that is subject to taxation. The Municipality may enter into an agreement with the appropriate rural fire district for mutual aid, sharing of costs, and authorizing the Waverly Fire and Rescue to provide protection and services for all the residents therein. (Amended by Ord. No. 99-19, 7/6/99)

§ 32.072 RESERVED.

§ 32.073 REMOVAL OF VOLUNTEER MEMBERS.

The Mayor shall, after consulting with the Emergency Services Coordinator and Fire/Rescue Chief, have the duty to remove or suspend any fire/rescue personnel who (1) act with gross or willful negligence in the performance of their duties; (2) display grossly immoral or dishonorable conduct evidencing unfitness for service as a volunteer fire/rescue member; (3) have been convicted of a Class I or II misdemeanor or a felony under state law; or (4) otherwise fail to perform duties in accordance with this Code. Gross or willful negligence includes, but is not necessarily limited to (a) a deliberate act; (b) such conduct as evidences reckless indifference to safety; or (c) intoxication or being under the influence of any drug which would impair physical or mental faculties while performing active duty. (Amended by Ord. No. 99-19, 7/6/99; 03-05, 7/7/03)

POLICE DEPARTMENT

§ 32.080 CONTRACT WITH COUNTY SHERIFF'S OFFICE.

The City of Waverly may enter into a contract with the County Board of Lancaster County for police services to be provided by the County Sheriff's office. Whenever any such contract has been entered into, the Sheriff shall, in addition to his other powers and duties, have all the powers and duties of peace officers within and for the City of Waverly. (Ref. 19-3801 RS Neb.)

§ 32.081 RESERVED.

§ 32.082 RESERVED.

§ 32.083 RESERVED.

CHAPTER 33: GENERAL PROVISIONS

Section

Meetings

- 33.01 Reserved
- 33.02 Reserved
- 33.03 Reserved
- 33.04 Reserved
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- 33.06 Reserved
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- 33.08 Reserved
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- 33.10 Reserved
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- 33.12 Reserved
- 33.13 Order of business
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- 33.15 Change in office
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Bonds and Oaths

- 33.30 Bonds; form
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Compensation

- 33.45 Compensation; municipal officers
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- 33.47 Reserved
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MEETINGS

All meetings of the City subject to the Nebraska Open Meetings Act shall be conducted pursuant to the Act, Neb. Rev. Stat. §§ 84-1407 to 1414.

§ 33.01 RESERVED.

§ 33.02 RESERVED.

§ 33.03 RESERVED.

§ 33.04 RESERVED.

§ 33.05 RESERVED.

§ 33.06 RESERVED.

§ 33.07 RESERVED.

§ 33.08 RESERVED.

§ 33.09 RESERVED.

§ 33.10 RESERVED.

§ 33.11 RESERVED.

§ 33.12 RESERVED.

§ 33.13 ORDER OF BUSINESS.

Regular meetings of the City Council shall be held on the second (2nd) and fourth (4th) Tuesdays of each month at the hour of six (6:00) o'clock p.m., unless the time or date of any regular meeting is changed by the Mayor and such change of schedule is communicated to the public by publication, or if publication is for any reason defective or deficient, then by posting. Promptly at the hour set by law on the day of each regular

meeting of the City Council, the members of the City Council, the Municipal Clerk, the Mayor, and those other municipal officials that may be required shall take their regular stations in the meeting place, and the business of the municipality shall be taken up for consideration and disposition in the manner prescribed by the official agenda on file at the office of the Municipal Clerk.

§ 33.14 PARLIAMENTARY PROCEDURE.

In all cases in which provisions are not made by this Code or state law for conduct of meetings of the City Council and other City bodies, *Robert's Rules of Order* is the authority by which the City Council and such bodies shall decide all procedural disputes that may arise.

§ 33.15 CHANGE IN OFFICE.

The change in office shall be made as follows: The Mayor and City Council shall meet on the first regular meeting date in December of each year in which a municipal election is held, and the outgoing officers and the outgoing members of the Council shall present their reports, if any. Upon the old Council having completed its business up to the time, the outgoing council members shall surrender their offices to the incoming members, and the outgoing officers shall thereupon each surrender to his or her successor in office all property, records, papers, and moneys belonging to the same.

§ 33.16 ORGANIZATIONAL MEETINGS.

(A) The newly elected Council shall convene at the regular place of meeting in the City on the first regular meeting in December of each year in which a municipal election is held immediately after the prior Council adjourns and proceed to organize itself for the ensuing year. The Mayor, elected for the new municipal year or continuing in office, as the case may be, 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, if such elections have not previously been certified by law, to see that each has been duly and properly elected and to see that those oaths and bonds have been given as are required. After ascertaining that all members are duly qualified, if such qualification has not previously been certified by law, the Council shall then elect one of its own body who shall be styled President of the Council. The Mayor may then nominate a number of candidates for appointive offices as are necessary to be made at that time, consistent with the Mayor's statutory code and other legal authority regarding removal and appointment of officers, including police officers, and the City Council's statutory and code authority to give advice and consent on mayoral nominations made. The Mayor shall then proceed with the regular order of business.

(B) It is hereby made the duty of each and every member of the Council or his or her successor in office and of each officer elected to any office to qualify prior to the first regular meeting in December following election. 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 subscribing and taking an oath to support the federal Constitution, the state Constitution, and the laws of the municipality and to perform

faithfully and impartially the duties of office, this oath to be filed in the office of the Municipal Clerk. Each officer who is required to give a bond shall file the required bond in the office of the Clerk with sufficient sureties, conditioned on the faithful discharge of the duties of his or her office, with the oath endorsed thereon.

§ 33.17 MEETINGS; ORDINANCES.

A. Introduced by Council Member proposing ordinance. If an area of another Council Member's liaison office, introducer shall communicate nature of ordinance to the liaison official prior to introduction to the Governing Body.

B. The introducer shall place each ordinance on the agenda of a regular meeting of the Governing Body, at his/her pleasure, for subsequent readings. Any person may comment on the ordinance at any public hearing held after the introduction of the ordinance, provided that no one ordinance shall be the subject of more than fifteen (15) minutes discussion during any single public hearing, divided as follows: Introducer, five (5) minutes for opening remarks; Proponents, five (5) minutes; Opponents, five (5) minutes.

C. Following successful vote on an ordinance on first (1st) reading the City Attorney will be authorized to work with the Council Member introducing the ordinance to add legal form to the ordinance.

D. The Clerk will read the ordinance by title following all inside motions to amend, and immediately following the summation of the main motion.

E. Any Council Member may amend current reading. Substantive changes may, by motion, cause the ordinance to revert to a lower reading.

F. Three-fourths ($\frac{3}{4}$) of those elected to the office are required for passage. The Mayor may break a tie.

G. Failure of a motion to adopt results in total failure of ordinance and cannot be reintroduced for six (6) months. (Amended by Ord. No. 90-3, 4/2/90)

§ 33.18 MEETINGS; AGENDAS.

Agenda items for regular meetings of the Governing Body shall be submitted to the Clerk on the Wednesday preceding the meeting date. The Governing Body shall have the right to modify agenda items or expand the agenda to include items of an emergency nature, at public meetings, and, to include items placed on the agenda after the due date provided above, but prior to the meeting date. Only by Council Members, the Mayor and the Clerk may place items on the agenda. The Clerk may place routine items on the agenda without endorsement and shall place on the agenda matters requiring action by State law and items requested by the City's Fiscal Agent or the City Attorney. (Ref. Ord. No. 78-4) (Amended by Ord. No.01-02, 4/2/01)

Should the President of the Council determine that more items have been submitted on the agenda than can be fairly disposed of under the rules, the President may request of the sponsor a postponement. The President may arrange items within the general context

of the agenda for efficient disposition of business at his/her discretion. Also, the Mayor shall dispose of all items pertaining to consultants in attendance upon their arrival at the meeting. Individual citizens wishing a specific item to be placed on the agenda shall be directed to the liaison official that is determined to be responsible for the item to be considered and/or the Mayor. Regular rules as outlined above shall then apply. The Mayor and the President of the Council shall make the final determination as to the makeup of the agenda. (Amended by Ord. No. 15-06, 8/4/15)

To conform to rules of the Governing Body, the following form shall be used for the agenda.

- I. Call to Order
- II. Public Hearings
- III. Public Comment
- IV. Approval of Minutes
- V. Approval of Financial Reports & Consideration of Claims for Payment
- VI. Introduction of Resolutions
- VII. Introduction of Ordinances
- VIII. Introduction of Business Communications

An agenda, kept continuously current, is available for public inspection at the office of the City Clerk. The Mayor shall arrange such agenda items at the meeting to economically use the time of retained consultants. The agenda information notice shall contain an estimated running time as set forth in the rules of Council meetings. (Amended by Ord. No. 90-3, 4/2/90)

Mayor and each Council Member receive via messenger on Friday afternoon, or before, preceding the Council meeting, a packet containing the following material:

- A. An agenda listing published agenda items
- B. Explanation of each agenda item indicating which Council Member has placed the item, as well as any guests or speakers and estimated time limits
- C. All support material relative to the agenda items
- D. Any communications to individual Council Members.

It shall be the duty of the introducer to see that adequate written explanation is given of each published agenda item to fully inform the Council and Mayor.

Although it is necessary that each Council Member and Mayor receive agenda support material with the agenda packet as outlined in herein, sometimes circumstances require handouts to be presented at the Council meeting. In this case, all handouts in the custody of the Clerk shall be presented prior to call to order. This Section does not pertain to support material brought to the meeting by Public or representatives although the Council encourages support material to be contained with the agenda packet.

BONDS AND OATHS

§ 33.30 BONDS; FORM.

(A) The City Council may require from all officers and servants, elected or appointed, bonds and security for the faithful performance of their duty. Official bonds of the municipality shall be in form, joint and several, and shall be made payable to the municipality in such penalty as the City Council may set by resolution, provided that the penalty amount on any bond shall not fall below the legal minimum, when one has been set by the state, for each particular official. All official bonds of the municipal officials shall be executed by the principal named in the bonds and by at least two sufficient sureties who shall be freeholders of the county, or by the official as principal and by a guaranty, surety, fidelity, or bonding company, provided that no municipal official, while still in his or her official term of office, shall be accepted as surety on any other official's bond, contractor's bond, license bond, or appeal bond under any circumstances. Only companies that are legally authorized to transact business in this state shall be eligible for suretyship on the bond of an official of the municipality. All these bonds shall obligate the principal and sureties for the faithful discharge of all duties required by law of the principal and shall inure to the benefit of the municipality and any persons who may be injured by a breach of the conditions of the bonds. No bond shall be deemed to be given or complete until the approval of the City Council and all sureties are endorsed in writing on that instrument by the Mayor and Municipal Clerk pursuant to that approval of the City Council.

(B) The premium on any official bond required to be given may be paid out of the general fund or other proper municipal fund, upon a resolution to that effect by the City Council at the beginning of any municipal year. All surety and other bonds required by city ordinances or by Nebraska law for city officials may be provided by the purchase of a blanket bond, undertaking or equivalent insurance. The bond or insurance coverage shall be, at a minimum, an aggregate of the amounts fixed by the law or by the City Council requiring such bond or undertaking and on such terms and conditions as may be required. (Neb. Rev. Stat. §11-104 (2))

(C) All official bonds meeting the conditions herein shall be filed with the Municipal Clerk for his or her official records, and it shall be the duty of the Municipal Clerk to furnish a certified copy of any bond so filed upon the payment of a fee, which shall be set by resolution of the City Council. In the event that the sureties on the official bond of any officer of the municipality, in the opinion of the City Council, become insufficient, the City Council may, by resolution, fix a reasonable time within which the officer may give a new bond or additional sureties as directed. In the event that the officer should fail, refuse, or neglect to give a new bond or additional sureties to the satisfaction and approval of the City Council, then the office shall, by that failure, refusal, or neglect, become vacant, and it shall be the duty of the City Council to appoint a competent and qualified person to fill the office. Any official who is reelected to office shall be required to file a new bond after each election.

§ 33.31 OATH OF OFFICE; MUNICIPAL OFFICIALS.

(A) All officials of the municipality, whether elected or appointed, shall before entering upon their respective duties take and subscribe the following oath, which shall be endorsed upon their respective bonds:

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

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

COMPENSATION

§ 33.45 COMPENSATION; MUNICIPAL OFFICERS.

The compensation of any elective municipal officer shall not be increased or diminished during the term for which he shall have been elected, except: (a) when there has been a combination and merger of offices as provided by Sections 17-108.02 and 17-209.02 of the Nebraska Revised Statutes; or (b) the compensation of the Mayor and all members of the Governing Body, may be increased or diminished at the beginning of the full term of the Mayor or any member of the Governing Body.

No person who shall have resigned or vacated any elective office shall be eligible to the same during the time for which he was elected if during the same time the compensation thereof were increased. The annual salary of the Mayor shall be \$2,000 per one thousand (1,000) City residents or fraction thereof, and the annual salary for each of the Council Members shall be \$1,000 per one thousand (1,000) City residents or fraction thereof. The City's resident population for purposes of this ordinance shall be determined by a federal, state or local census accepted by the City by resolution and any salary change shall become effective on the beginning of the next full term of the Mayor or any member of the Governing Body after the census has been completed. The salaries shall be paid in two semiannual payments during the first council meetings in June and December. (Ref. 17-108.02, 17-612 RS Neb.)(Amended by Ord. 02-13, 4/1/02; 04-06, 7/5/04)

§ 33.46 CONFLICTS OF INTEREST.

For purposes of conflicts of interest, the City and its officials shall adhere to all applicable provisions of the Nebraska Political Accountability and Disclosure Act.

§ 33.47 RESERVED.

§ 33.48 EMPLOYEE HANDBOOK.

The City shall maintain an Employee Handbook which shall contain those rules and regulations relating to full- and part-time employees of the City as the Council deems necessary for good management of the City.

CHAPTER 34: ELECTIONS

Section

General Election Provisions

- 34.01 Generally
- 34.02 Notice
- 34.03 Registered voters; qualifications
- 34.04 Special elections
- 34.05 Election of officers; certification
- 34.06 Partisan ballot; when allowed; requirements
- 34.07 Filing fee
- 34.08 Petition, write-in, and other candidates for general election ballot; procedures
- 34.09 Exit polls
- 34.10 Certificate of nomination or election

GENERAL ELECTION PROVISIONS

§ 34.01 GENERALLY.

All municipal issues and offices shall be combined on the statewide primary and general election ballots whenever possible. The issuance of separate ballots shall be avoided in a statewide election if municipal offices or issues can reasonably be combined with the nonpartisan ballot and state law does not require otherwise. All City elections involving the election of officers shall be held in accordance with the Election Act and in conjunction with the statewide primary or general election. Any other election by the municipality shall be held as provided in the Election Act unless otherwise provided by Neb. RS Chapter 32. (Neb. RS 32-556)

§ 34.02 NOTICE.

The notice of election required to be published by the Election Commissioner or County Clerk no less than 40 days prior to an election shall serve as the notice requirement for all municipal elections which are held in conjunction with the statewide primary or general election. (Neb. Rev. Stat. 32-802)

§ 34.03 REGISTERED VOTERS; QUALIFICATIONS.

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

REGISTERED VOTER. An elector who has a valid voter registration record on file with the election commissioner or county clerk in the county of his or her residence. (Neb. RS 32-115)

(B) All registered voters residing within the corporate limits of the municipality on or before election day shall be entitled to vote at all municipal elections. (Neb. RS 17-602)

§ 34.04 SPECIAL ELECTIONS.

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

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

(3) After the Election Commissioner or County Clerk has received the certification of the issue to be submitted, he or she shall be responsible for all matters relating to the submission of the issue to the registered voters, except that the City Clerk shall be responsible for the publication or posting of any required special notice of the submission of such issue other than the notice required to be given of the statewide election issues. The Election Commissioner or County Clerk shall prepare the ballots and issue ballots for early voting and shall also conduct the submission of the issue, including the receiving and counting of ballots on the issue. The election returns shall be made to the Election Commissioner or County Clerk. The ballots shall be counted and canvassed at the same time and in the same manner as the other ballots. Upon completion of the canvass of the vote by the County Canvassing Board, the Election Commissioner or County Clerk shall certify the election results to the City Council. The canvass by the County Canvassing Board shall have the same force and effect as if made by the City Council. (Neb. RS 32-559)

(B) Any special election under the Election Act shall be held on the first Tuesday following the second Monday of the selected month unless otherwise specifically provided. No special election shall be held under the Election Act in April, May, June, October, November, or December of an even numbered year unless it is held in conjunction with the statewide primary or general election. (Neb. RS 32-405) (Ord. 2305, 8-21-84) (Am. Ords. 2700, 7-1-97; 2892, 9-7-04)

§ 34.05 ELECTION OF OFFICERS; CERTIFICATION.

(A) All municipal elections involving the election of officers shall be held in accordance with the Election Act and in conjunction with the statewide primary or general election. (Neb. RS 32-556)

(B) No later than January 5 of each even numbered year, the City Council shall certify to the Secretary of State, the Election Commissioner, or the County Clerk the name of the municipality, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office. (Neb. RS 32-404(2))

§ 34.06 PARTISAN BALLOT; WHEN ALLOWED; REQUIREMENTS.

All elective municipal offices shall be nominated and elected on a nonpartisan basis unless the City Council provides for a partisan ballot by ordinance. No ordinance providing for nomination and election on a partisan ballot shall permit affiliation with any party not recognized as a political party for purposes of the Election Act. The ordinance providing for nomination and election on a partisan ballot shall be adopted and effective not less than 60 days prior to the filing deadline. (Neb. RS 32-557)

§ 34.07 FILING FEE.

(A) Except as provided in divisions (C) or (D) of this section, a filing fee shall be paid to the Municipal Treasurer by or on behalf of each candidate prior to filing for office. The filing fee shall be a sum equal to 1% of the annual salary as of November 30 of the year preceding the election for the office for which he or she files as a candidate. The fee shall be placed in the general fund of the municipality. No candidate filing forms shall be filed until the proper receipt showing payment of the filing fee is presented to the filing officer. On the day of the filing deadline, the City treasurer's office shall remain open to receive filing fees until the hour of the filing deadline.

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

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

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

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

AVAILABLE RESOURCES. Include every type of property or interest in property that an individual owns and may convert into cash except real property used as a home; household goods of a moderate value used in the home; and assets to a maximum value of \$3,000 used by a recipient in a planned effort directed towards self-support.

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

(E) If any candidate dies prior to an election, the spouse of the candidate may file a claim for refund of the filing fee with the City Council prior to the date of the election. Upon approval of the claim by the City Council, the filing fee shall be refunded. (Neb. RS 32-608)

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

(A)(1) Any registered voter who was not a candidate in the primary election and who was not registered to vote with a party affiliation on or after March 1 and before the general election in the calendar year of the general election may have his or her name placed on the general election ballot for a partisan office by filing petitions as prescribed in Neb. Rev. Stat. 32-617 and Neb. RS 32-621 or by nomination by political party convention or committee pursuant to Neb. Rev. Stat. 32-627 or 32-710.

(2) Any candidate who was defeated in the primary election and any registered voter who was not a candidate in the primary election may have his or her name placed on the general election ballot if a vacancy exists on the ballot under Neb. RS 32-625(2) and the candidate files for the office by petition as prescribed in Neb. Rev. Stat. 32-617 and 32-618, files as a write-in candidate as prescribed in Neb. RS 32-615, or is nominated by political party convention or committee pursuant to Neb. Rev. Stat. 32-627 or 32-710. (Neb. RS 32-616)

(B) Petitions for nomination for partisan and nonpartisan offices shall conform to the requirements of Neb. RS 32-628. Petitions shall state the office to be filled and the name and address of the candidate. Petitions for partisan office shall also indicate the party affiliation of the candidate. Petitions shall be signed by registered voters residing in the ward in which the officer is to be elected, if candidates are chosen by ward, or residing

in the municipality, if candidates are not chosen by ward, and shall be filed with the filing officer in the same manner as provided for candidate filing forms in Neb. RS 32-607. Petition signers and circulators shall conform to the requirements of Neb. RS 32-629 and 32-630. No petition for nomination shall be filed unless there is attached thereto a receipt showing payment of the filing fee required pursuant to Neb. RS 32-608. The petitions shall be filed by September 1 in the year of the general election. (Neb. RS 32-617)

(C) (1) The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be at least 10% of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the ward in which the officer is to be elected or in the municipality, as appropriate.

(2) The number of signatures of registered voters needed to place the name of a candidate upon the partisan ballot for the general election shall be at least 20% of the total vote for Governor or President of the United States at the immediately preceding general election within the municipality, not to exceed 2,000. (Neb. RS 32-618) (Am. Ord. 2868, 9-2-03)

§ 34.09 EXIT POLLS.

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

§ 34.10 CERTIFICATE OF NOMINATION OR ELECTION.

(A) The Election Commissioner or County Clerk shall, within 40 days after the election, prepare, sign, and deliver a certificate of nomination or a certificate of election to each person whom the Canvassing Board has declared to have received the highest vote for each municipal office. No person shall be issued a certificate of nomination as a candidate of a political party unless that person has received a number of votes at least equal to 5 % of the total ballots cast at the primary election by registered voters affiliated with that political party in the district which the office for which he or she is a candidate serves. (Neb. Rev. Stat. 32-1033) (Ord. 2813, 1-16-01)

CHAPTER 35: FINANCE AND REVENUE

Section

General Provisions

- 35.01 General fund
- 35.02 Budget statement, hearing, filing, and procedure
- 35.03 Reserved
- 35.04 Reserved
- 35.05 Reserved

- 35.06 Appropriations
- 35.07 All purpose levy
- 35.08 Extraordinary levy
- 35.09 Inadequate valuation
- 35.10 All purpose levy, allocation
- 35.11 All purpose levy, abandonment
- 35.12 General property tax
- 35.13 Expenditures
- 35.14 Contract
- 35.15 Annual audit
- 35.16 Claims
- 35.17 Warrants
- 35.18 Special assessment fund
- 35.19 Sinking funds
- 35.20 Deposit of funds
- 35.21 Investment of funds
- 35.22 Bond issues

§ 35.01 GENERAL FUND.

All money not specifically appropriated in the annual appropriation bill shall be deposited in and known as the General Fund.

§ 35.02 BUDGET STATEMENT, HEARING, AND FILING.

The City shall adhere to the requirements of the Nebraska Budget Act, Neb. Rev. Stat. §§ 13-501 to 513, for all purposes related to the City's budget.

§ 35.03 RESERVED.

§ 35.04 RESERVED.

§ 35.05 RESERVED.

§ 35.06 APPROPRIATIONS.

The Governing Body shall, on or before September 20th, pass an ordinance to be termed The Annual Appropriation Bill, in which are appropriated such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the Municipality, not exceeding in the aggregate the amount of tax authorized to be levied. The said ordinance shall specify the objects and purposes for which such appropriations are to be made, and the amount appropriated for each purpose. Any balance unexpended and unobligated at the end of the fiscal year shall, unless reappropriated, lapse into the General Fund. *(Ref. 17-706 RS Neb.) (Amended by Ord.02-11, 3/18/02)*

§ 35.07 ALL PURPOSE LEVY.

The Governing Body has determined that the amount of money to be raised by taxation shall be certified to the County Clerk in the form of one all purpose levy instead of

certifying a schedule of levies for specific purposes added together. Said all purpose levy shall not exceed the maximum levy permitted by State law. *(Ref. 19-1309 RS Neb.) (Amended by Ord.02-11, 3/18/02)*

§ 35.08 EXTRAORDINARY LEVY.

Otherwise authorized extraordinary levies to service and pay bonded indebtedness of the Municipality and to pay judgments obtained against the Municipality may be made in addition to the all purpose levy. *(Ref. 19-1309 RS Neb.)*

§ 35.09 INADEQUATE VALUATION.

If the valuation of the Municipality has been reduced so that the maximum levy permitted by Section 35.07 is inadequate to produce the necessary revenue, said maximum levy may be exceeded upon presentation to the Governing Body of petitions signed by a majority of the registered voters of the Municipality requesting such action and specifying the extent to, and the period of time, not to exceed five (5) years, in which such maximum may be exceeded. No signature may be withdrawn after the petitions have been filed with the Governing Body. The Governing Body shall cause such petitions, accompanied by the certificate of the County Clerk that he has examined the petitions and that they have been signed by a majority of the registered voters of the Municipality, to be filed with the County Board in which the Municipality is located. After such filing, the Governing Body may exceed the maximum mill levy to the extent and for the period of time specified in the petitions. *(Ref. 19-1309 RS Neb.)*

§ 35.10 ALL PURPOSE LEVY, ALLOCATION.

The Governing Body shall allocate the amount raised by the all purpose levy to the several departments of the Municipality in its annual budget and appropriation ordinance, or in other legal manner, as the Governing Body shall deem best. *(Ref. 19-1310 RS Neb.)*

§ 35.11 ALL PURPOSE LEVY, ABANDONMENT.

The Municipality shall be bound by its election of the all purpose levy during the ensuing fiscal year, but may abandon such method in succeeding fiscal years. *(Ref. 19-1311 RS Neb.)*

§ 35.12 GENERAL PROPERTY TAX.

The Governing Body shall cause to be certified to the County Clerk the amount of tax to be levied upon the assessed value of all the taxable property of the Municipality for the requirements of the adopted budget for the ensuing year, including all special assessments and taxes. The maximum amount of tax which may be certified and assessed shall not require a tax levy in excess of the legal maximum as prescribed by State law. *(Ref. 12-702 RS Neb.)*

§ 35.13 EXPENDITURES.

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

§ 35.14 CONTRACT.

The Governing Body shall, before making any contract in excess of twenty (\$20,000.00) as estimated by the Municipal Engineer, for general improvements such as water extensions, sewers, public heating system, bridges, or work on streets, or any other work or improvement where the cost of such improvement shall be assessed to the property, advertise for bids, unless such contract shall be entered into for the benefit of the Municipal Electric Utility. A Municipal Electric Utility may enter into a contract for any such work or improvement or for the purpose of such equipment without advertising for bids if the: (a) Price is twenty thousand dollars (\$20,000) or less; (b) price is forty thousand dollars (\$40,000) or less and the Municipal Electric Utility has a gross annual revenues from retail sales in excess of one million dollars (\$1,000,000.00); (c) price is sixty thousand dollars (\$60,000.00) or less and the Municipal Electric Utility has gross annual revenues from retail sales in excess of five million dollars (\$5,000,000.00); or (d) price is eighty thousand dollars (\$80,000.00) or less and the Municipal Electric Utility has gross annual revenues from retail sales in excess of ten million dollars (\$10,000,000.00). In advertising for bids for any such work, or for the purchase of such equipment, the Governing Body may cause the amount of such estimate to be published therewith. Such advertisement shall be published once each week for three (3) consecutive weeks in a legal newspaper published in or of general circulation in the Municipality, or by posting a written or printed copy thereof in each of three (3) public places in the Municipality; provided, that in case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, 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, or war, estimates of costs and advertising for bids may be waived in the emergency ordinance when adopted by a three-fourths (3/4) vote of the Governing Body. If, after advertising for bids as provided in this section, the Governing Body receives fewer than two (2) bids on a contract for services, material, or labor, or if the bids received by the Governing Body contain a price which exceeds the estimated cost of the project, the Governing Body shall have the authority to negotiate a contract for services, material, or labor in an attempt to complete the proposed project at a cost commensurate with the estimate given.

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

The Municipal bidding procedure shall be waived 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. *(Ref. 17-568.01)*
(Amended by Ord. No. 83-19, 10/17/83, 02-11, 3/18/02)

§ 35.15 ANNUAL AUDIT.

The Governing Body shall cause an audit of the Municipal accounts to be made by a qualified accountant as expeditiously as possible following the close of the fiscal year. Such audit shall be made on a cash or accrual method at the discretion of the Governing Body. The said audit shall be completed, and the annual audit report made not later than six (6) months after the close of the fiscal year. The accountant making the audit shall submit not less than three (3) copies of the audit report to the Governing Body. All public utilities or other enterprises which substantially generate their own revenue shall be audited separately in the annual audit report, and such audits shall be on an accrual basis and shall contain statements and materials which conform to generally accepted accounting principles. The audit report shall set forth the financial position and results of financial operations for each fund or group of accounts of the Municipality as well as an opinion by the accountant with respect to the financial statements. Two (2) copies of the annual audit report shall be filed with the Municipal Clerk, and shall become a part of the public records of the Municipal Clerk's office, and will at all times thereafter, be open for public inspection. One (1) copy shall be filed with the Auditor of Public Accounts.

§ 35.16 CLAIMS.

All claims against the Municipality shall be presented to the Governing Body in writing with a full account of the items, and no claim or demand shall be audited or allowed unless presented as provided for in this Section. No costs shall be recovered against the Municipality in any action brought against it for an unliquidated claim which has not been presented to the Governing Body to be audited, nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed, with the interest due. No order, or warrant shall be drawn in excess of eighty-five percent (85%) of the current levy for the purpose for which it is drawn unless there shall be sufficient money in the Municipal Treasury for the appropriate fund against which it is to be drawn; Provided, that in the event there exists obligated funds from the Federal and/or State government for the general purpose of such warrant, then such warrant may be drawn in excess of eighty-five percent (85%), but not more than one hundred percent (100%) of the current levy for the purpose for which said warrant is drawn. *(Ref. 17-714, 17-715 RS Neb.)*

§ 35.17 WARRANTS.

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

§ 35.18 SPECIAL ASSESSMENT FUND.

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

§ 35.19 SINKING FUNDS.

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

§ 35.20 DEPOSIT OF FUNDS.

The Governing Body, at its first (1st) meeting in each fiscal year, shall designate one (1) or more banks of approved and responsible standing in which the Municipal Treasurer shall keep at all times all money held by him; Provided, if more than one (1) bank in the Municipality meets the requirements for approved banks as herein defined, the said funds shall be deposited in each of them, and the Municipal Treasurer shall not give a preference to any one (1) or more of them in the money he 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. 17-607, 77-2362 through 77-2364 RS Neb.*)

§ 35.21 INVESTMENT OF FUNDS.

The Governing Body may, by resolution, direct and authorize the Municipal Treasurer to invest surplus funds in the outstanding bonds or registered warrants of the Municipality, and other approved bonds and obligations as provided by law. The interest on such bonds or warrants shall be credited to the fund out of which the said bonds or warrants were purchased. (*Ref. 17-608, 17-609, 77-2341 RS Neb.*)

§ 35.22 BOND ISSUES.

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

TITLE V: PUBLIC WORKS

Chapter

50. GENERAL PROVISIONS

51. WATER

52. SEWERS

53. SANITATION, GARBAGE, AND MUNICIPAL LANDFILL

54. NATURAL GAS

CHAPTER 50: GENERAL PROVISIONS

Section

50.01 Discontinuance of service, notice procedure.

50.02 Diversion of services; penalty

§ 50.01 DISCONTINUANCE OF SERVICE, NOTICE PROCEDURE.

The Municipality shall have the right to discontinue services if the charges for such services are not paid within thirty (30) days after the date that the charges are deemed delinquent. Before any termination, the Department of Utilities shall first give notice by first class mail or in person to any domestic subscriber whose service is proposed to be terminated. If notice is given by first class mail, such mail shall be conspicuously marked as to its importance. Service shall not be discontinued for at least seven (7) days. The Department of Utilities shall then provide a second notice with a door hanger, and/or a phone call to the residence, that service will be terminated within twenty-four (24) hours. If payment is not made, then the service connection shall be terminated. Termination of service shall only occur on a Monday, Tuesday, or Wednesday, absent extenuating circumstances. No termination of service shall occur on a holiday or within two (2) days preceding such City holiday. Water reconnections shall only be made from Monday through Friday between the hours of 8:00 a.m. and 3:00 p.m. at the City Office at 14130 Lancashire Street. Water service shall not be reinstated until the bill has been paid in full. As to any subscriber who has previously been identified as a welfare recipient to the Municipality by the Department of Health and Human Services, such notice shall be by certified mail and notice of such proposed termination shall be given to the Department. All notices shall contain the following information:

1. The reason for the proposed disconnection.
2. A statement of the intention to disconnect unless the domestic subscriber either pays the bill or reaches an agreement with the Department regarding payment of the bill.
3. The date upon which service will be disconnected if the domestic subscriber does not take appropriate action.

4. The name, address, and telephone number of the employee or department to whom the domestic subscriber may address an inquiry or complaint.

5. The domestic subscriber's right, prior to the disconnection date, to request a conference regarding any dispute over such proposed disconnection.

6. A statement that the Municipality may not disconnect service pending the conclusion of the conference.

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

8. The cost that will be borne by the domestic subscriber for restoration of service.

9. A statement that the domestic subscriber may arrange with the Utilities Department for an installment payment plan.

10. A statement to the effect that those domestic subscribers who are welfare recipients may qualify for assistance in payment of their utility bill and that they should contact their case worker in that regard.

11. Any additional information not inconsistent with this Section which has received prior approval from the Governing Body.

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

The procedures adopted by the Governing Body for resolving utility bills, one (1) copy of which is on file in the office of the Municipal Clerk, are hereby incorporated by reference in addition to any amendments thereto and is made a part hereof as though set out in full.

This Section shall not apply to any disconnections or interruptions of services made necessary by the utility for reasons of repair or maintenance or to protect the health or safety of the domestic subscriber or of the general public. *(Ref. 18-2101 et seq.)(Amended by Ord. 02-06, 02/18/02; 09-01, 01/19/09; 23-03, 04/11/23)*

§ 50.02 DIVERSION OF SERVICES; PENALTY.

The Municipality may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts (a) bypassing, (b) tampering, or (c) unauthorized metering when such act results in damages to a Municipal Utility. A Municipality may bring a civil action for damages pursuant to this Section against any

person receiving the benefit of utility service through means of bypassing, tampering, or unauthorized metering.

In any civil action brought pursuant to this Section, the Municipality shall be entitled, upon proof of willful or intentional bypassing, tampering, or unauthorized metering to recover as damages:

A. The amount of actual damage or loss if the amount of the damage or loss is susceptible of reasonable calculation; or

B. Liquidated damage of (i) until July 1, 1985, and thereafter, seven hundred fifty dollars (\$750.00) if the amount of actual damage or loss is not susceptible of reasonable calculation.

In addition to damage or loss under subdivision A or B of this Section the Municipality may recover all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering including, but not limited to, disconnection, reconnection, service calls, equipment, costs of the suit, and reasonable attorneys' fees in cases within the scope of Section 25-1801 Reissue Revised Statutes of Nebraska 1943.

There shall be a rebuttable presumption that a tenant or occupant at any premises where bypassing, tampering or unauthorized metering is proven to exist caused or had knowledge of such bypassing, tampering, or unauthorized metering if the tenant or occupant (a) had access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering is proven to exist and (b) was responsible or partially responsible for payment, either directly or indirectly, to the utility or to any other person for utility services to the premises.

There shall be a rebuttable presumption that a customer at any premises where bypassing, tampering, or unauthorized metering is proven to exist caused or had knowledge of such bypassing, tampering, or unauthorized metering if the customer controlled access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering was proven to exist.

The remedies provided by this section shall be deemed to be supplemental and additional to powers conferred by existing laws and the remedies provided in this section are in addition to and not in limitation of any other civil or criminal statutory or common law remedies. (*Ord. No. 83-20, 10/17/83*)

§50.03 INFRASTRUCTURE FEE. (*Ord. 22-04, 05/24/22*)

- (1) In addition to any building permit or inspection fee set forth herein, any person who applies for a building permit or who applies for any other permit for construction or development where a building permit is not required shall pay a water system infrastructure fee, sanitary wastewater infrastructure fee, street infrastructure fee, parks/trails infrastructure fee, and building and zoning fee, unless exempted by this ordinance.
- (2) The Government Body shall establish and adopt infrastructure fee schedules by resolution.

CHAPTER 51: WATER

General Provisions

Section

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- 51.02 Customer's application
- 51.03 Service to non-residents
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§ 51.01 GENERAL DEFINITIONS.

The following definitions shall be applied throughout this Article.

- A. MAIN. The term “main” shall mean any pipe other than a supply or service pipe that is used for the purpose of carrying water to, and dispersing the same in, the Municipality.
- B. SADDLE CORPORATION VALVE. The term “saddle corporation valve” shall mean a valve attached to the main for a tapping point for water service.
- C. SERVICE ELBOW. The term “service elbow” shall mean a 90-degree brass elbow attached to the saddle corporation valve, to provide a turn in the service pipe.
- D. SERVICE PIPE. The term “service pipe” shall mean any pipe tapped into a main and extending from there to the location on the premise where the water is to be dispersed.
- E. SEPARATE UNIT. The term “separate unit” shall mean a dwelling, business establishment, private, semi-private, or public institution, or other entity which has a separate and independent identity and/or location specifically excluding “home occupations” as defined in Section 11-611 of the Municipal Zoning Ordinance, which is served with water from the Municipal Water Department, regardless of whether or not such separate unit has an independent water meter.
- F. CURB STOP. The term “curb stop” shall mean a protective device reaching from the supply or service pipe to the surface of the ground, of a suitable size to admit a stop key for turning on and off the water supply, with cast iron cover even with the pavement or ground line, and shall further include all internal working parts, including, but not limited to, the curb stop. *(Amended by Ord. Nos. 85-05, 09/03/85; 01-04, 05/07/01; 12-10, 05/15/12)*

§ 51.02 CUSTOMER’S APPLICATION.

Every person or persons desiring a supply of water must make application therefore to the Municipal Clerk. The Water Department Superintendent may require any applicant to make a service deposit in such amount as has been set by the Governing Body and placed on file at the office of the Municipal Clerk. Water may not be supplied to any service pipe except upon the order of the Water Department. *(Amended by Ord. No.01-04, 5/7/01) (Ref. 17-537; RS Neb.)*

§ 51.03 SERVICE TO NON-RESIDENTS.

The Water Department shall not supply water service to any person outside the corporate limits without special permission from the Governing Body; Provided, the cost of laying mains shall be paid by the customer. Nothing herein shall be construed to obligate the Municipality to provide water service to non-residents. Such non-resident service shall be subject to any special rules and regulations the Governing Body may prescribe. The aforesaid rules and regulations shall not include any provision to set the rates lower than two (2) times the rates set for residents. *(Ref. 17-537, 19-2701 RS Neb.) (Amended by Ord. Nos. 85-05, 09/03/85; 01-04, 05/07/01)*

§ 51.04 WATER CONTRACT.

The Municipality, through its Water Department, shall furnish water to persons within its corporate limits whose premises abut a street or alley in which a commercial main now is, or may hereafter be, laid. The Municipality may furnish water to persons within its corporate limits whose premises do not abut a street or alley in which a Municipal commercial main is now, or may hereafter be, laid, and may also furnish water to persons whose premises are situated outside the corporate limits of the Municipality, as and when, according to law, the Governing Body may see fit to do so. The rules, regulations, and water rates hereinafter named in this Article, shall be considered a part of every application hereafter made for water service and shall be considered a part of the contract between every consumer now or hereafter served. Without further formality, the making of application on the part of any applicant or the use or consumption of water service by present consumers thereof and the furnishing of water service to said consumer shall constitute a contract between the consumer and the Municipality, to which said contract both parties are bound. If the consumer shall violate any of the provisions of said contract, or any reasonable rules and regulations that the Governing Body may hereafter adopt, the Water Department representative may, in compliance with Section 50.01, cut off or disconnect the water service from the building or premise or place of such violation. No further connection for water service to said building, premise, or place shall again be made save or except by order of said Water Department Representative. *(Amended by Ord. No.01-04, 05/07/01)*

§ 51.05 INSTALLATION PROCEDURE.

All tapping of the mains shall be done by or at the direction of water department personnel and a fee set by the council shall be charged for said service. Taps shall be made on the top of the main and no nearer than thirty-six inches (36") from the end of the main, from a pipe joint or from another tap.

Plumbing between the main and dwelling or other building may not be covered until inspected by authorized City personnel and approved by the same.

Backfill of trenches for service pipe shall consist of common subsoil fill from 6" above top of pipe compacted to the extent necessary to prevent future settlement. Backfill of trenches under roadways shall consist of select backfill from 6" above top of pipe to subgrade elevation, compacted to 95%. Compaction is expressed as a percentage of maximum density and optimum moisture in comparison with ANSI/ASTM 0698. The City

may require compaction tests of any backfill under the roadway surfacing.

No person shall have any excavation made in the street, alley, or highways open at any time without barricades, and during the night warning lights must be maintained at such excavations.

No person shall make any excavation in any street, alley, or highway where the ground is frozen, or dig up or uncover so as to expose to frost any water pipes or sewer of the City, except under the directions of the responsible municipal employee.

If the excavation in any street, alley, or sidewalk is left open or unfinished for a period of twenty-four (24) hours or more, the City shall have the duty to finish or correct the work, and all expenses so incurred shall be charged to the customer. All installations or repairs of pipe shall require inspection by City personnel. Such inspection shall be made when repairs or connections are complete and before pipes are covered. It is the customer's responsibility to notify the City at the time the work is ready for inspection.

All pipes shall be laid four and one half feet (4½') below the established grade, or as low as the mains in the street, and shall be laid in such manner as to prevent rupture by settlement. All joints of pipe shall be made in accordance with the standards adopted by the American Water Works Association as the same are presently constituted or as amended from time to time or at any time. Unless otherwise permitted, stop boxes shall be placed in the service pipe. There shall be a stop and waste cock attached to every supply pipe in the building so as to permit the water to be shut off in freezing weather and the pipe to be emptied. A stop cock is required on each side of the meter.

The City shall supply the curb stop with box and water meter at prices set by regulation of the City Administrator and ratified by the Governing Body.

It shall be unlawful to use and install any of the above mentioned items unless the same are purchased from the City, or authorization is given by the City.

All installation shall be done under the supervision and strictly in accordance with the rules, regulations, and specifications prescribed for such installation by the Water Department; Provided, that the said rules, regulations, and specifications have been reviewed and approved by the Governing Body. *(Ref. 17-537 RS Neb.) (Amended by Ord. Nos. 85-05, 09/03/85; 01-04, 05/07/01; 06-24, 11/06/06; 14-01, 02/04/14)*

§ 51.06 INSTALLATION EXPENSE.

The expense of providing water service by the Municipality shall not extend beyond the water main. The customer shall then pay the cost of the corporation stop, curb stop with box, meter, fittings, and pipe from the water main to the place of disbursement and the cost of installing such items. No person other than the Water Department Representative or his or her duly authorized agent shall tap the water main. The consumer shall pay a tap fee before connection is made. Tap fees (per dwelling unit) shall be as follows:

1 inch	\$350.00
1 ¼ inch	\$425.00
1 ½ inch	\$465.00
2 inch	\$600.00

Taps over 2 inches shall be performed by experienced personnel who are authorized by the Water Department to perform these services. All taps over 2 inches shall pay a connection fee of \$650.00 (Six hundred and fifty dollars).

The fee for all water taps in areas not covered under a subdivision agreement shall be \$2,000.00.

The customer shall, at his, her or its own expense, bring water service from the main to said customer's place of disbursement and shall employ a competent plumber who shall install water service to the place of disbursement. Nonresidents shall pay such tap fees and installation charges in such sums as the City Administrator, pursuant to resolution of the Governing Body, shall in each case fix. The extension of commercial mains into unsupplied territory within the corporate limits may be made by means of water extension districts. *(Ref. 17-542 RS Neb.) (Amended by Ord. Nos. 85-05, 09/03/85; 92-01, 03/02/92; 93-06, 12/06/93; 01-04, 05/04/01; 05-10, 07/18/05; 19-09, 09/24/19)*

§ 51.07 MAINTENANCE OF METERS BY PROPERTY OWNERS.

As a condition precedent to the use of Municipal water, it shall be the responsibility of all real property owners to maintain a water meter in good working order for each subdivided parcel within the corporate limits of the Municipality.

In the event that any consumer of water for any purpose is utilizing a water meter which is not accessible to City officials and may not be read for three (3) consecutive monthly water meter reading periods, such consumer shall, within thirty (30) days of request by the Municipal Clerk, and at such consumer's own expense, install a radio read meter transceiver unit provided by the Municipality to permit the obtaining of a meter reading without entering the premises served by said meter. The radio read meter transceiver unit shall be located on the exterior of the structure in a location accessible to the Water Department. All water meters installed, whether in new structures or, as replacements to existing meters, on or after January 1, 2003 shall be equipped with a radio read meter system which may be read without entering the premises served by such meter.

(Amended by Ord. Nos. 85-05, 09/03/85; 91-04, 08/05/91; 01-04, 05/07/01; 02-25, 12/16/02)

§ 51.08 REPAIRS.

- a. Repairs - Customer Obligations. The customer shall be responsible for installing and maintaining the service pipe to and including the curb stop, and the City shall be responsible for maintaining such from the curb stop to the main. The customer shall repair and maintain the service pipe, curb stop, meter, at the expense of the customer. When in the course of repairing a service pipe, it becomes necessary to remove or alter sidewalks, the cost of removing and replacing the sidewalk, and earth shall be borne by the property owner served by the service pipe which is repaired. All such replacements and repairs of the service pipe made by the customer shall be done in good and workmanlike manner in compliance with all applicable building codes using materials approved and inspected by the City.
- b. Meters/Curb Stops. When meters and/or curb stops are worn out or in need of new parts, they shall be replaced and reset by the Municipality. Cost of the meter and/or curb stop shall be at the expense of the customer. Labor incident to the repair or replacement of a meter or curb stop shall be provided by the Municipality. Meters may be tested at the customer's request and expense; Provided, that if the test shows the water meter to be inaccurate by two percent (2%) or more of its original efficiency, the expense of such test shall be borne by the Municipality. The Municipality reserves the right to test any water service meter at any time, and if said meter is found to be beyond repair, the Municipality may place a new meter on the customer's water service fixtures at the customer's expense.
- c. Touch Read/Radio Read. Any touch read or radio read unit removed for any reason shall be reinstalled at the customer's expense. (Ref. 17-542 RS Neb.) (Amended by Ord. Nos. 85-05, 09/03/85; 91-9, 01/06/92; 98-02, 02/03/98; 01-04, 05/07/01; 01-17, 12/03/01; 02-25, 12/16/02; 12-10, 05/15/12)

§ 51.09 RATES.

All water from the Municipal Water Department shall be furnished at metered rates unless otherwise provided herein. All consumers of water, except the Municipality, shall pay for water used or metered in accordance with the following schedule:

A. RATES APPLICABLE FOR EACH WATER METER WHERE WATER IS SUPPLIED TO ONE (1) OR MORE SEPARATE UNITS LOCATED WITHIN THE MUNICIPALITY:

1.	<u>Meter Size</u>	<u>Costs of Service Charge</u>
	5/8"	\$18.64
	3/4"	\$18.77
	1"	\$19.12

1.5"	\$42.24
2"	\$69.10
3"	\$152.12
4"	\$247.74

- Two dollars and five cents (\$2.05) shall be charged per thousand gallons of water used up to ten thousand (10,000) gallons multiplied by the number of separate units per billing month,
- Two dollars and sixty-four cents (\$2.64) shall be charged per thousand gallons of water used from 10,001 to 20,000 gallons multiplied by the number of separate units per billing month, and
- Three dollars and thirty-one cents (\$3.31) shall be charged per thousand gallons of water used in excess of twenty thousand (20,000) gallons multiplied by the number of separate units per billing month.

B. RATES APPLICABLE FOR EACH WATER METER WHERE WATER IS SUPPLIED TO ONE (1) OR MORE SEPARATE UNITS LOCATED OUTSIDE THE MUNICIPALITY:

1.	<u>Meter Size</u>	<u>Costs of Service Charge</u>
	5/8"	\$37.28
	3/4"	\$37.54
	1"	\$38.24
	1.5"	\$84.49
	2"	\$138.20
	3"	\$304.24
	4"	\$495.47

- Four dollars and ten cents (\$4.10) shall be charged per thousand gallons of water used up to ten thousand (10,000) gallons multiplied by the number of separate units per billing month, and
- Five dollars and twenty-eight cents (\$5.28) shall be charged per thousand gallons of water used from 10,001 to 20,000 gallons multiplied by the number of separate units per billing month, and

4. Six dollars and sixty-two cents (\$6.62) shall be charged per thousand gallons of water used in excess of twenty thousand (20,000) gallons multiplied by the number of separate units per billing month.

C. RATES APPLICABLE WHERE WATER IS SUPPLIED TO RESIDENTS OR SEPARATE UNITS LOCATED WITHIN THE MUNICIPALITY FOR LOADING INTO A TRANSPORT VEHICLE OR FOR ANY OTHER PURPOSE AND THE SAME IS NOT DELIVERED TO A STRUCTURE THROUGH THE MAINS, SUPPLY PIPES, AND SERVICE PIPES WHICH CONSTITUTE THE MUNICIPAL WATER SYSTEM:

1. Fifteen dollars (\$15.00) shall be charged per calendar month, and
2. Two dollars and five cents (\$2.05) shall be charged per thousand gallons of water used up to ten thousand (10,000) gallons per calendar month, and
3. Two dollars and sixty-four cents (\$2.64) shall be charged per thousand gallons of water used from 10,001 to 20,000 gallons per calendar month,
4. Three dollars and thirty-one cents (\$3.31) shall be charged per thousand gallons of water used in excess of twenty thousand (20,000) gallons multiplied by the number of separate units per billing month, and
5. A loading fee of fifteen dollars (\$15.00) shall be charged per transport vehicle or vessel loaded.

D. RATES APPLICABLE WHERE WATER IS SUPPLIED TO NON-RESIDENTS OR SEPARATE UNITS LOCATED OUTSIDE THE MUNICIPALITY FOR LOADING INTO A TRANSPORT VEHICLE OR FOR ANY OTHER PURPOSE AND THE SAME IS NOT DELIVERED TO A STRUCTURE THROUGH THE MAINS, SUPPLY PIPES, AND SERVICE PIPES WHICH CONSTITUTE THE MUNICIPAL WATER SYSTEM:

1. Thirty dollars (\$30.00) shall be charged per calendar month, and
2. Four dollars and ten cents (\$4.10) shall be charged per thousand gallons of water used up to ten thousand (10,000) gallons per calendar month, and
3. Five dollars and twenty-eight cents (\$5.28) shall be charged per thousand gallons of water used from 10,001 to 20,000 gallons per calendar month,
4. Six dollars and sixty-two cents (\$6.62) shall be charged per thousand gallons of water used in excess of twenty thousand (20,000) gallons multiplied by the number of separate units per billing month, and
5. A loading fee of thirty dollars (\$30.00) shall be charged per transport vehicle or vessel loaded.

- E. All water sold pursuant to Paragraphs C and D of this section shall be sold in accordance with the following regulations:
1. Persons purchasing water pursuant to Paragraphs C and D of this section shall be issued a receipt by the office of the Municipal Clerk, which receipt shall state:
 - a. The date of purchase.
 - b. The number of gallons purchased (metered or estimated).
 - c. The dollar amount paid to the Municipality, and,
 - d. The name and address of the purchaser.
 2. In the event the metering of the water purchased is not feasible, the Water Department Representative, or his or her agent, shall estimate the capacity of the vessel to be filled and state the quantity purchased as an estimated quantity on the receipt issued to the purchaser. In no event shall any adjustment whatsoever be made, based upon the accuracy of such estimate, subsequent to issuance of the receipt and payment by the purchaser.
 3. It shall be the responsibility of the purchaser to prove prior purchase of water within the same calendar month in order for rates for quantities in excess of the monthly minimum to apply. For this purpose, an original receipt signed by the clerk in the same calendar month shall be conclusive.
 4. In the event of an actual or potential water shortage, the Mayor shall have absolute authority to suspend sales of water pursuant to paragraphs C & D of this section, as to residents, non-residents, or both.
- F. It shall be the responsibility of the water consumer to maintain a water meter in good working order. When a meter is temporarily out of service, the consumer shall be charged in accordance with his, her, or its past usage for comparable months. Should a customer's meter fail to register properly, the customer shall be charged for water during the time the meter is out of repair on the basis of the monthly consumption during the same month of the preceding year. Provided that if no such basis for comparison exists, the customer shall be charged such amount as may be reasonable fixed by the Water Department.
- G. Rate changes imposed by this article shall become effective for meter readings taken during the first month of the fiscal year. (*Amended by Ord. Nos 85-05, 09/03/85; 87-08, 6/15/87; 92-12, 09/21/92; 97-02, 02/03/97; 99-23, 09/07/99; 01-04, 05/07/01; 03-06, 09/15/03; 07-09, 09/17/07; 08-13, 09/15/08; 09-08, 09/21/09; 11-18, 08/16/11; 12-18, 09-18-12; 13-06, 09/17/13; 19-07, 09/24/2019; 20-04, 08/25/20; 21-07, 08/10/21; 22-05, 08/09/22; 23-11, 09/12/23; 24-07, 09/24/24*)

§ 51.10 WATER BILLS.

Water bills shall be due and payable monthly at the office of the Municipal Clerk. The Water Department shall read, or cause to be read, water meters monthly. It shall be the duty of the customers to pay their bills monthly in a manner approved by the Governing Body. The Water Department shall report to the Municipal Clerk the volume of water used by each customer each month, and the Clerk shall charge and collect from each customer for the amount of water consumed since the last examination, together with any other charges, properly itemized, due the Water Department. Bills shall be due on the fifteenth (15th) day of each month and shall be payable by the fifteenth (15th) of each month.

Bills not paid by the fifteenth (15th) day of each month shall be deemed to be delinquent. Customers whose bills are thirty (30) days delinquent shall be given written notice of such delinquency. Disconnection procedures in compliance with section 50.01 shall be commenced. A thirty-five dollar (\$35.00) fee shall be added to the water bill for service disconnection. This fee shall be added and collected if City personnel are dispatched to disconnect the water, even if the bill is paid before disconnection is physically accomplished. An additional thirty-five dollar (\$35.00) fee shall be collected before water service will be reconnected during the City's regular business hours. (*Ref. 17-542, 19-2702 RS Neb.*) (*Amended by Ord. No. 85-05, 09/03/85; 01-04, 05/07/01; 02-06, 02/18/02; 09-01, 01/19/09; 20-06, 08/11/20*)

§ 51.11 RESPONSIBILITY FOR WATER CHARGES.

In all cases property owners, rather than their tenants, shall be ultimately responsible for all water and sewer charges which accrue against property to which they hold record title.

§ 51.12 LIEN.

In addition to all other remedies, if a customer shall for any reason remain indebted to the Municipality for water service furnished, such amount due, together with any rents and charges in arrears, shall be considered a delinquent water rent which is hereby declared to be a lien upon the real estate for which the same was used. The Municipal Clerk shall notify in writing or cause to be notified in writing, all owners of premises or their agents whenever their tenants or lessees are forty-five (45) days or more delinquent in the payment of water rent. It shall be the duty of the Municipal Clerk on the first (1st) day of each month to report to the Governing Body a list of all unpaid accounts due for water together with a description of the premise upon which the same was used. The report shall be examined, and if approved by the Governing Body, shall be certified by the Municipal Clerk to the County Clerk to be collected as a special tax in the manner provided by law. The City Treasurer is authorized and directed to expend the funds necessary to file such liens with the appropriate authorities. (*Ref. 17-538 RS Neb.*)

§ 51.13 SUPPLY RESTRICTED TO SINGLE PREMISE.

No consumer shall supply water to other persons, nor allow them to take water from his, hers, or its premises, or after water is supplied into a building shall any person make or

employ a plumber or other person to make a tap or connection with the pipe upon the premises for alteration, extension, or attachment without the written permission of the Municipality. It shall further be unlawful for any person to tamper with any water meter or by means of any contrivance or device to divert the water from the service pipe so that the water will not pass through the meter or while passing through said meter to cause the meter to register inaccurately. *(Amended by Ord. No. 01-04, 5/7/01) (Ref. 17-537 RS Neb.)*

§ 51.14 RESTRICTED USE.

The Governing Body or the Water Department may order a reduction in the use of water or shut off the water supply to any premises in the event of a water shortage due to fire or other good and sufficient cause. The Municipality shall not be liable for any damages caused by shutting off the supply of water of any consumer while the system or any part thereof is undergoing repairs or when there is a shortage of water due to circumstances over which the Municipality has no control. *(Amended by Ord. No. 01-04, 05/07/01) (Ref. 17-537 RS Neb.)*

§ 51.15 FIRE HYDRANTS.

All hydrants for the purpose of extinguishing fires are hereby declared to be public hydrants, and it shall be unlawful for any person other than members of the Waverly Fire and Rescue Department under the orders of the Fire Chief, or the Assistant Fire Chief, or members of the Water Department to open or attempt to open any of the hydrants and draw water from the same, or in any manner to interfere with the hydrants. No member or representative of the Waverly Fire and Rescue Department or any fire or police organization shall open any fire hydrant or draw any water there from in non-emergency situations without prior approval from the City and supervision by City personnel. *(Amended by Ord. No. 98-10, 7/20/98)*

§ 51.16 POLLUTION.

It shall be unlawful for any person to pollute or attempt to pollute any stream or source of water for the supply of the Municipal Water Department. In order to prevent the pollution of the Municipal water supply through plumbing facilities connected thereto, the following regulations concerning cross-connection and back flow prevention are hereby adopted and appear in sections 51.17 to 51.21. *(Ref. 17-536 RS Neb.)*

§ 51.17 AUTHORITY.

- A. RESPONSIBILITY OF THE UTILITIES SUPERINTENDENT. Water Department personnel, or a designated agent, shall inspect the plumbing in every structure in the Municipality as frequently as in his or her judgment may be necessary to ensure that such plumbing has been installed in such a manner as to prevent the possibility of pollution of the water supply of the Municipality by the plumbing facilities connected thereto. The Water Department shall notify or cause to be notified in writing the owner or authorized agent of the owner of any such structure, to correct, within a reasonable time set by the Utilities Superintendent, any plumbing installed or existing contrary to or in violation of this Article, and which in his or her judgment, may, therefore, permit the pollution of the Municipal water supply, or otherwise adversely

affect the public health.

- B. INSPECTION. The Water Department personnel, or his or her designated agent, shall have the right of entry into any structure, during reasonable hours, for the purpose of making inspection of the plumbing systems installed in such structure; Provided, that with respect to the inspection of any single family dwelling, consent to such inspection shall first be obtained from a person of suitable age and discretion therein or in control thereof. (*Amended by Ord. No. 01-04, 05/07/01*)

§ 51.18 CONNECTION CONTROL.

General policy and purpose:

- A. Purpose. The purpose of this section is to:
1. Protect the public potable water supply of the city water system from the possibility of contamination or pollution by isolating real or potential sources of contamination or pollutants which may backflow or cause back siphonage through the service connection into the public potable water supply system, as required by Title 179, NAC 2 "Regulations Governing Public Water Supply Systems."
 2. Promote the elimination, containment, isolation, or control of existing cross connections, actual or potential, between the public or consumer's potable water systems and nonpotable water systems, plumbing fixtures and industrial process systems.
 3. Provide for the maintenance of a continuing program of cross connection control which will systematically and effectively prevent the contamination or pollution of all potable water systems.
- B. Applicability. This section shall apply to all premises serviced by the public potable water system of the city.
- C. Policy.
1. This section will be reasonably interpreted as the city's intent to recognize the varying degrees of hazard and to apply the principle that the degree of protection shall be commensurate with the degree of hazard.
 2. The Municipal Water Department shall be primarily responsible for protection of the public potable water distribution system from contamination or pollution due to backflow of contaminants or pollutants through the water service connection. The cooperation of consumers is required to implement and maintain the program to control cross connections. The consumer is responsible for preventing contamination of the water system within the consumer's own premises.
 3. If, in the judgment of the Water Department or the state department of health or their authorized representative, cross connection protection is required through either piping modification or installation of an approved backflow prevention

device, 30 days' notice shall be given to the consumer. The failure, refusal, or inability on the part of the consumer to provide requested protection within 30 days shall make the consumer subject to discontinuance of water service at the discretion of the Water Department according to the degree of hazard, without further notice. (*Amended by Ord. No. 99-17, 06/21/99*)

§ 51.19 CROSS CONNECTION CONTROL; DEFINITIONS.

- A. The following definitions shall apply in the interpretation and enforcement of this ordinance:
1. "Air gap separation" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device, and the flood-level rim of the receptacle.
 2. "Auxiliary water supply" means any water source or system, other than the public water supply, that may be available in the building or premises.
 3. "Backflow" means the flow other than the intended direction of flow, of any foreign liquids, gases, or substances into the distribution system of a public water supply.
 4. "Backflow prevention device" means any device, method, or type of construction intended to prevent backflow into a potable water system provided backflow preventers have been tested and approved by a reputable testing laboratory.
 5. "Consumer" means the owner or person in control of any premises supplied by or in any manner connected to a public water system.
 6. "Containment" means protection of the public water supply by installing a cross connection control device or air gap separation on the main service line to a facility, or as an installation within equipment handling potentially hazardous materials.
 7. "Contamination" means an impairment of the quality of the water by sewage, process fluids, or other wastes to a degree which could create an actual hazard to the public health through poisoning or through spread of disease by exposure.
 8. "Cross connection" means any physical link, between a potable water supply and any other substance, fluid, or source which makes possible contamination of the potable water supply due to the reversal of flow of the water in the piping or distribution system.
 9. "Hazard, Degree of" means an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.
 - a. Hazard-Health - any condition, device, or practice in the water supply system and its operation which could create or may create a danger to the health and well-being of the water consumer.

- b. Hazard-Plumbing - a plumbing type cross connection in a consumer's potable water system that has not been properly protected by a vacuum breaker, air-gap separation, or backflow prevention device.
 - c. Hazard-Pollutional - an actual or potential threat to the physical properties of the water system or to the potability of the public or the consumer's potable water system but which would constitute a nuisance or be aesthetically objectionable or could cause damage to the system or its appurtenances, but would not be dangerous to health.
 - d. Hazard-System - an actual or potential threat of severe damage to the physical properties of the public potable water system or the consumer's potable water system, or of a pollution or contamination which would have a protracted effect on the quality of the potable water in the system.
10. "Industrial Process System" means any system containing a fluid or solution, which may be chemically, biologically, or otherwise contaminated or polluted in a form or concentration such as would constitute a health, system, pollutional or plumbing hazard if introduced into a potable water supply.
11. "Isolation" means protection of a facility service line by installing a cross connection control device or air gap separation on an individual fixture, appurtenance, or system.
12. "Pollution" means the presence of any foreign substance (organic, inorganic, or biological) in water which tends to degrade its quality so as to constitute a hazard or impair the usefulness of the water to a degree which does not create an actual hazard to the public health but which does adversely and unreasonably affect such waters for domestic use.
13. "Public Potable Water System" means any publicly or privately owned water system supplying water to the general public which is satisfactory for drinking, culinary, and domestic purposes and meets the requirements of the Nebraska Department of Health.
14. "Service Connection" means the terminal end of a service line from the public water system. If a meter is installed at the end of the service, then the service connection means the downstream end of the meter.
15. "Water Department" means the owner, operator, or individual in responsible charge of a public water system. (*Amended by Ord. No. 99-17, 06/21/99*)

§ 51.20 CROSS CONNECTIONS PROHIBITED.

- A. No water service connection shall be installed or maintained to any premises where actual or potential cross connections as required by the laws and regulations of the state to the public potable or consumer's water system may exist.

- B. No connection shall be installed or maintained whereby an auxiliary water supply may enter a public potable or consumer's water system.
- C. No water service connection shall be installed or maintained to any premises in which the plumbing system, facilities, and fixtures have not been constructed and installed using acceptable plumbing practices of the latest edition of the Uniform Plumbing Code as considered by the Municipal Water Department as necessary for the protection of health and safety. *(Amended by Ord. No. 99-17, 06/21/99)*

§ 51.21 SURVEYS AND INVESTIGATIONS; RESPONSIBILITIES OF CONSUMER.

- A. The consumer shall provide access to the premises at reasonable times to the Municipal Water Department, or its authorized representative, for the conduction of surveys and investigations of water use practices within the consumer's premises to determine whether there are actual or potential cross connections to the consumer's water system through which contaminants or pollutants could backflow into the public potable water system.
- B. On request by the Municipal Water Department or its authorized representative, the consumer shall furnish information on water use practices within his premises.
- C. It shall be the responsibility of the water consumer to conduct periodic surveys of water use practices on his premises to determine whether there are actual or potential cross connections to his water system through which contaminants or pollutants could backflow into his or the public potable water system. *(Amended by Ord. No. 99-17, 06/21/99)*

§ 51.22 TYPE OF PROTECTION REQUIRED.

The type of protection required by this section shall depend on the degree of hazard which exists, as follows: An approved air gap separation, or an approved reduced pressure principle backflow prevention device, or an approved double check valve assembly shall be installed where the public potable water system may be polluted with substances that could cause a health hazard. *(Amended by Ord. No. 99-17, 06/21/99)*

§ 51.23 PREMISES WHERE PROTECTION IS REQUIRED.

- A. An approved backflow prevention device shall be installed in the service connection line to a consumer's water system or within any premises where actual or potential hazards to the public potable water system exist. The type and degree of protection required shall commensurate with the degree of hazard.
- B. An approved air gap separation or reduced pressure principle backflow prevention device shall be installed at the service connection or within any premises where the nature and extent of activities on the premises, or the materials used in connection with the activities, or materials stored on the premises, would present an immediate and dangerous hazard to health should a cross connection occur, even though such

cross connection may not exist at the time the backflow prevention device is required to be installed. This includes but is not limited to the following situations:

1. Premises having an auxiliary water supply.
 2. Premises having internal cross connections that are not correctable, or intricate plumbing arrangements which make it impractical to ascertain whether or not cross connections exist.
 3. Premises where entry is restricted so that inspections for cross connections cannot be made with sufficient frequency or at sufficiently short notice to ensure that cross connections do not exist.
 4. Premises that, although not covered by this division, are subject to frequent modification which would change their status, or premises that have had violations of this division.
 5. Premises on which any substance is handled under pressure so as to permit entry into the public water supply, or where a cross connection could reasonably be expected to occur. This shall include the handling of process waters and cooling waters.
 6. Premises where materials of a toxic or hazardous nature are handled such that, if back siphonage or back pressure should occur, a serious health hazard may result.
- C. The following types of facilities must install or have in operation an approved air gap separation, atmospheric vacuum breaker, pressure vacuum breaker, double check valve assembly, or reduced pressure principle backflow prevention device as required by the Municipal Water Department to protect the public water supply, and such equipment must be installed at these facilities unless all hazardous or potentially hazardous conditions have been eliminated or corrected:
1. Auxiliary water systems.
 2. Beverage bottling plants and food processing plants.
 3. Canneries, packing houses, and reduction plants.
 4. Car washing facilities and automobile servicing facilities.
 5. Chemical manufacturing, processing, compounding, or treatment plants.
 6. Chemically contaminated water systems.
 7. Dairies and cold storage plants.
 8. Film laboratories, film development facilities, and testing laboratories.
 9. Fire protection systems.

10. Hazardous waste storage and disposal.
11. Hospitals, mortuaries, clinics, nursing and convalescent homes, and medical facilities.
12. Sprinkler systems and hose connections injecting directly material of a toxic or hazardous nature.
13. Laundries and dye works, and dry cleaners.
14. Metal manufacturing, cleaning, processing, and fabricating plants.
15. Oil and gas production, storage, or transmission properties.
16. Plating plants.
17. Printing and publishing facilities.
18. Research and analytical laboratories.
19. Sewage and storm drainage facilities.
20. Zoological and horticultural gardens.
21. All cemetery sprinkler systems.
22. Pet grooming and veterinarian facilities, kennels, stockyards, and feedyards.
23. Swimming pools.
24. Cooling coil service lines (refrigeration, air conditioning, etc.)
25. All hot water and steam boiler heating systems with water recirculating.
26. Lawn irrigation systems. All lawn irrigation systems must have a pressure vacuum breaker or reduced pressure zone backflow prevention device. Backflow devices must be tested at the time of installation and at least every 36 months thereafter.
27. Hose connections. All garden hose type connections must have hose bib vacuum breakers.
28. Yard hydrants. The installation of new or replacement yard hydrants where water is available or accessible for drinking or culinary purposes, and which have a drip opening below the ground surface, is prohibited unless such hydrants are equipped with an approved device to prevent entrance of groundwater into chambers connected with the water supply. Yard hydrants or hose bibs which would be used by the consumer to provide water to mix pesticides, fertilizer or other chemicals for

direct use or aerial application to surface areas shall be equipped with an antisiphon vacuum breaker.

29. Booster pumps. No person shall install or maintain a water service connection to any premises where a booster pump has been installed on the service line to or within such premises, unless such booster pump is equipped with a low pressure cutoff designed to shut off the booster pump when the pressure in the service line on the suction side of the pump drops to 20 pounds per square inch gauge or less. It shall be the duty of the customer to maintain the low pressure cutoff device in proper working order. The utilities superintendent may require testing at any time if it is suspected that a problem exists with the device.
30. Multistoried buildings greater than three stories. These facilities, falling into one or more or more of the categories listed in this section, will be given six months after passage of the ordinance from which this division is derived to comply with this division, except those facilities or systems which are determined by the Municipal Water Department to be an immediate or severe health hazard, in which case that system or facility shall be required to comply immediately with this division. *(Amended by Ord. No. 99-17, 06/21/99)*

§ 51.24 APPROVED BACKFLOW PREVENTION DEVICES.

- A. Any backflow prevention device required by this section shall be of a model or construction approved by the Municipal Water Department.
 1. An air gap separation, to be approved, shall be at least double the diameter of the supply pipe measured vertically above the flood level rim of the vessel, but in no case less than one inch.
 2. A double check valve assembly or a reduced pressure principle backflow prevention device shall be approved by the Municipal Water Department and shall appear on the current list of approved backflow prevention devices established by the Water Department.
- B. Existing testable backflow prevention devices approved by the water purveyor at the time of installation and properly maintained shall, except for inspection and maintenance requirements, be excluded from the requirements of this division so long as the Municipal Water Department is assured that they will satisfactorily protect the water system. Whenever the existing device is moved from its present location, or requires more than minimum maintenance, or when the Water Department finds that the maintenance constitutes a hazard to health, the unit shall be replaced by a backflow prevention device meeting the requirement of this division. *(Amended by Ord. No. 99-17, 06/21/99)*

§ 51.25 INSTALLATION OF BACKFLOW PREVENTION DEVICES.

- A. Backflow prevention devices required by this section shall be installed by licensed state-certified tester/repair technicians at a location and in a manner approved by the Municipal Water Department or according to the latest addition of the Uniform Plumbing Code, and shall be installed at the expense of the water consumer.
- B. Backflow prevention devices installed on the service line to the consumer's water system shall be located on the consumer's side of the water meter, and prior to any other connection.
- C. Backflow prevention devices shall be located so as to be readily accessible for maintenance and testing, and protected from freezing, and where no part of the device will be submerged or subject to flooding by any fluid.
- D. Backflow prevention devices for underground sprinklers that have an opening to the atmosphere shall be located at least 12 inches from the bottom of the valve above the highest ground served by the sprinkler system. *(Amended by Ord. No. 99-17, 06/21/99)*

§ 51.26 INSPECTION AND MAINTENANCE OF BACKFLOW PREVENTION DEVICES.

A. It shall be the duty of the consumer at any premises on which backflow prevention devices required by this division are installed to have inspections, tests, and overhauls made by licensed state-certified backflow tester/repair technicians in accordance with the following schedule, or more often where inspections indicate a need:

1. Air gap separations shall be inspected at the time of installation and at least every 12 months thereafter.
2. Double check valve assemblies shall be inspected and tested for tightness at the time of installations and at least every twelve (12) months thereafter. They shall be dismantled, inspected internally, cleaned, and repaired whenever needed and at least every five (5) years.
3. Reduced pressure principal backflow prevention devices shall be inspected and tested for tightness at the time of installation and at least every twelve (12) months thereafter. They shall be dismantled, inspected internally, cleaned, and repaired whenever needed and at least every five (5) years.

B. Overhauls of backflow prevention devices shall be made at the expense of the water consumer and shall be performed by a State of Nebraska Certified Backflow Prevention Device Tester.

C. Backflow prevention devices designed with testing cocks shall be inspected and tested each year and those tests performed by a Nebraska Certified Backflow Prevention Device Tester and will be at the expense of the water consumer.

D. Whenever backflow prevention devices required by this ordinance are found to be defective, they shall be repaired, or replaced at the expense of the consumer without delay.

E. The water consumer must maintain a complete record of each backflow prevention device that has test cocks from purchase to retirement. Records of inspections, tests, repairs, and overhauls performed by others shall be submitted to the Municipal Water Department annually.

F. Backflow prevention devices shall not be bypassed, made inoperative, removed, or otherwise made ineffective.

G. Further regulations concerning the installation of sprinkler systems and backflow prevention devices are found in the latest edition of the Uniform Plumbing Code. *(Amended by Ord. No. 99-17, 6/21/99)*

§ 51.27 CROSS CONNECTIONS; BACKFLOW PREVENTION DEVICES; VIOLATIONS.

- A. The Municipal Water Department shall have the right to deny or discontinue after ten (10) days notice to the occupants thereof, the water service to any premises wherein any backflow prevention device required by this ordinance is not installed, tested, and maintained in
- B. a manner acceptable to the Municipal Water Department, or if it is found that the backflow prevention device has been removed or bypassed or if an unprotected cross connection exists on the premises.
- C. Water service to such premises shall not be restored until the consumer has corrected or eliminated such conditions or defects in conformance with this ordinance to the satisfaction of the Municipal Water Department.
- D. The appropriate state or local regulatory agency, the Mayor and City Council shall be advised of inspection findings, and the violation abatement action pursued by the Municipal Water Department, and consulted prior to violation abatement action on items having to do with public health significance. *(Amended by Ord. Nos. 99-17, 06/21/99; 01-04, 05/07/01)*

§ 51.28 MANDATORY HOOKUP.

All persons within three hundred feet (300') of a water main shall be required, upon notice by the Governing Body, to hookup with the Municipal Water System. No private water wells shall be allowed:

- (1) within the corporate limits; Provided, however, that any private water wells in existence within the corporate limits prior to January 1, 1990, shall be permitted to continue operating until the first transfer or conveyance of the property served by

such water well to occur after January 1, 1990, at which time the well must be closed, at the owner's expense, and the property shall be hooked up to the Municipal Water System as provided herein. Existing private water wells may be repaired, but such repairs shall be limited to replacement or reconstruction of the electrical and mechanical components of the well. Replacement of the casing or reconstruction of the well shall not be permitted without a permit; or

- (2) within one-half ($\frac{1}{2}$) mile of the corporate limits; Provided, however, that any private water wells in existence within one-half ($\frac{1}{2}$) mile of the corporate limits prior to May 1, 2000, shall be permitted to continue operating until the first transfer or conveyance of the property served by such water well to occur after May 1, 2000, at which time the well must be closed, at the owner's expense, and the property shall be hooked up to the Municipal Water System as provided herein. Existing water wells may be repaired, but such repairs shall be limited to replacement or reconstruction of the electrical and mechanical components of the well. Replacement of the casing, or reconstruction of the well shall not be permitted without a permit.

Any person using a private water well and requests, or is required by the Governing Body, to connect to the Municipal Water System must disconnect the private water well from the system. No cross connections are permitted with the Municipal Water System.

Any well that penetrates the aquifer for purposes of extracting water or injecting water or any other substance, or for purposes of testing or monitoring ground water must have a permit issued by the City. Ground source heat pumps with closed loop systems used for heating and cooling of facilities are exempt from the permit requirement. (*Ref. 17-539 RS Neb.*) (*Amended by Ord. Nos. 90-6, 06/18/90; 99-17, 06/21/99; 00-2, 04/03/00*)

§ 51.29 WATER SERVICE CONTRACTS.

Contracts for water service are not transferable. Any person wishing to change from one location to another shall make a new application and sign a new contract. If any consumer shall move from the premises where service is furnished, or if the said premise is destroyed by fire or other casualty, he shall at once inform the Water Department who shall cause the water service to be shut off at the said premises. If the consumer should fail to give such notice, he shall be charged for all water used on the said premises until the Water Department is otherwise advised of such circumstances. (*Ref. 17-537 RS Neb.*) (*Amended by Ord. Nos. 99-17, 06/21/99; 01-04, 05/07/01*)

§ 51.30 DESTRUCTION OF PROPERTY.

It shall be unlawful for any person to willfully or carelessly break, injure, or deface any building, machinery, apparatus, fixture, attachment, or appurtenance of the Municipal Water Department. No person may deposit anything in a curb stop or commit any act tending to obstruct or impair the intended use of any of the above mentioned property without the written permission of the Water Department. (*Amended by Ord. Nos. 99-17, 06/21/99; 01-04, 05/07/01*)

§ 51.31 HOURS.

Except in the case of emergency, all taps or plumbing work done on or to the Municipal Water System shall be done during normal business hours of the Municipal Water Department. *(Ref. 17-537 RS Neb.) (Amended by Ord. No. 99-17, 06/21/99)*

§ 51.32 FLUORIDE PERMITTED.

Fluoride shall be added for dental health benefits to the water supply of the City of Waverly, Nebraska in the amount and manner prescribed by the rules and regulations of the Nebraska Department of Health and Human Services. *(Amended by Ord. Nos. 98-05, 03/16/98; 99-17, 06/21/99)*

§ 51.33 BOILERS.

All house boilers shall be constructed with one (1) or more air holes near the top of the inlet pipe and sufficiently strong to bear the pressure of the atmosphere under the vacuum, the stop cock and all other apparatus must be sufficiently strong to bear the pressure of water in the mains. All persons taking the water shall keep the service pipes, stock cock, and other apparatus in good order and repair and protect the same from frost at their own risk and expense. *(Amended by Ord. No. 99-17, 06/21/99)*

§ 51.34 SEPARATE SHUT OFFS.

When one (1) service pipe supplies two (2) or more customers, except four plex or larger residential buildings, there shall be provided, subject to the supervision of the Water Department, a separate stop cock and meter for each of said customers, so that water supplies may be shut off from one without interfering with the supply of the others. *(Amended by Ord. Nos. 99-17, 06/21/99; 01-04, 05/07/01; 08-01, 02/04/08)*

§ 51.35 VIOLATIONS AND PENALTIES.

- A. NOTIFICATIONS OF VIOLATION OF 51.16 TO 51.27. The Water Department shall notify the owner, or authorized agent of the owner, of the structure in which there is found a violation of Section 51.16 to and including Section 51.27 of this Code, of such violation. The Water Department shall set a reasonable time for the owner to have the violation removed or corrected. Upon failure of the owner to have the defect corrected by the end of the specified time interval, the Water Department may, if in his or her judgment an imminent health hazard exists, cause the water service to the structure to be terminated, and/or recommend such additional fines or penalties to be invoked as herein may be provided.
- B. FINES ESTABLISHED FOR VIOLATION OF 51.16 TO 51.27. The owner or authorized agent of the owner for the maintenance of the plumbing systems in the structure who knowingly permits a violation of 51.16 to 51.27 of this Code to remain uncorrected after the expiration of time set by the Water Department shall, upon conviction thereof by the Court, be deemed guilty of an infraction, be required to pay a fine of not less than one hundred dollars (\$100.00) for each violation, and stand committed to jail until such fine and costs of prosecution are paid. Each day of failure

to comply with the requirements of this Section, after the specified time provided herein, shall constitute a separate violation. If such violation is disposed of pursuant to a waiver of appearance and plea of guilty, the fine shall be fifty dollars (\$50.00).

- C. FINES ESTABLISHED FOR VIOLATION OF 51.15. Any person upon whom a duty is placed by the provisions of 51.15 of this Code, and who shall violate any of the provisions of said Section, shall be deemed guilty of an infraction and upon conviction thereof, shall be fined in the sum of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), and shall stand committed to jail until such fine and costs of prosecution are paid. If such violation is disposed of pursuant to a waiver of appearance and plea of guilty, the fine shall be ten dollars (\$10.00).
- D. FINES ESTABLISHED FOR VIOLATION OF 51.13 AND 51.30. Any person upon whom a duty is placed by the provisions of 51.13 or 51.30 of this Code, and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Sections, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in the sum of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), and shall stand committed to jail until such fine and costs of prosecution are paid. If such violation is disposed of pursuant to a waiver of appearance and plea of guilty, the fine shall be twenty-five dollars (\$25.00). (*Amended by Ord. Nos. 99-17, 06/21/99; 01-04, 05/07/01*)

§ 51.36 LAWN IRRIGATION SYSTEMS.

- A. It shall be the duty of the consumer at any premises that have an automatic sprinkler system to have a backflow prevention device and a rain sensor. All backflow prevention devices shall comply with Section 51.26 of the Waverly Municipal Code.
- B. All piping material from the house to the vacuum breaker needs to be copper tubing or approved cross-linked polyethylene tubing. The piping from the vacuum breaker to the sprinkler system may be PVC plastic rated for 160 psi or greater.
- C. Automatic lawn sprinkler systems shall have a rain sensor installed that will turn the system off under predetermined rain or moisture conditions. (*Est. by Ord. 10-09, 07/19/10*)
- D. Effective May 1, 2024, the following lawn watering and lawn irrigation restrictions on consumers and enforcement measures shall be in full force and effect:
1. Restrictions
 - a. Consumers having an ODD numbered street address shall be permitted to water or irrigate their lawns on Tuesday & Saturday;
 - b. Consumers having an EVEN numbered street address shall be permitted to water or irrigate their lawns on Wednesday and Sunday;
 - c. No lawn watering or irrigation shall be permitted on Mondays, Thursdays and Fridays; and

- d. No lawn watering or irrigation shall be permitted between the hours of 10 a.m. and 4 p.m. on any day.
2. Compliance Measures/Fines
 - a. First (1st) and Second (2nd) offense in a calendar year: Warning notification letter for violation will be hung on the front door of the residence.
 - b. Third (3rd) offense in a calendar year: Warning notification letter for violation will be hung on the front door of the residence. Water service will be disconnected and a reconnection fee of \$200 shall be paid prior to reconnection.
 - c. Fourth (4th) and subsequent offenses in a calendar year: Warning notification letter for violation will be hung on the front door of the residence. Water service will be disconnected and a reconnection fee of \$400 shall be paid prior to reconnection.
 3. Exemptions
 - a. A fourteen (14) day exemption will be permitted for lawn watering and lawn irrigation for those consumers establishing new grass or sod provided a sod permit has been issued by the City. Sod permits may be obtained from the City Office and are subject to a \$50 permit fee. A sod permit will not alter the requirement that no lawn watering or irrigation shall be permitted between the hours of 10 a.m. and 4 p.m. on any day.
 - b. These restrictions only apply to lawn watering and lawn irrigation, and do not apply to the watering of gardens or the washing of vehicles, driveways, houses, etc.
 - c. Consumers seeking to transport water from outside the City's corporate limits for the purpose of lawn watering or lawn irrigation must notify the City in advance. (*Est. by Ord. 24-02, 04/23/24*)

§51.37 AUTHORIZES THE DECLARATION OF A WATER WATCH, WARNING, OR EMERGENCY; ESTABLISHING PROCEDURES AND VOLUNTARY AND MANDATORY CONSERVATION MEASURES; AUTHORIZING THE ISSUANCE OF ADMINISTRATIVE REGULATIONS; AND PRESCRIBING CERTAIN PENALTIES.

Section 1. Purpose. The purpose of this ordinance is to provide for the declaration of a water supply watch, warning or emergency and the implementation of voluntary and mandatory water conservation measures throughout the city in the event such a watch, warning or emergency is declared.

Section 2. Declaration of Water Watch. Whenever the City finds that conditions indicate that the probability of a drought or some other condition causing a major water supply shortage is rising, the Mayor shall be empowered to declare that a water watch

exists and may impose restrictions on water use during the period of watch consistent with this Section 2. Such a watch shall be deemed to continue until it is declared by the Mayor to have ended.

Triggers

This stage is triggered by any one of the following conditions:

1. *Pumping Water Level:* When more than 50% of the wells have a pumping water level within 5 feet of the minimum pumping level for 7 consecutive days.
2. *Wells Out of Service:* When more than 25% of wells are taken out of service OR if one storage tank is taken out of service for 5 or fewer days for a reason other than routine maintenance.
3. *Well Run Times:* When all well pumps are running for more than 18 hours per day.

Education: The following step will be taken to inform the public and implementation of both Mandatory and Voluntary Conservation Measures will begin:

The public will be informed through local media of the Water Watch and the existing conditions.

Regulatory Conservation Measures – Mandatory

Sprinkling of water on lawns (including golf courses) three (3) days per week. It is mandatory to conserve water by rotating water use on an odd, even system. Tuesday, Thursday, and Saturday addresses ending in Odd numbers, water on these days only. Wednesday, Friday, and Sunday, addresses ending in Even numbers, water on these days only. No outdoor watering on Mondays. No outdoor watering between 10am and 4pm. Watering of new trees and gardens is permitted.

Additional Conservation Measures – Voluntary

Limit all outdoor use of water, such as washing automobiles, fountains, swimming pools and other recreational use of water.

City Conservation Measures:

City Departments and Fire Department will practice Conservation Measures to ensure only necessary water is used. This will not restrict water used for training purposes.

Section 3. Declaration of Water Warning. Whenever the City finds that conditions are such that a major water supply shortage exists and supplies are starting to decline, the Mayor shall be empowered to declare that a water warning exists and may impose restrictions on water use during the period of warning consistent with this Section 3. Such a warning shall be deemed to continue until it is declared by the Mayor to have ended.

Triggers

This stage is triggered by any one of the following conditions:

1. *Pumping Water Level:* When more than 40% of wells have a pumping water level within 3 feet of the minimum pumping level for 7 consecutive days.
2. *Wells Out of Service:* When more than 38% of wells are taken out of service OR if the storage tanks are not able to completely filled within a 24-hour period.
3. *Well Run Times:* When all pumps are running for more than 20 hours per day.

Education: The following step will be taken to inform the public and implementation of both Mandatory and Voluntary Conservation Measures will begin:

1. The public will be informed through local media of the Water Warning and the existing conditions.
2. Information will be mailed to all City Water Users detailing the Conservation Measures in place explaining the Regulations and Penalties associated with the Declaration.

Regulatory Conservation Measures – Mandatory

1. Sprinkling of water on lawns (including golf courses) two (2) days per week. It is mandatory to conserve water by rotating water use only water on Tuesday and Saturday for addresses ending in Odd numbers. Wednesday and Sunday for addresses ending in Even numbers. No outdoor watering on Mondays, Thursdays or Fridays. No outdoor watering between 10am and 4pm. Watering of new trees and gardens is permitted.
2. Waste of water is prohibited. Water running down the street will be enforced.

Additional Conservation Measures – Voluntary

Limit all outdoor use of water, such as washing automobiles, fountains, swimming pools and other recreational use of water.

City Conservation Measures:

City Departments and Fire Department will practice Conservation Measures to ensure only necessary water is used. This will not restrict water used for training purposes.

Section 4. Declaration of Water Emergency. Whenever the City finds that the following conditions are met, the Mayor shall be empowered to declare that a water supply emergency exists and may impose restrictions on any water use during the period of emergency consistent with this Section 4. Such an emergency shall be deemed to continue until the next regular or special meeting of the Governing Body, at which time a public hearing shall be held and the Governing Body may ratify, amend or rescind, in whole or in part, the Mayor's water supply emergency declaration and the Governing Body may provide

for the manner and method by which the determination of the cessation of any water supply emergency declaration shall be made.

Triggers

This stage is triggered by any one of the following conditions:

1. *Pumping Water Level:* When more than 15% of wells have a pumping water level within 1 foot of the minimum pumping level. Turn off a well when it reaches the minimum pumping level for 7 consecutive days.
2. *Wells Out of Service:* When more than 50% of wells are taken out of service OR if one storage tank is taken out of service for more than 5 days for a reason other than routine maintenance OR if all storage tanks are simultaneously taken out of service for any amount of time.
3. *Well Run Times:* When all well pumps are running for more than 22 hours per day.

Education: The following step will be taken to inform the public and implementation of Emergency Conservation Measures will begin:

1. The City will make news releases to local media of the Water Emergency and the existing conditions.
2. The City will hold Public Meeting(s) to discuss the Emergency and the existing conditions.
3. Information will be mailed to all City Water Users detailing the Conservation Measures in place explaining the Regulations and Penalties associated with the Declaration.

Regulatory Conservation Measures – Mandatory

1. Sprinkling of water on lawns (including golf courses), it is mandatory to conserve water by watering one (1) day per week. Only Saturday for addresses ending in Odd numbers. Sunday watering is permitted for addresses ending in Even numbers. No outdoor watering Monday through Friday. No outdoor watering between 10am and 4pm. Watering of new trees and gardens only as needed.
2. Waste of water is prohibited. Water running down the street, on driveways and/or sidewalks will be enforced.
3. A complete ban on outdoor watering may be declared.
4. New water taps may be suspended, except for fire hydrants and Building Permits issued prior to the Declaration of a Water Emergency.

5. Residential pools will not be allowed to be filled with the City water supply. Water may be brought in from another source.
6. Any combination of the forgoing measures.

City Conservation Measures:

The City will not irrigate municipal Parks and the Aquatic Center will not be filled. Fire Hydrants will not be flushed. Sewer mains will not be jetted, except for emergency situations. The Fire Department will practice Conservation Measures to ensure only necessary water is used and training will be only as required.

Section 5. Emergency Water Rates. Upon the declaration of a water supply emergency as provided in Section 4, the Governing Body of the City shall have the power to adopt emergency water rates by ordinance designed to conserve water supplies. Funds collected above the current water rate will be used for education, code enforcement and other water conservation measures.

Section 6. Council Approval of Mandatory Conservation Measures. During the effective period of any water supply watch, warning or emergency as provided for in Section 4, any mandatory water conservation measures implemented by the Mayor shall remain in effect until the next regular or special meeting of the Governing Body, at which time a public hearing shall be held and the Governing Body may ratify, amend or rescind, in whole or in part, the Mayor's mandatory water conservation measures.

Section 7. Violations, Disconnections and Penalties. Upon any violation of any water use restrictions imposed pursuant to this ordinance, a written notice of the violation shall be affixed to the property where the violation occurred and the customer of record and any other person known to the City who is responsible for the violation or its correction shall be provided with either actual or mailed notice. Said notice shall describe the violation and order that it be corrected, cured or abated immediately or within such specified time as the City determines is reasonable under the circumstances. If the order is not complied with, the City may terminate water service to the customer.

- (a) A fee of \$50 shall be paid for the reconnection of any water service terminated pursuant to Section 7. In the event of subsequent violations, the reconnection fee shall be \$200 for the second reconnection and \$300 for any additional reconnections.
- (b) Any person who shall violate or refuse to comply with the enforcement of any provision in this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$100 for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such violation or failure to comply.

Section 8. Emergency Termination. Nothing in this ordinance shall limit the ability of any properly authorized city official from terminating the supply of water to any or all customers upon the determination of such city official that emergency termination of water service is required to protect the health and safety of the public.

Section 9. Severability. If any provision of this ordinance is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the ordinance and its applicability to other persons and circumstances shall not be affected thereby. *(Ord. No. 00-06, 08/07/00; Ord. No. 03-02, 04/07/03; Ord. No. 06-16, 09/05/06; Ord. No. 23-09, 07/11/23; Ord. No. 23-17, 01/09/24)*

§ 51.38 WELL – HEAD PROTECTION: PURPOSE.

The intent of this Article is to establish control by the City of Waverly, Lancaster County, Nebraska over the location of future potential sources of contamination within the proximity of the City’s drinking water system, so as to prevent or minimize any hazard to the safety of the City’s drinking water. *(Amended by Ord. No. 02-18, 06/17/02)*

§ 51.39 WELL – HEAD PROTECTION: DEFINITIONS.

For purposes of this Article, “water well” shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground or extracting water from or injecting water into the underground water reservoir. Water wells shall not include any excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried or inserting media to repressure oil or natural gas-bearing formations. *(Amended by Ord. No. 02-18, 06/17/02)*

§ 51.40 WELL – HEAD PROTECTION: PLACEMENT, MAINTENANCE AND CONSTRUCTION; PROHIBITIONS.

It shall be unlawful to place, maintain, construct, or replace any of the following structures or conduct any of the following activities within the distance specified below from existing Municipal water well:

<u>CATEGORY</u>	<u>DISTANCE</u>	
	Feet	Meters
Absorption of Disposal Field for Waste:		
A. <u>Receiving 2000 or more</u>		
<u>Gallons per day (gpd)</u>	1,000	300
B. <u>Receiving less than 2000 (gpd)</u>	500	150
Cesspool	500	150
Chemical or Petroleum Product Storage	1,000	300
Corral	500	150

Domestic Water Well	1,000	300
Dump	1,000	300
Feedlot or Feedlot Runoff	1,000	300
Nonpotable Water Well	1,000	300
Pit Toilet	500	150
Sanitary Landfill	1,000	300
Sanitary Sewer Connection	100	30
Sanitary Sewer Line	50	15
Sanitary Sewer Line (permanently watertight)	10	3
Sanitary Sewer Manhole	100	30
Septic Tank	500	150
Sewage Lagoon	1,000	300
Sewage Treatment Plant	500	150
Sewage Wet Well	500	150
Storm Sewer	50	15
Closed-Loop Food Grade Heat Pump	500	150
<i>(Amended by Ord. No. 02-18, 06/17/02; 05-13, 07/18/05)</i>		

§ 51.41 WELL – HEAD PROTECTION: APPLICATIONS; APPROVAL REQUIRED.

The Governing Body may consider allowing placement of water wells, as defined by Nebraska Regulations governing public water supply systems (Title 179, NAC 2) and Nebraska Regulations governing water well construction, pump in stallion and water well abandonment standards (Title 178, NAC 12) as amended from time to time, closer to a Municipal water well than the limitations set forth in Section 51.40 hereof. Closer placement shall be allowed only under the following conditions:

(a) An application must first be filled with the City showing the type of water well to be installed, the materials used, the operation of the proposed unit, and the person responsible for the actual installation of the water well. Preference, for approval, will be given to installations that do not disturb any bearing strata.

The City shall refer the application to its engineer for evaluation and report. The estimated cost of the engineer's fees must be paid at the time of filing the application. Any additional costs, which are reasonably incurred by the engineer in making his examination and report shall be paid by the applicant, in addition to any previously paid estimated cost.

(b) The Governing Body shall consider the engineer's report and any additional information submitted by the applicant. In reaching its decision on whether to allow the placement of a water well, as above defined, the Governing Body must act to prevent all sources of possible or likely water contamination.

If the Governing Body approves the installation, it shall submit the application, together with the engineer's report to the Department of Health of the State of Nebraska for final approval or denial.

No installation shall be made without the approval of both the Governing Body and the Department of Health of the State of Nebraska. *(Amended by Ord. No. 02-18, 06/17/02)*

§ 51.42 WELL-HEAD PROTECTION: EXISTING WELLS.

Water wells in existence and use, as of the effective date of this Article, shall continue to be permitted unless such a continued existence or use presents a hazard to the quality or quantity of the drinking water for public use. The owner of any water well shall have the burden of establishing the existence and use of such well at the time of effective date of this Article. *(Amended by Ord. No. 02-18, 06/17/02)*

§ 51.43 WELL-HEAD PROTECTION: VIOLATIONS; PENALTY.

Any person found violating any provision of this Article shall be subject to a fine, not to exceed \$100.00. The continuation of a violation of this Article shall be deemed an additional offense for every twenty-four (24) hours of such continued violation. In addition, the City may obtain injunctive relief, and sue for damage and remediation, and pursue any other remedy available to it under the laws of the State of Nebraska, the ordinances of the City of Waverly, or other authority having jurisdiction over such matter. *(Amended by Ord. No. 02-18, 06/17/02)*

§ 51.44 WELL-HEAD PROTECTION: VIOLATIONS; DESIGNATION OF WELL-HEAD PROTECTION AREA.

Section 1. Definitions. Wellhead Protection Area means the surface and subsurface area surrounding a public water supply well or wellfield, supplying a public water supply system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

Section 2. The City Council designates a Wellhead Protection Area for the purpose of protecting the public water supply system. The boundaries of the Wellhead Protection Area are based upon the delineation map published by the Nebraska Department of Environmental Quality on June 2019. The boundaries of the Wellhead Protection Area are:

A PARCEL OF LAND LOCATED IN SECTIONS 3, 4 AND 5, TOWNSHIP 10 NORTH, RANGE 8 EAST OF THE SIXTH P.M., AND IN SECTIONS 16, 20, 21, 22, 27, 28, 28, 29, 32, 33 AND 34, TOWNSHIP 11 NORTH, RANGE 8 EAST OF THE SIXTH P.M., ALL IN LANCASTER COUNTY, NEBRASKA, BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SECTION 22, TOWNSHIP 11 NORTH, RANGE 8 EAST OF THE SIXTH P.M.; THENCE EASTERLY ON THE NORTH LINE OF SAID SECTION 22, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF THE WEST HALF OF SAID SECTION 22; THENCE SOUTHERLY ON THE EAST LINE OF SAID WEST HALF, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID WEST HALF; THENCE SOUTHERLY ON THE EAST LINE OF THE WEST HALF OF SECTION 27, TOWNSHIP 11 NORTH, RANGE 8 EAST OF THE SIXTH P.M., A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF THE WEST HALF OF SECTION 24, TOWNSHIP 11 NORTH, RANGE 8 EAST OF THE SIXTH P.M.; THENCE SOUTHERLY ON THE EAST LINE OF SAID WEST HALF OF SECTION 24, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF THE WEST HALF OF SECTION 3, TOWNSHIP 10 NORTH, RANGE 8 EAST OF THE SIXTH P.M.; THENCE SOUTHERLY ON THE EAST LINE OF SAID WEST HALF OF SECTION 3, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID WEST HALF OF SECTION 3; THENCE WESTERLY ON THE SOUTH LINE OF SAID WEST HALF OF SECTION 3, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SECTION 4, TOWNSHIP 10 NORTH, RANGE 8 EAST OF THE SIXTH P.M.; THENCE WESTERLY ON THE SOUTH LINE OF SAID SECTION 4, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SECTION 5, TOWNSHIP 10 NORTH, RANGE 8 EAST OF THE SIXTH P.M.; THENCE WESTERLY ON THE SOUTH LINE OF SAID SECTION 5, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID SECTION 5; THENCE NORTHERLY ON THE WEST LINE OF SAID SECTION 5, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SECTION 32, TOWNSHIP 11 NORTH, RANGE 8 EAST OF THE SIXTH P.M.; THENCE NORTHERLY ON THE WEST LINE OF SAID SECTION 32, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SECTION 29, TOWNSHIP 11 NORTH, RANGE 8 EAST OF THE SIXTH P.M.; THENCE NORTHERLY ON THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE NORTHWEST

CORNER OF SAID SOUTHWEST QUARTER; THENCE NORTHERLY ON THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 29, A DISTANCE OF 500 FEET, MORE OR LESS, TO THE CENTERLINE OF INTERSTATE 80; THENCE NORTHWESTERLY ON THE CENTERLINE OF INTERSTATE 80, A DISTANCE OF 2500 FEET, MORE OR LESS, TO A POINT OF INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE OF UNITED STATES HIGHWAY 6; THENCE NORTHEASTERLY ON SAID NORTHERLY RIGHT OF WAY LINE OF UNITED STATES HIGHWAY 6, A DISTANCE OF 6000 FEET, MORE OR LESS, TO THE WEST LINE OF THE EAST HALF OF SECTION 20, TOWNSHIP 11 NORTH, RANGE 8 EAST OF THE SIXTH P.M.; THENCE NORTHERLY ON THE WEST LINE OF SAID EAST HALF OF SECTION 20, A DISTANCE OF 3300 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID EAST HALF OF SECTION 20; THENCE EASTERLY ON THE NORTH LINE OF SAID EAST HALF OF SECTION 20, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SECTION 16, TOWNSHIP 11 NORTH, RANGE 8 EAST OF THE SIXTH P.M.; THENCE NORTHERLY ON THE WEST LINE OF THE OF SAID SECTION 16, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID SECTION 16; THENCE EASTERLY ON THE NORTH LINE OF SAID SECTION 16, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID SECTION 16; THENCE SOUTHERLY ON THE EAST LINE OF SAID SECTION 16, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, CONTAINING 6840 ACRES, MORE OR LESS.

Section 3. That a copy of the map of the Wellhead Protection Area for the City of Waverly, Nebraska is on file and shall be kept in the office of the City Clerk for the City of Waverly, Nebraska.

CHAPTER 52: SEWERS

Section

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GENERAL PROVISIONS

§ 52.01 DEFINITIONS.

Unless the context specifically indicates otherwise, the meaning of terms used in this Article shall be as follows:

A. **CARBONACEOUS BIOCHEMICAL OXYGEN DEMAND.** The term "Carbonaceous Biochemical Oxygen Demand" (CBOD) shall mean and include the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty degrees (20°) C., expressed in milligrams per liter.

B. **BUILDING DRAIN.** The terms "Building Drain" shall mean and include that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, or other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.

C. **BUILDING SEWER.** The term "Building Sewer" shall mean the extension from the building drain to the public sewer or other place of disposal.

D. **CHEMICAL OXYGEN DEMAND.** The term "Chemical Oxygen Demand" (COD) shall mean and include the oxygen equivalent of that portion of an organic matter in a sample that is susceptible to oxidation by strong chemical oxidant, expressed in milligrams per liter.

E. **CHLORINE REQUIREMENT.** The term "Chlorine Requirement: shall mean the amount of chlorine, in parts per million by weight, which must be added to sewage to produce a specified residual chlorine content, or to meet the requirements of some other objective, in accordance with the procedures set forth in "Standard Methods."

F. **COMMERCIAL USER.** The term "Commercial User" shall constitute a class of users and shall mean and include: All governmental subdivisions and all users who or which are neither "industrial" nor "residential" users as defined in this Article.

G. **FLOATABLE OIL.** The term "Floatable Oil" shall mean and include: oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the collection system.

H. GARBAGE. For purposes of this Article, the term "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.

I. HAZARDOUS WASTE. The term "Hazardous Waste" shall mean a solid, semi-solid, or liquid waste which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

1. cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or,

2. pose a substantial present or potential hazard to human or animal health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

"Rules and Regulations Governing Hazardous Waste Management in Nebraska," the "Nebraska Department of Environmental Control Rules and Regulations Pertaining to the Pretreatment Program" as amended from time to time and at any time, the "Solid Waste Disposal Act: as amended by the "Resource Conservation and Recovery Act (RCRA) of 1976," 42 U.S.C. §6901 et seq. and the "Nebraska Environmental Protection Act," RS Neb. §81-1501 to 81-1532, (Reissue 1981), as amended from time to time and at any time.

J. HIGH POLLUTANT SEWAGE. The term "High Pollutant Sewage" shall mean and include sewage which when analyzed shows, or which, due to the nature of a commercial activity or the types of waste water receptacles connected to a building drain and with consideration of the volume of waste water discharged, has the potential to show, by weight a daily average of more than 250 parts per million of suspended solids, more than 250 parts per million CBOD, or when Carbonaceous Biochemical Oxygen Demand cannot accurately be determined a Chemical Oxygen Demand of more than 400 parts per million, and more than 50 parts per million of the soluble matters of grease or oil.

K. INDUSTRIAL USER. The term "Industrial User" shall constitute a class of users and shall mean and include all users who or which are identified in the Standard Industrial Classification Manual, 1972, or any updated revisions, as published by the United States Office of Management and Budget. A user shall be excluded from this Industrial Classification and placed instead in the appropriate commercial classification if it is determined that such user will introduce primarily segregated domestic wastes or wastes from sanitary conveniences. Any industry which discharges waste to the sewer system other than restroom/kitchen wastes shall be included as an industrial user.

L. INDUSTRIAL WASTES. The term "Industrial Wastes" shall mean the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.

M. NATURAL OUTLET. The term "Natural Outlet" shall mean any outlet into a water-course, pond, ditch, lake, or other body of surface or groundwater.

N. NORMAL SEWAGE. The term "Normal Sewage" shall mean and include

sewage which when analyzed shows by weight a daily average of not more than 250 parts per million of suspended solids, not more than 250 parts per million CBOD, or when Carbonaceous Biochemical Oxygen Demand cannot accurately be determined a Chemical Oxygen Demand of not more than 400 parts per million, and not more than 100 parts per million of the soluble matters of grease or oil.

O. PARTS PER MILLION. The term "Parts Per Million" shall mean a weight-to-weight ratio; the parts-per-million value multiplied by the factor 8.345 shall be equivalent to pounds per million gallons of water.

P. pH. The term "pH" shall mean the logarithm of the reciprocal of the hydrogen ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen ion concentration of 10^{-7} .

Q. PROPERLY SHREDDED GARBAGE. The term "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 and 27/100 centimeters (1.27 cm) in any dimension.

R. PUBLIC SEWER. The term "Public Sewer" shall mean a sewer in which all owners of abutting properties have equal rights, and which is controlled by public authority.

S. RESIDENTIAL USER. The term "Residential User" shall constitute a class of users and shall mean and include all users of the Municipal Waste Water System to the extent such use is confined to sewer service to real property which is within any Residential Zone of the Municipality and on which no commercial activity takes place except for "home occupations" as defined in Section 11.611 of the Municipal Zoning Ordinance.

T. REPLACEMENT. The term "Replacement" shall mean expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary so long as the waste water treatment facility remains in operation, to maintain the capacity and performance for which such system was designed and constructed.

U. SANITARY SEWER. The term "Sanitary Sewer" shall mean and include a sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

V. SEPARATE UNIT. The term "Separate Unit" shall mean a dwelling, business establishment, private, semi-private or public institution or other entity which has a separate and independent identity and/or location, specifically excluding "home occupations" as defined in Section 11.611 of the Municipal Zoning Ordinance, which is served with water from Municipal Water Department, regardless of whether or not such separate unit has an independent water meter, and/or which is provided with sewer service from the Municipal Sewer Department.

W. SEWAGE. The term "Sewage" shall mean and include 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.

X. SEWER. The term "Sewer" shall mean a pipe or conduit for carrying sewage.

Y. SEWER PIPE. The term "Sewer Pipe" shall mean any pipe extending from a premise where sewer is dispersed and is tapped into a main.

Z. SLUG. The term "Slug" shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration of flows during normal operation.

AA. STANDARD METHODS. The term "Standard Methods" shall mean the examination and analytical procedures set forth in the most recent editions of "Standard Methods for the Examination of Water, Sewage, and Industrial Waste," published jointly by the American Public Health Association, the American Water Works Association, and the Water Environmental Federation.

BB. STORM SEWER. The term "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.

CC. SUSPENDED SOLIDS. The term "Suspended Solids" shall mean and include solids that either float on the surface of, or are in immersion in water, sewage, or other liquids, and are removable by filtering.

DD. WASTEWATER. The term "Wastewater" shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water, and storm water that may be present.

EE. WASTE WATER OPERATOR. The term "Waste Water Operator" shall mean and include the Municipal employee who is primarily responsible for the operation and management of the Municipal Waste Water System Treatment Facility or his or her authorized deputies, assistants, or representatives.

FF. WASTE WATER TREATMENT PLANT. The term "Waste Water Treatment Plant" shall mean any arrangement of devices and structures owned and operated by the City of Waverly and used for treating sewage.

GG. WATERCOURSE. The term "Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently. (Amended by Ord. No. 87-9, 7/20/87, 01-08, 7/2/01; 06-17, 9/5/06; 10-14, 9/7/10; 12-10, 5/15/12)

§ 52.02 SEWER CONTRACT; SHUT-OFF.

The Municipality through the Municipal Sewer Department shall furnish sewer services to persons within its corporate limits whose premises abut a street or alley in which a commercial main is now or may hereafter be laid. The Municipality may also furnish sewer service to persons whose premises are situated outside the corporate limits of the Municipality, as and when, according to law, the Governing Body may see fit to do so. The rules, regulations, and sewer service rates hereinafter named in this Article, shall be considered a part of every application hereafter made for sewer service and shall be considered a part of the contract between every customer now or hereafter served. Without further formality, the making of the application on the part of any applicant or the use of sewer service by present customers thereof shall constitute a contract between the customer and the Municipality to which contract both parties are bound. If the customer shall violate any of the provisions of said contract or any reasonable rules and regulations that the Governing Body may hereafter adopt, the Municipality, or his or her agent, may, in compliance with Section 50.01 of this Code, cut off or disconnect the sewer service from the building or premise of such violation. No further connection for sewer service to said building or premise shall again be made save or except by order of the Municipality. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.03 SERVICE CONTRACTS; TRANSFER; TERMINATION.

Contracts for sewer service are not transferable. Any person wishing to change from one location to another shall make a new application and sign a new contract. If any customer shall move from the premise where service is furnished, or if the said premise is destroyed by fire or other casualty, he or she shall at once inform the Sewer Department who shall cause the sewer service to be shut off from the said premise. If the customer should fail to give notice, he or she shall be charged for that period of time until the Sewer Department is otherwise advised of such circumstances. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.04 WASTEWATER SYSTEM; MAINTENANCE FUND.

The operation and maintenance, and replacement and waste water system bond retirement portions of the total sewer user charges shall be accounted for in two (2) separate non-lapsing Waste Water System Maintenance Funds, within the general ledger of the Municipality, and the revenues so deposited will be used only for the purposes of defraying the operation and maintenance. Funds transferred from other revenue sources to meet temporary shortages in the operation and maintenance, and bond retirement accounts shall be refunded following an appropriate adjustment in the user charges for operation and maintenance and bond retirement. The Waste Water System Maintenance Fund will have a separate O&M account with provision for carry-over of the fiscal year end balance to meet the overall O&M costs in the subsequent fiscal year. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.05 CLASSIFICATION.

The Governing Body may classify for the purpose of service fees the customers of the Municipal Sewer Department; Provided, that such classifications are reasonable and do not discriminate unlawfully against any consumer or group of consumers. (*Ref. 17-925.02 RS Neb.*)

§ 52.06 COLLECTION OF SEWER USE FEES.

Sewer service bills shall be due and payable at the same time and in the same manner as water bills are due and payable. All penalties and procedures concerning delinquent accounts with the Municipal Water Department shall also be applicable to delinquent accounts with the Municipal Sewer Department, to the extent the same are consistent with the provisions of this Article.

§ 52.07 LIENS FOR UNPAID SEWER CHARGES.

Delinquent sewer use fees shall become a lien on the property served. Whenever necessary, a sewer lien shall be filed against the property served at the same time a lien for unpaid water charges is filed. Liens for delinquent sewer use charges shall be filed in accordance with the provisions of Neb. Rev. Stat. §18-509 (Reissue 1977), as the same may be amended from time to time and at any time. Liens shall be filed against the property served; but charges may be collected either from the owner or the person receiving the services.

§ 52.08 UNLAWFUL DEPOSIT OF WASTES.

It shall be unlawful for any person to place, deposit, or permit to be deposited on public or private property within the Municipality or in any area under the jurisdiction of said Municipality, any human or animal excrement, garbage, hazardous waste, or materials which are potentially damaging to the environment or human life or otherwise objectionable.

§ 52.09 UNLAWFUL DISCHARGE OF UNTREATED SEWAGE.

It shall be unlawful to discharge to any natural outlet within the Municipality, or in any area under the jurisdiction of said Municipality, any sewage, polluted waters, or materials enumerated in §52.08, except where suitable treatment has been provided in accordance with provisions of this Article.

§ 52.10 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 within the Municipality.

§ 52.11 PUBLIC SEWERS REQUIRED; MANDATORY HOOKUP.

The owner of all houses, buildings, or properties used for human employment,

recreation, or other purposes, situated within the Municipality and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary of the Municipality, is hereby required at his or her expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Article within ninety (90) days after date of official notice to do so; Provided, that said public sewer is within three hundred (300) feet of the property line. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.12 PROHIBITION OF PRIVATE SEWAGE DISPOSAL SYSTEMS; WHEN APPLICABLE.

Where a public sanitary is not available under the provisions of Section 52.11, 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 52.11, a direct connection shall be made to the public sewer within sixty (60) days of such availability 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. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.13 PRIVATE SEWAGE DISPOSAL SYSTEM; PERMIT REQUIRED, FEE.

Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the Sewer Department. The application for such permit shall be made on a form furnished by the Municipality, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the Sewer Department. A permit and inspection fee of fifteen dollars (\$15.00) shall be paid to the Municipality at the time such application is filed. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.14 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 Sewer Department. He or she shall be allowed to enter the property at any reasonable time to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Sewer Department when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within twenty-four (24) hours of the receipt of notice by the Sewer Department. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.15 PRIVATE SEWAGE DISPOSAL SYSTEMS; SPECIFICATIONS.

The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the Department of Environmental Quality of the State of Nebraska. 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 ten thousand (10,000) square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.16 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 Municipality.

§ 52.17 PRIVATE SEWAGE DISPOSAL SYSTEM; ADDITIONAL REQUIREMENTS.

No statement contained in this Chapter, shall be construed to interfere with any additional requirements that may be imposed by the Sewer Department. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.18 APPLICATION FOR PERMIT; PRETREATMENT QUESTIONNAIRES.

Any person wishing to connect with the Waste Water System shall make an application therefore to the Sewer Department, in accordance with the provisions of this Article. Current industrial waste pretreatment questionnaires shall be filed with the Sewer Department by all users discharging industrial wastes within thirty (30) days of the effective date of this section and annually thereafter, on or before July 1, of each year. Said questionnaires shall be updated periodically and kept continuously current through amendments filed before changes occur in the character of wastes discharged by each user discharging industrial wastes. Prior to the connection the Clerk shall require applicants to make a service Deposit in an amount consistent with the prevailing policy of the Governing Body. All such permits shall be approved by the Sewer Department. The Department shall not supply sewer service to any person outside the corporate limits without special permission from the Governing Body; Provided, that the entire cost of pipe and other installation charges shall be paid by such consumer. Nothing herein shall be construed to obligate the Municipality to provide sewer service to non-residents. *(Amended by Ord. No. 01-08, 7/2/01) (Ref. 17-574, 19-2701 RS Neb.)*

§ 52.19 ALTERATION OR USE OF PUBLIC SEWER; PERMIT REQUIRED.

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Sewer Department. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.20 CLASSIFICATION; PERMIT APPLICATION, FEE. .

There shall be two (2) classes of building sewer permits:

- A. For ordinary residential and ordinary commercial service, and
- B. For service to industrial users and other users discharging industrial wastes.

In either case, the owner of his or her agent shall make application on a special form furnished by the Municipality. The permit application shall be supplemented by an plans, specifications, or other information considered pertinent in the judgment of the Sewer Department. Users discharging “industrial waste” shall, in every case, file a “pretreatment questionnaire” as a part of the application form.

All permits shall be approved by the Sewer Department.

A permit and inspection fee shall be paid to the Municipality at the time the application is filed. The following fees shall apply:

For each connection:

- 1. Residential users.....\$250.00
- 2. Commercial users.....\$250.00
- 3. Industrial users.....\$500.00
- 4. Users if any class discharging industrial wastes...\$500.00

(Amended by Ord. No. 01-08, 7/2/01; Ord. 19-10)

§ 52.21 INSTALLATION PROCEDURE; EXCAVATIONS; INSPECTIONS; TAP FEES.

All tapping of the mains shall be done by a licensed plumber under the direction of sewer department personnel. Taps shall be made on the top of the main and no nearer than twenty-four inches (24") from the end of the main, from a pipe joint or from another tap.

Building Sewers between the main and dwelling or other building may not be covered until inspected by authorized City personnel and approved by the same.

Backfill of trenches for service pipe shall consist of common subsoil fill from 6" above top of pipe compacted to the extent necessary to prevent future settlement. Backfill of trenches under roadways shall consist of select backfill from 6" above top of pipe to sub grade elevation, compacted to 95%. Compaction is expressed as a percentage of maximum density and optimum moisture in comparison with American National Standards Institute/American Society for Testing and Materials 0698. The City may require compaction tests of any backfill under the roadway surfacing.

No person shall have any excavation made in the street, alley, or highways open at any time without barricades, and during the night warning lights must be maintained at such excavations. No person shall make any excavation in any street, alley, or highway where the ground is frozen, or dig up or uncover so as to expose to frost any water pipes or sewer of the City, except under the directions of the responsible municipal employee.

If the excavation in any street, alley, or sidewalk is left open or unfinished for a period of twenty-four (24) hours or more, the City shall have the duty to finish or correct the work, and all expenses so incurred shall be charged to the customer. All installations or repairs of pipe shall require inspection by City personnel. Such inspection shall be made when repairs or connections are complete and before pipes are covered. It is the customer's responsibility to notify the City at the time the work is ready for inspection.

Building sewer pipe shall be Polyvinyl Chloride Pipe meeting the requirements of American Society for Testing and Materials D1785, Schedule 40. Pipe shall be laid to a minimum grade of 1/8" per foot. All pipe shall be properly bedded.

All installation shall be done under the supervision and strictly in accordance with the rules, regulations, and specifications prescribed for such installation by the Sewer Department; provided, that the said rules, regulations, and specifications have been reviewed and approved by the Governing Body.

The fee for all sewer taps in areas not covered under a subdivision agreement shall be \$4,000.00(*Amended by Ord. No. 01-08, 7/2/01; 05-10, 7/18/05; 06-14, 8/7/06; 14-01, 2/4/14*)

§ 52.22 CONSTRUCTION CODES.

- A. 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,
- B. shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the Municipality. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the American Society for Testing and Materials and Recommended Standards for Wastewater Facilities shall apply.
- C. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.
- D. 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
- E. Municipality, or the procedures set forth in the appropriate specifications of the American Society for Testing and Materials and the Recommended Standards for Wastewater Facilities. 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 Sewer Department before installation. (*Amended by Ord. No. 01-08, 7/2/01*)

§ 52.23 UNLAWFUL CONNECTION; REQUIRED CONNECTION.

- A. No person shall make connection of roof downspouts, interior and exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the Sewer Department for purposes of disposal of polluted surface drainage.
- B. All drainage systems, pits, or other reservoirs intended for collection, retention, or discharge of surface run-off or ground water which are located within a building, structure or other improvement shall be equipped with a pump, sump pump or other mechanical means of discharging the run-off or ground water from the drainage system, pit, or other reservoir and shall be plumbed to the exterior of the building, structure or other improvements my means other than the public sanitary sewer system. *(Amended by Ordinance Nos. 98-3, 2/3/98; 98-15, 9/8/98, 01-08, 7/2/01)*

§ 52.24 REPAIRS AND MAINTENANCE.

- a. Repairs - Municipal Obligations. The Municipality shall repair or replace all pipe constituting major sewer mains (Public Sewer), and shall bear the cost thereof.
- b. Repairs - Customer Obligations. It shall be the responsibility of the user to bear the cost of repair or replacement of all sewer pipe and appurtenances from the main to and including the customer's property.

When in the course of repairing a sewer pipe, it becomes necessary to remove sidewalks, pavement, curb, and/or gutter, the cost of removing and replacing the sidewalk, pavement, curb, gutter, and earth shall be borne by the property owner served by the service pipe which is repaired.

All replacements and repairs of the sewer pipe made by the customer shall be done in a good and workmanlike manner in compliance with all applicable building codes using materials approved by the City. All repairs within the right of way shall meet or exceed the City's compaction and paving standards. *(Amended by Ord. No. 01-08, 7/2/01; 01-17, 12/3/01; 12-10, 5/15/12)*

§ 52.25 SINGLE PREMISE, SEPARATE BUILDING SEWERS.

A separate and independent building sewer and a separate tap into the public sewer shall be provided for every building; and for every unit within one (1) building which is or may be conveyed without a conveyance of the entire building; Provided, however, that a variance from the foregoing policy may be granted by the Municipality on a showing by the property owner that it is not feasible to construct such a separate building sewer. When such variance is granted, no connection shall be made without the express written consent of the Sewer Department and the Municipality does not and will not assume any obligation or responsibility whatsoever for damage caused by or resulting from any such connection. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.26 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 Sewer Department, to meet all requirements of this Article. No such use shall be made without the express written consent of the Sewer Department. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.27 STORM WATER, SURFACE WATER, GROUNDWATER, COOLING WATER AND PROCESS WATER.

No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, including interior and exterior foundation drains, uncontaminated cooling water, or unpolluted industrial waters to any sanitary sewer.

Storm water 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 Sewer Department. Industrial cooling water or unpolluted process water may be discharged, on approval of the Sewer Department, to a storm sewer, or natural outlet. The contributor of any identifiable discharge of polluted water to the Municipal waste water system shall be held responsible for reimbursing the Municipality for such costs. The costs shall be determined by the City Administrator with the approval of the Governing Body. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.28 HAZARDOUS AND PROHIBITED DISCHARGES; FLAMMABLE, TOXIC, CORROSIVE AND OBSTRUCTIVE SUBSTANCES; PRELIMINARY TREATMENT.

No person shall discharge or cause to be discharged any hazardous wastes as defined by the "Rules and Regulations Governing Hazardous Waste Management in Nebraska," the "Nebraska Department of Environmental Control Rules and Regulations Pertaining to the Pretreatment Program," the "Resource Conservation and Recovery Act (RCRA) of 1976," 42 U.S.C. §6901 et. Seq., and the "Nebraska Environmental Protection Act," as amended from time to time and at any time, or any of the following described waters or wastes to 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, to 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 waste water treatment facility.
3. Any waters or wastes having a pH lower than 6.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the wastewater system.
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, 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 water or wastes having:
 - a) a five (5) day CBOD greater than 300 parts per million by weight, or,
 - b) a COD greater than 480 parts per million by weight or suspended solids, or,
 - c) containing more than 350 parts per million by weight of suspended solids, or,
 - d) having an average daily flow greater than two percent (2%) of the average sewage flow of the Municipality, or,
 - e) a chlorine requirement greater than demanded by normal sewage as evaluated by the Municipality's consulting engineer shall be subject to the review of the Waste Water Operator.

Required Preliminary Treatment- When preliminary treatment of the hazardous and prohibited discharges is required in the opinion of the Waste Water Operator, the owner shall provide, at his or her expense, such preliminary treatment as may be necessary to accomplish any or all of the following:

- a) reduce the biochemical oxygen demand to 300 parts per million by weight, or,
- b) reduce the chemical oxygen demand to 480 parts per million by weight,
- c) reduce the suspended solids to 350 parts per million by weight, or,
- d) control the quantities and rates of discharge of such waters or wastes, or
- e) reduce the chlorine requirement to conform with normal sewage,
- f) adhere to the following limits for industrial discharges expressed in milligram per liter:

	ELEMENT	Mg/L
1.	As	0.050
2.	Ba	5.000
3.	Cd	0.020
4.	Cr+6	5.000
5.	CrT	5.000

6.	Cu	1.000
7.	CNT	2.000
8.	Fe	5.000
9.	Pb	0.100
10.	Hg	0.005
11.	Ni	1.000
12.	Ag	0.100
13.	Zn	5.000

Plans, specifications, and other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Waste Water Operator and no construction of such facilities shall be commenced until said approval is obtained in writing. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.29 HAZARDOUS AND PROHIBITED DISCHARGES; SPECIFIC PROHIBITIONS AS DETERMINED BY WASTE WATER OPERATOR.

No persons shall discharge or cause to be discharged any hazardous wastes as defined by the "Rules and Regulations Governing Hazardous Waste Management in Nebraska," the "Nebraska Department of Environmental Control Rules and Regulations Pertaining to the Pretreatment Program," the "Resource Conservation and Recovery Act (RCRA) of 1976," 42 U.S.C. §6901 et. Seq., and the "Nebraska Environmental Protection Act," as amended from time to time and at any time, or any of the following described substances, materials, water, or wastes if it appears likely in the opinion of the Waste Water Operator that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his or her opinion as to the acceptability of these wastes, the Waste Water Operator 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 waste water system plant, and other pertinent factors. The substances prohibited are:

1. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor three-fourths horsepower ($\frac{3}{4}$ hp) [0.76 hp metric] or greater shall be subject to the review and approval of the Waste Water Operator.
2. Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not.

3. 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 by the wastewater system exceeds the limits established by the Waste Water Operator for such materials.
4. Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentrations exceeding limits which may be established by the Waste Water Operator as necessary, after treatment of the composite sewage, to meet the requirements of State, Federal, or other public agencies of jurisdiction of such discharge to the receiving waters.
5. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Waste Water Operator in compliance with applicable State or Federal regulations.
6. Any waters or wastes having a pH in excess of 9.5.
7. Any liquid or vapor having a temperature higher than one hundred fifty degrees (150°) Fahrenheit [65 degrees (65°) Centigrade].
8. Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two degrees (32°) and one hundred fifty degrees (150°) Fahrenheit [zero degrees (0°) and sixty-five degrees (65°) Centigrade].
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 wastewater system.
 - d) Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein, except when such slugs are permitted in accordance with the provisions of §52.40 of this Code.
10. Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater system processes employed, or are amenable to treatment only to such degree that the wastewater system plant effluent cannot meet the requirement of other agencies having jurisdiction over discharge to the receiving waters. (*Amended by Ord. No. 01-08, 7/2/01*)

§ 52.30 DISCHARGE OF HAZARDOUS AND PROHIBITED SUBSTANCES; REJECTION, PRETREATMENT, CONTROL OF DISCHARGE RATE OR USE FEE SURCHARGE.

If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 52.29, and which in the judgment of the Waste Water Operator, may have a deleterious effect upon the waste water system, processes, equipment, or receiving waters, or which otherwise create a hazard to life to constitute a public nuisance, the Waste Water Operator 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 this Article.

If the pretreatment or equalization of waste flows is permitted, the design and installation of the plants and equipment shall be subject to the review and approval of the Waste Water Operator, and subject to the requirements of all applicable codes, ordinances and laws. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.31 GREASE, OIL, AND SAND INTERCEPTORS; WHEN REQUIRED.

Grease, oil, and sand interceptors shall be provided when, in the opinion of the Waste Water Operator, 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 Waste Water Operator and shall be located so as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates, and means of disposal which are subject to review by the Waste Water Operator. Any removal and hauling of the collected materials not performed by owner(s)' personnel must be performed by currently licensed waste disposal firms. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.32 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 or her expense.

§ 52.33 CONTROL MANHOLES; FLOW RECORDERS, SAMPLING STATIONS; WHEN REQUIRED; INSTALLATION AND MAINTENANCE.

The owner of each building within the Municipality or of any property serviced by a separate building sewer (1) reasonably believed to be regularly carrying industrial wastes, whether or not an industrial user, or (2) with a supply of water other than from the Municipal Water Department and without separate plumbing systems to accurately record the volume of water discharged into the waste water system, shall install a suitable control manhole together with a flow recorder capable of accurately recording the volume of water discharged into the waste water systems, and such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes as may be required by the Waste Water Operator. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Waste Water Operator. The manhole shall be installed by the owner at his or her expense, and shall be maintained by the owner so as to be safe and accessible at all times. Owners of such control manholes shall, as a condition of use of the wastewater system, allow the Waste Water Operator or his or her designated agent(s) access to such sampling manholes at any time with or without notice to the owner for the purpose of sampling and inspections as required herein. *(Amended by Ord. No. 87-9, 7/20/87, 01-08, 7/2/01)*

§ 52.34 CONTROL MANHOLES, FLOW RECORDERS, 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. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the wastewater system and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a twenty-four (24) hour composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD, COD, and suspended solids analyses are obtained from twenty-four (24) hour composites of all outfalls whereas pH's are determined from periodic grab samples.)

§52.35 HAZARDOUS AND PROHIBITED SUBSTANCES; SPECIAL EXCEPTIONS PERMITTED; USE FEE SURCHARGE.

Except where the wastes in question have been identified as "Hazardous Wastes" as defined by the "Rules and Regulations Governing Hazardous Waste Management in Nebraska," the "Nebraska Department of Environmental Control Rules and Regulations Pertaining to the Pretreatment Program," the "Resource Conservation and Recovery Act (RCRA) of 1976," 42 U.S.C. §6901 et. seq., and the "Nebraska Environmental Protection Act," as amended from time to time and at any time, no statement contained in this Article shall be construed as preventing any special agreement or arrangement between the Municipality and any industrial concern whereby an industrial waste of unusual strength

or character may be accepted by the Municipality for treatment, subject to payment therefore, by the industrial concern. In every case, the industrial concern shall comply with this article prior to discharging its waste to the wastewater system.

§ 52.36 COMPLIANCE WITH ARTICLE; INSPECTIONS GENERALLY.

The Waste Water Operator and other duly authorized employees of the Municipality bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this Article. The Waste Water Operator or his or 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 waste water system. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.37 COMPLIANCE WITH ARTICLE; INSPECTIONS; INJURY LIABILITY.

While performing the necessary work on private properties referred to above, the Waste Water Operator or duly authorized employees of the Municipality shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the Municipal employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required hereunder. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.38 COMPLIANCE WITH ARTICLE; INSPECTIONS; EASEMENTS.

The Waste Water Operator, other duly authorized employees of the Municipality; and/or agents for the Municipality bearing proper credentials and identification shall be permitted to enter all private properties through which the Municipality 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 waste water system 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. *(Amended by Ord. No. 01-08, 7/2/01)*

§52.39 BASE RATES.

Except for the Municipality, all customers of the Municipal Sewer department shall be charged a base rate to be set by ordinance of the Governing Body. The sewer base rates shall be as follows for:

A.	<u>Meter Size</u>	<u>Costs of Service Charge</u>
	5/8"	\$36.17
	3/4"	\$36.17
	1"	\$36.17
	1.5"	\$47.84
	2"	\$55.48
	3"	\$72.46
	4"	\$113.23

Both multiple housing units and multiple commercial units on a single water meter for use of the waste water system shall be charged the base rate for each separate unit served by said meter.

B. Non-Resident Users

Wastewater system users located outside the corporate limits of the Municipality shall be charged double the base rates set for residents of the Municipality under the classification that the non-resident may be placed. *(Amended by Ord. No. 01-13, 9/4/01; 01-08, 7/2/01; 99-24, 9/7/99; 01-08, 07/02/01; 07-09, 09/17/07; 09-09, 09/21/09; 11-19, 08/16/11; 12-19, 12/18/12; 13-07, 08/06/13; 19-08, 09/24/19; 20-05, 8/25/20; 21-08, 08/10/21; 22-06, 08/09/22; 23-12, 08/08/23)*

§52.40 SURCHARGE RATES.

Except for the Municipality, all customers of the Municipal Sewer Department for the use of sewer service for volume, high pollutant, or industrial waste discharges shall be charged, in addition to other wastewater system use fees imposed by this Article, a surcharge at rates to be set by ordinance of the Governing Body. In the absence of either separate plumbing systems or flow recording equipment acceptable to the Wastewater Operator sufficient to clearly show the volume of water discharged into the wastewater system, all users shall be presumed to discharge into the wastewater system all of the water purchased from the Municipality. The sewer surcharge rates shall be as follows:

A. Residential Volume Surcharge

All residential users for volume use of the wastewater system shall be charged monthly a surcharge of three dollars and fifty-two cents (\$3.52) per one thousand (1,000) gallons of water used and discharged into the wastewater system as determined by a monthly average of water supplied by the Municipal water Department during the winter quarter, for usage during December, January and February.

If a resident or commercial user's December, January and February monthly usage of water are not available to determine an average, the monthly rate shall be calculated on the basis of a 4,000 gallon metered water bill until the December, January and February billing statements are available or such other reasonable estimate can be made by the City.

B. Commercial Volume Surcharge

All commercial users, except industrial level commercial users, for volume use of the waste water system shall be charged monthly a surcharge of five dollars and two cents (\$5.02) per one thousand (1,000) gallons of water used and discharged into the waste water system as determined by a monthly average of water supplied by the Municipal water department during a twelve (12) month period and for which billings are made by the Municipality from October through September.

C. Industrial Pollutant Surcharge

All industrial level users, who introduce into the waste water system any sewage other than "normal sewage" shall be charged monthly a surcharge of six dollars and eighty-eight cents (\$6.88) per one thousand (1,000) gallons of water used and discharged into the wastewater system and determined by a monthly average of water supplied by the Municipal water Department during a twelve (12) month period and for which billings are made by the Municipality from October through September.

D. Industrial Level Commercial and Industrial Surcharge

All users who discharge "High Pollutant Wastes" into the waste water system shall be charged monthly a surcharge, which shall be computed in accordance with the following schedule:

1. Eighty-four cents (\$.84) per pound of BOD, or
2. Fifty cents (\$.50) per pound of COD, whichever is greater, and
3. Forty-three cents (\$.43) per pound of suspended solids.
4. Grease Disposal Clause – The City requires that customers with the wastewater discharges that have high concentrations of grease and oil as determined by the City will install city approved grease traps in drains. Failure to install such traps and proper disposal of grease will result in a Grease Penalty Charge of 25% of the total wastewater bill to be added to each monthly bill until traps are installed and approved by the City.

E. The surcharge imposed in Paragraph "D" of this Section shall be based on the high three (3) daily averages for each such user based upon a sampling program which includes sampling by the Municipality over four (4), four (4) day periods during each calendar year. One (1) of said sampling periods shall fall within each quarter of the calendar year but sampling dates within each quarter shall be selected at random by the Wastewater Operator.

- F. The surcharge applicable to any “slug” which is introduced into the wastewater system shall be computed at four (4) times the rates specified in paragraph “D” of this Section, provided, however that the surcharge applicable to any “slug” which is introduced into the wastewater system shall be computed at two (2) times the rates specified in paragraph “D” of this Section, if the user shall:
1. Provide the Municipality an opportunity to sample the “slug” no less than twenty-four (24) hours prior to its introduction into the wastewater system, and
 2. Provide the Municipality with a written “slug” discharge request no less than twenty-four (24) hours prior to its introduction into the wastewater system, and
 - a. A brief statement, acceptable to the wastewater Operator, as to the composition of the “slug”, and
 - b. A statement as to the time and rate at which the “slug” will be introduced into the wastewater system,
 - c. In every case, actual laboratory fees shall be assessed to the user to reimburse the Municipality for the cost of handling the laboratory tests for each individual “slug” tested at the request of any user.
- G. Users who have not installed a control manhole and flow recorder, if required under this Article, and a sampling station, on or before the effective date of this Article, shall be assessed a surcharge based on the best estimate of the Wastewater Operator derived from samples taken from the nearest available manhole and estimates of flow.
- H. It shall be the duty of each user to install a suitable control manhole, flow recorder, and all other equipment required under this Article within thirty (30) days of the effective date of this Article.
- I. The laboratory analysis required in order to evaluate the samples taken in order to determine the surcharges imposed by this Section shall be performed by the Municipality at no charge whenever possible, but where the Municipality lacks the necessary equipment, users shall pay the cost of all testing which must be done by independent laboratories.
- J. The Wastewater Operator, or any law enforcement officer, for the purpose of enforcing this Article, or abating any nuisance existing hereunder, may enter private premises.
- K. Wastewater system users located outside the corporate limits of the Municipality shall be charged double the surcharge rates set for residents of the Municipality under the classification that the non-residents may be placed. *(Amended by Ord. Nos. 85-6, 09/03/85; 87-09, 07/20/87; 92-13, 09/21/92; 97-01, 02/03/97; 99-24, 09/07/99; 01-08, 07/02/01; 07-09, 09/17/07; 09-09, 09/21/09; 10-10, 08/16/10; 11-19, 08/16/11; 12-19, 09/18/12; 13-07, 09/17/13; 19-08, 09/24/19; 19-16, 11/12/19; 20-05,*

08/25/20; 21-08, 08/10/21; 22-06, 08/09/22; 23-12, 08/08/23)

§ 52.41 HAZARDOUS POLLUTANT SURCHARGES.

In addition to other elements of the total user charge system contained in this Article:

- A. The authority and intent shall be established to require each user generating any hazardous waste to render the waste non-hazardous in accordance with the "Rules and Regulations Governing Hazardous Waste Management in Nebraska," the "Nebraska Department of Environmental Control Rules and Regulations Pertaining to the Pretreatment Program," the "Resource Conservation and Recovery Act (RCRA) of 1976," 42 U.S.C. 6901 et. Seq., and the "Nebraska Environmental Protection Act," as amended from time to time and at any time, prior to discharge to the wastewater system.
- B. The authority and intent shall be established to require each user discharging any hazardous pollutants to pay the increased cost of managing the effluent or the sludge of the waste water system resulting from such discharge. *(Amended by Ord. No. 87-9, 7/20/87)*

§ 52.42 USER CLASSIFICATION PROCEDURE; NOTICE; HEARING.

- A. Within fifteen (15) days of the effective date of this Article, the Sewer Department shall make a determination as to the appropriate user classification for each waste water system user. Such determination shall be approved by the Mayor and communicated to the Governing Body. Thereafter, the Municipal Clerk shall mail notice to all users of the Municipal Waste Water System and to all owners of property served by the Municipal Waste Water System specifying the user classification which such owner and/or user has been assigned together with a copy of the rate section(s) of this Article. Provided, however, that residential users need not be notified of their classification.
- B. Within thirty (30) days of receipt of such notice, such users and property owners may file a written appeal of their wastewater system use classification and request a hearing before the Governing Body. Such hearing shall be held within thirty (30) days of the date of the request for hearing. The Governing Body may request the attendance of the Waste Water Operator and a consulting engineer. If the objecting party is not in attendance at such hearing, the Governing Body may rule in his or her absence.
- C. In the case of an appeal, rates shall be charged in accordance with the initial determination of the Sewer Department pending a final ruling by the Governing Body. When a change of classification is granted by the Governing Body, rates shall be adjusted retroactively.
- D. No user classification shall be changed by the Governing Body unless a timely appeal and request for hearing is filed.

- E. New wastewater system users shall be assigned a user classification at the time of application and shall have a period of thirty (30) days thereafter to appeal the determination of the Sewer Department in the same manner provided in the case of original classification.
- F. Whenever the Waste Water Operator has reason to believe that the character of the waste water discharged by any waste water system user has changed significantly in strength, flow, or both since the time of original classification, he or she shall review the classification of such users and recommend such changes of body in the same manner established for initial classification. In the event the classification of any user is changed subsequent to such review, said user shall have the right to utilize the same appeal procedure set forth hereunder in the case of original classification. *(Amended by Ord. No. 01-08, 7/2/01)*

§ 52.43 USER CHARGE REVIEW.

The Governing Body shall review, at least annually, in connection with the budget process, the user charge system and revise the charges, if necessary, to accomplish the following:

- A. Maintain the proportional distribution of operation, maintenance and replacement (OM&R) costs among users and user classes;
- B. Generate adequate revenues to pay the costs of OM&R and waste water system bond retirement;
- C. Apply excess revenues collected from a class of users to the costs of operation and maintenance, and replacement attributable to that class for the next year and adjust the rates accordingly.

As part of the annual user charge review, the Governing Body shall make a public statement in its minutes specifying the percentage distribution of the OM&R costs of the wastewater treatment facility among the various classes of users, and shall incorporate into the minutes of their proceedings a summary of the date on which rate-setting was based.

§ 52.44 WASTEWATER SYSTEM; 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 system.

§ 52.45 VIOLATION; NOTICE AND LIABILITY.

- A. Except as otherwise provided herein, and excluding violations of §52.44 of this code, any person upon whom a duty is placed by the provisions of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum of one hundred dollars (\$100.00), and shall stand committed to jail until such fine and costs of prosecution are paid. *(Amended by Ordinance 21-15, 11-*

9-21.)

- B. Any person who shall violate Section 52.44 of this code shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) and shall stand committed to jail until such fine and costs of prosecution are paid. If such violation may be and is disposed of pursuant to a waiver of appearance and plea of guilty, the fine shall be fifty dollars (\$50.00).
- C. Each day that a violation of any section of this Article continues shall constitute a separate and distinct offense and shall be punishable as such. The penalties herein provided shall be cumulative with and in addition to any penalty provided elsewhere in this Article.
- D. In addition to the penalties provided above, any person violating any of the provisions of this Article may be ordered by the Court to make restitution to the Municipality for any expenses, loss, or damage suffered by the Municipality as the result of such violation.

§ 52.46 EFFECTIVE DATE.

Wastewater system user charge changes resulting from average winter consumption (AWC) calculations affected by this Article shall take effect with the March statements. Any rate changes in user charges required by this Article shall take effect beginning with the first (1st) statements issued in each fiscal year. (*Amended by Ord. Nos. 85-6, 9/3/85; 87-9, 7/20/87; 92-13, 9/21/92; 99-24, 9/7/99; 01-08, 7/2/01; 25-02, 3/11/25.*)

CHAPTER 53: SANITATION; GARBAGE AND MUNICIPAL LANDFILL

Section

- 53.01 Definition of hazardous waste
- 53.02 Commercial refuse haulers - duties
- 53.03 Certificate of compliance with federal law and agreement; filing with city clerk – when required
- 53.04 City clerk – duty to require filing of certificate of compliance and agreement
- 53.05 Removal of hazardous waste – when required
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- 53.10 Franchise termination, public hearing
- 53.11 Rates to subscribers
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- 53.13 Haulers, requirements, equipment, personnel, insurance, availability
- 53.14 Residential subscribers, regulations
- 53.15 Commercial subscribers, regulations
- 53.16 Sharing subscription prohibited
- 53.17 Violation, penalty

§ 53.01 DEFINITION OF HAZARDOUS WASTE.

The words hazardous waste shall be defined to include all materials which are identified by the United States Environmental Protection Agency (hereinafter referred to as EPA) within the regulations promulgated by the EPA pursuant to the Resource and Conservation Recovery Act of 1976 (hereinafter referred to as RCRA) (appearing at the time this Article is enacted at 40 CFR parts 260 to 265, inclusive, and 122 to 124, inclusive), as the same are presently constituted and as the same may be amended from time to time and at any time. (*Amended by Ord. No. 87-6, 6/1/87*)

§ 53.02 COMMERCIAL REFUSE HAULERS - DUTIES.

Each locally franchised commercial refuse hauler shall, on or before, July fifteenth (15th) of each year, file with the City Clerk, a statement which shall show the name and addresses of all private individuals (itemized by individual dwelling unit) and all business entities residing or located outside of the Municipality who or which subscribe to said commercial refuse hauler's service at the time such statement is filed. Such statements shall be kept continuously current and the Municipal Clerk shall be promptly notified as to any increase in the list of subscribers maintained by each such commercial refuse hauler. The Municipal Clerk may require supplemental statements whenever he or she deems the same to be necessary and appropriate.

§ 53.03 CERTIFICATE OF COMPLIANCE WITH FEDERAL LAW AND AGREEMENT; FILING WITH CITY CLERK - WHEN REQUIRED.

All persons who or which are engaged in businesses involving the use of material which when disposed of may possibly be classified as hazardous wastes by the EPA and persons who otherwise regularly handle such substances and persons who are requested to do so by the City Clerk shall file a Certificate of Compliance with Federal Law and Agreement with the City Clerk on or before August first (1st) of each year or within thirty (30) days after written notice by the City Clerk that the same shall be required; Provided, however, that such certificates shall be filed with the Waverly City Clerk on or before January 1, during the calendar year 1981. The following form shall be utilized for such certificates:

CERTIFICATE OF COMPLIANCE WITH FEDERAL LAW AND AGREEMENT CONCERNING DISPOSAL OF 'HAZARDOUS WASTES'

STATE OF _____)
) §
COUNTY OF _____)

I, the undersigned, _____, hereby affirm and agree that ___ I (or) ___ my company, (company name) _____, am/is familiar with the regulations promulgated by the United States Environmental Protection Agency (EPA), pursuant to the Resource Conservation and Recovery Act of 1976 (RCRA), concerning the disposal of hazardous waste; that I/we have secured a CURRENT copy of such regulations; and, that I/we shall not dispose of or attempt to dispose of such hazardous wastes within the City of Waverly, Nebraska, or within or near the Waverly Municipal Landfill.

In the event that I/we intentionally or accidentally dispose of such hazardous waste within the City of Waverly or within or near the Waverly Municipal landfill, I/we agree to remove all traces of such hazardous waste at my/our own expense and cause the same to be immediately transported to an approved hazardous waste disposal area.

Affiant

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

SEAL

§ 53.04 CITY CLERK - DUTY TO REQUIRE FILING OF CERTIFICATE OF COMPLIANCE AND AGREEMENT.

It shall be the duty of the City Clerk to require any persons who might reasonably be expected to be involved in handling hazardous waste within or near the City of Waverly, Nebraska, to file a certificate and agreement as required under §53.03 of this Code. (Amended by Ord. No. 87-6, 6/1/87)

§ 53.05 REMOVAL OF HAZARDOUS WASTE - WHEN REQUIRED.

Persons who or which intentionally or accidentally dispose of hazardous waste within the City Limits of Waverly, Nebraska, shall remove all traces of such hazardous waste at his, her, or its own expense and cause the same to be immediately transported to an approved hazardous waste disposal area. Failure to remove such hazardous wastes as required under this Section shall be deemed a misdemeanor. (*Amended by Ord. No. 87-6, 6/1/87*)

§53.06 DEFINITIONS.

- A. The term "garbage" as used in this Section shall be construed to mean all animal, fruit, or vegetable waste residue which attends the preparation, dressing, use, cooking, dealing, and/or storage of meats, fish, fowl, fruits, vegetables, cereals, or grains for human consumption, corn husks or cobs, coffee or tea grounds, except oyster or clam shells.
- B. The term "refuse" as used in this Section shall be construed to mean and include garbage and ashes as hereinbefore defined and all sweepings, paper, cardboard, feathers, rags, glass, dishes, bottles, crockery, pans, utensils of every kind and nature, pasteboard boxes, poison, food containers, tin cans, tree limbs and branches, and any other waste matter or material not herein designated as garbage which accumulates in the conduct of a household, business establishment, shop, or factory of any kind or nature.
- C. The term "refuse" shall specifically exclude grass cuttings, leaves, oil and oil products, and other products designated as hazardous waste by the Environmental Protection Agency and/or the Department of Environmental Quality, as amended from time to time. (*Amended by Ord. No. 92-15, 9/21/92; 02-01, 2/4/02*)

§ 53.07 HAULING SERVICE, CERTIFICATE OF APPROVAL REQUIRED.

No Refuse Hauler shall operate a refuse hauling business within the City limits of Waverly, Nebraska without first receiving a Certificate of Approval to operate a Franchise Refuse Hauling Service (hereinafter referred to as Certificate of Approval) from the City Clerk and complying with all of the terms and conditions of this Article.

§ 53.08 HAULING SERVICE, FRANCHISES.

Any person, partnership, or corporation receiving approval from the City Council to operate a Franchise Refuse Hauling Service within the City limits of Waverly, Nebraska, shall be granted such franchised right for a period of five (5) years from the date indicated within the Certificate of Approval itself, and the Franchise Certificate of Approval shall automatically be renewed and continue indefinitely on a year-to-year basis until such time the Franchise Agreement is terminated. The Franchise Agreement may be terminated at any time if the conditions in Section 53.10 of this Code are met. In granting such franchised rights, in the interest of maintaining high quality service, the City Council shall consider the best interest of the community and shall grant the right to operate a Franchised Refuse Hauling Service to no more persons, partnerships, or corporations than

the City of Waverly, Nebraska can reasonably support. *(Amended by Ord. No. 99-2, 4/5/99)*

§ 53.09 CERTIFICATES OF APPROVAL, ISSUANCE, FEES, BOND REQUIRED.

- A. The City Clerk shall, at the direction of the Mayor and City Council and pursuant to a resolution passed and approved by the City Council, issue a Certificate of Approval to each Refuse Hauler specifically approved by such resolution; Provided, however, that no such Certificate of Approval shall be issued to any Hauler until such Hauler has:
 - 1. Paid to the City Clerk a fee to cover the costs of administration of this Article in the amount of fifty dollars (\$50.00), and
 - 2. Executed and filed with the City Clerk a bond in the sum of five hundred dollars (\$500.00), with one (1) or more sufficient sureties thereon, conditioned that said applicant will indemnify and save harmless the City of Waverly, Nebraska from any damage or injury due to or on account of the act or neglect or default of such Refuse Hauler, and conditioned further that such Refuse Hauler shall comply with all ordinances or regulations of the City of Waverly, Nebraska, respecting the collecting, hauling, or conveying of refuse; Provided, however, that the execution and filing of such bond shall be waived with respect to each such hauler after the completion of one (1) year of operation unless the City Council shall specifically require a bond of such hauler by resolution, and
 - 3. Furnished to the City Clerk a copy of a policy of insurance or insurance binder adequate to comply with section 53.13(B).
- B. The City Clerk shall hand-deliver or mail by First Class United States Mail, postage prepaid, an executed original of any such Certificate of Approval together with a copy of this Article to any Refuse Hauler approved by the City Council, immediately upon issuance thereof.
- C. Any Certificate of Approval issued under this section shall be signed by the City Clerk under the official seal of the City of Waverly, Nebraska, and shall appear in form and content substantially as follows:

CERTIFICATE OF APPROVAL

I, the undersigned City Clerk of Waverly, Nebraska, hereby certify that pursuant to Resolution Number _____, _____ has been granted approval to operate a Franchise Refuse Hauling Service within the City Limits of Waverly, Nebraska.

I acknowledge the receipt from the above-named Refuse Hauler of the sum of fifty dollars (\$50.00) and proof of adequate insurance coverage as required under the Waverly Municipal Code.

I further acknowledge that said Refuse Hauler has executed and filed with my office a bond in the sum of five hundred dollars (\$500.00) or that said hauler is exempt and is not

required to file a bond under the provisions of the Waverly Municipal Code.

I further certify that I have hand-delivered or mailed by First Class United States Mail, postage prepaid, a copy of Section 53.06 to 53.17 of the Waverly Municipal Code, together with an executed original of this Certificate to the above-named Refuse Hauler.

(SEAL)

City Clerk

(Amended by Ord. No. 99-3, 4/5/99)

§53.10 FRANCHISE TERMINATION, PUBLIC HEARING.

- A. When the Mayor or a majority of the City Council find and determine on the basis of citizen complaints or otherwise that the service provided by any Refuse Hauler is undesirable and that such hauler's services must be either improved or terminated, the Mayor or a majority of the members of the City Council may call a public hearing to be conducted by the Mayor and City Council to be held no sooner than the seventh (7th) day following publication of notice thereof, for the purpose of hearing citizen complaints regarding the service provided by any or all Refuse Haulers. Notice of such hearing shall be mailed by Certified United States Mail, postage prepaid, return receipt requested, to all Refuse Haulers engaged in serving the City of Waverly, Nebraska, no later than the first date of publication of such notice. Any Refuse Hauler whose services are in question shall have the right to appear at such hearing and put on evidence showing cause why its franchise should not be terminated. In the event that a majority of the City Council members determine that the services of any Refuse Hauler or Haulers require substantial improvement, the City Council shall, by Resolution, direct the City Clerk to inform the Refuse Hauler or Haulers involved of such deficiencies as the Council shall determine require correction. The City Clerk shall prepare a list of such deficiencies and mail the same to each such hauler together with a copy of this Article, by Certified United States Mail, postage prepaid, return receipt requested, no later than the seventh (7th) day following said public hearing.

- B. If at any time after the expiration of thirty (30) days following receipt by any such Refuse Hauler of the notice provided for in Subsection A of this Section, a majority of the members of the City Council determine that the deficiencies as detailed in said notice have not been satisfactorily corrected, then the City of Waverly, Nebraska shall have the right to terminate its franchise approval of any person, partnership, or corporation engaged in the operation of a Refuse Removal Service upon ten (10) days notice.

§ 53.11 RATES TO SUBSCRIBERS.

Upon receiving a Certificate of Approval, Haulers shall be allowed to charge the residential subscribers to their Refuse Hauling Service no more than twenty-four dollars (\$24.00) per single family dwelling unit, per month for pick up at the curb or twenty-five dollars (\$25.00) per single family dwelling unit, per month for pick up from the house or other dwelling unit; Provided, however, that subscribers who are unable to place their refuse at the

curb due to age or infirmity shall be charged at the rate herein provided for pick up at the curb in accordance with Section 53.14(B) of this Code. All subscribers shall receive pick up service at the curb at the rate provided herein, unless they deliver or mail to the offices of the Refuse Hauler serving their area, a written request for service at the house or dwelling unit. Each such Refuse Hauler may charge such additional fee (in excess of the maximum monthly rate as the same may be established from time to time by the City Council), for the disposal of grass cuttings, leaves, extraordinarily large, bulky, or heavy items, as shall be mutually agreeable to the subscriber and hauler.

The City Council may, uniformly increase or decrease this maximum monthly rate by ordinance for good cause shown. Commercial subscribers may subscribe to this service upon such terms and conditions as may be mutually agreed upon by the commercial subscriber and the hauler. (*Amended by Ord. Nos. 4-200.206, 11/2/81; 87-12, 8/3/87; 92-15, 9/21/92; 96-8, 9/16/96; 05-05, 6/20/05; 11-10, 4/5/11; 13-05, 9/3/13*).

§ 53.12 SERVICES TO BE PROVIDED.

Each Refuse Hauler receiving a Certificate of Approval shall provide the following services to each residential subscriber to its service:

- A. Collection of all refuse from each dwelling unit at least once (1 time) within every seven (7) day period and shall pick up refuse at the curb or at the written request of any subscriber, from the house or dwelling unit as provided in section 53.11.
- B. Such collection shall be accomplished between the hours of six o'clock (6:00) a.m. and four o'clock (4:00) p.m.; Provided, however, that no refuse shall be collected on Sundays.
- C. Notwithstanding any provision to the contrary contained herein, no Refuse Hauler shall be required to collect ashes from any residential subscriber.
- D. Refuse Hauler shall provide a seasonal service, of not less than weekly, for the collection of grass cuttings and leaves. (*Amended by Ord. Nos. 92-15, 9/21/92 and 99-4, 4/5/99*)

§ 53.13 HAULERS, REQUIREMENTS, EQUIPMENT, PERSONNEL, INSURANCE, AVAILABILITY.

Each Refuse Hauler receiving a Certificate of Authority under this Article shall maintain:

- A. Vehicles which comply with the following specifications:
 1. Shall have a watertight, metal body, fully enclosed; Provided however, that special equipment for use in commercial collection need not be fully enclosed, but shall be watertight. "Watertight," as used herein, shall mean so constructed that liquid materials will not spill or be discharged therefrom between point of loading and the designated disposal ground.

2. Shall be so constructed as to be readily cleaned.
 3. Shall be kept clean and presentable, both inside and outside, at all times.
 4. Shall have imprinted on its two (2) longest sides the Refuse Hauler's name and the phone number of the Refuse Hauler's place of business. Such letters and numbers shall be at least four inches (4") high and the color of such lettering shall contrast with the background color of the truck.
- B. Insurance in no less than the following amounts: Liability, one hundred/three hundred thousand dollars (\$100,000/\$300,000); property damage, one hundred thousand dollars (\$100,000); medical payments, five thousand dollars (\$5,000). Said insurance shall indemnify the City of Waverly, Nebraska, and/or any citizen of the City of Waverly, Nebraska, against any and all damage to persons and/or property that said hauler might cause in the conduct of its refuse collection service.
- C. Adequate personnel to insure that collections are made expeditiously and quietly without littering of either public or private property.
- D. A billing system adequate to provide to each subscriber, at least quarterly, a statement detailing the amount presently due and owing, and reciting the date on which payment is due and the address to which payment should be mailed. If any interest or service charge is assessed, a Refuse Hauler assessing such interest or service charge shall comply with all applicable statutory requirements imposed by the United States Government or the State of Nebraska.
- E. A business office capable of handling the questions, complaints, and suggestions of each subscriber during normally accepted business hours.
- F. Receptacles, selected by the refuse hauler, for the disposal of refuse, and separate receptacles, selected by the refuse hauler, for the disposal of grass cuttings and leaves, each to be provided to subscribers upon request. *(Amended by Ord. Nos. 92-15, 9/21/92 and 99-14, 4/5/99)*

§ 53.14 RESIDENTIAL SUBSCRIBERS, REGULATIONS.

Each residential subscriber to a Refuse Hauling Service within the City of Waverly, Nebraska, shall:

- A. Place all refuse in suitable, airtight containers, not exceeding thirty (30) gallons capacity and fifty (50) pounds in weight, or in receptacles provided by the Refuse Hauler.
- B. Place all such containers at or near the curb line prior to six o'clock (6:00) a.m. on the scheduled collection date for such subscriber's location, unless such subscriber shall have submitted, in writing to the refuse hauler, a request for pick up from the house

or dwelling unit rather than at the curb; Provided, however, that when, because of age or infirmity, any citizen shall request the Refuse Hauler to collect refuse or garbage at some point other than the curb line, the Refuse Hauler shall do so at no additional charge.

- C. Cut all branches and brush into lengths of no more than four feet (4').
- D. Contact the Refuse Hauler in advance when requiring disposal of items other than normal garbage or household refuse which will fit into containers approved for use in subsection A of this section.
- E. Place grass cuttings or leaves in airtight containers, paper disposable bags, or receptacles provided by the Refuse Hauler. Disposing of grass cuttings and/or leaves in plastic bags is prohibited. (*Amended by Ord. No. 92-15, 9/21/92*)

§ 53.15 COMMERCIAL SUBSCRIBERS, REGULATIONS.

Each commercial subscriber to a refuse hauling service shall abide by such rules and regulations as to the disposal of refuse as shall be agreed upon by subscriber and Refuse Hauler; and shall maintain receptacles for garbage which shall be constructed of substantial material and lined with or made of iron, tin, or zinc, and which shall include a self-closing lid. Notwithstanding any provision to the contrary contained herein, no refuse hauler shall be required to collect ashes from any commercial subscriber.

§ 53.16 SHARING SUBSCRIPTION PROHIBITED.

No person, partnership, or corporation shall utilize the subscription to any Refuse Hauling Service or utilize the refuse collection receptacles of any other person, partnership, or corporation.

No residential or commercial subscriber to a Refuse Hauling Service shall permit any other person, partnership, or corporation to utilize the Refuse Hauling Service to which he, she, or it subscribes, nor permit any other person, partnership, or corporation to utilize the receptacles he, she, or it provides for the collection of refuse.

§ 53.17 VIOLATION, PENALTY.

- A. Any residential subscriber to a Refuse Hauling Service, or any person, partnership, or corporation who or which shall violate section 53.14 or section 53.16 of this Article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined one hundred dollars (\$100.00) and shall stand committed to jail until such fine and costs be paid or otherwise discharged according to law. Each and every day that such violation continues after notification of the same by the City Clerk shall constitute a distinct and separate offense.
- B. Any commercial subscriber to a Refuse Hauling Service, or any person, partnership, or corporation who or which shall violate section 53.15 or section 53.16 of this Article shall be deemed guilty of a Class I Misdemeanor as defined in this Code. Each and

every day that such violation continues after notification of the same by the City Clerk shall constitute a distinct and separate offense. *(Amended by Ord. 02-01, 2/4/02, 07-05, 5/7/07)*

CHAPTER 54: NATURAL GAS

Section

- 54.01 General provision
- 54.02 Applicability and classification
- 54.03 Rate schedule, monthly charge; heat value, basis of; adjustment; penalty for delinquency; adjustment for cost of purchased gas and taxes
- 54.04 Franchise
- 54.05 Rates
- 54.06 Rate schedules
- 54.07 Refund
- 54.08 Adjustment for purchased gas cost
- 54.09 Other rate changes
- 54.10 Information to be provided
- 54.11 Notice of application
- 54.12 Providing of general information
- 54.13 Violation; penalty

§ 54.01 GENERAL PROVISION.

An Article of the City of Waverly, Lancaster County, Nebraska, establishing classes of gas service and rates to be charged for gas service within the City of Waverly, Nebraska, and repealing ordinance No. 91-8 and all other ordinances and parts of ordinances in conflict with the provisions of this Article. *(Amended by Ord. 15-07, 7/21/15)*

§ 54.02 APPLICABILITY AND CLASSIFICATION.

This Article shall apply to any person, firm, or corporation supplying gas service to the City of Waverly, Nebraska, and the inhabitants thereof. Any such person, firm, or corporation shall be hereinafter referred to as the gas distribution company or company.

The gas distribution company shall provide two (2) classes of service to its customers as hereinafter specified and defined:

Firm Gas Service. The term "firm gas service" is hereby defined as gas service that is supplied on a non-interruptible basis. Firm gas service shall be made available to all customers whose maximum space heating requirements are less than 1,000 cubic feet per hour.

Interruptible Gas Service. The term "interruptible gas service" is hereby defined as gas service that is supplied on an interruptible basis. It shall be subject to curtailment or interruption on demand of the gas distribution company whenever necessary to protect the service to its firm gas customers. *(Amended by Ord. 15-07, 7/21/15)*

§54.03 RATE SCHEDULE, MONTHLY CHARGE; HEAT VALUE, BASIS OF; ADJUSTMENT; PENALTY FOR DELINQUENCY; ADJUSTMENT FOR COST OF PURCHASED GAS AND TAXES.

Grantee, its successors or assigns, shall file and make effective initially a schedule of rates for gas service and shall furnish gas at the schedule of rates hereafter set forth or at such other reasonable rates as may be hereafter established from time to time under the Nebraska State Natural Gas Regulation Act, Neb. Rev. Stat. 66-1801, et seq.

(1) FIRM GAS SERVICE RATES

AVAILABILITY - These rates are available only to domestic and commercial customers whose maximum requirements for natural gas are less than one hundred thousand (100,000) cubic feet per day. Grantee shall not be required to serve any customer at the following rates whose requirements amount to one hundred thousand (100,000) cubic feet or more per day. Grantee may negotiate price and other contract terms with customers whose natural gas requirements exceed fifty thousand (50,000) cubic feet per day.

RESIDENTIAL CUSTOMERS	AMOUNT
Monthly Customer Charge.....	\$8.25 and
Rate Per Hundred Cubic Feet.....	\$0.1153170

COMMERCIAL CUSTOMERS	AMOUNT
Monthly Customer Charge.....	\$13.25 and
Rate Per Hundred Cubic Feet.....	\$0.1567016

The foregoing rates apply only when bills are paid on or before twenty (20) days after the monthly billing date. When not so paid, a one percent (1%) per month late fee will apply on the unpaid amount.

The above and foregoing rate shall be understood to be based upon natural gas of the British Thermal Unit (BTU) heating value of 1,000 BTUs per cubic foot of gas. If in any monthly period the average heating value of gas sold and delivered to the customers shall vary from 1,000 BTUs, then the volumes of gas billed to the customers during the month shall be multiplied by the factor of average heating value in BTUs ÷ 1,000 to adjust for the variance.

TURN-ON AND RECONNECT FEE

In addition to the other rates set forth in this Ordinance, Grantee may charge a \$26.00 fee to initiate service ("turn-on fee") for each customer account and a \$30.00 fee ("reconnect fee") to reconnect service that has been discontinued or terminated for non-payment.

(2) ADJUSTMENT FOR COST OF PURCHASED GAS

In addition to the Firm Gas Service Rates set forth in Sub-Section (1) of this Ordinance, a separate charge per Therm may be made for the monthly cost of purchased gas in the Purchased Gas Cost Adjustment, if the Grantee (or any predecessor of Grantee) has properly filed a natural gas supply-cost-adjustment rate schedule pursuant to the Nebraska State Natural Gas Regulation Act. Such Purchased Gas Cost Adjustment shall be computed monthly pursuant to the natural gas supply-cost-adjustment rate schedule filed by the Grantee (or any predecessor of Grantee) pursuant to the Nebraska State Natural Gas Regulation Act.

Any refund including interest thereon, if any, received by the Company from its supplier in respect of increased rates paid by Grantee subject to refund and applicable to natural gas purchased on a firm supply basis for resale in Waverly, Nebraska shall be refunded to its gas customers in the form of credits on such customers' bills, or in cash, to the extent that such increased rates paid by the Company were passed on to such firm gas customers.

(3) ADJUSTMENT FOR TAXES

If, after the effective date of this ordinance, the business of Grantee in Waverly, Nebraska, shall be subjected to any taxes measured by its gross revenues from the operation of such business, or the volume of such business, or constituting a fee for carrying on such business, or in the event that (a) the rate of any such tax or (b) the amount of any such fee shall be increased after the effective date of this ordinance, the gas distribution company shall be entitled to increase its charges under the aforesaid rates so as to offset such imposition or impositions of such increase.

(4) GENERAL RATE ADJUSTMENT

The above provided for cost of purchased gas and tax adjustments are apart from and shall not in any manner limit or abridge either Grantee's right to request or the Mayor and City Council's authority to grant general rate adjustments increasing or decreasing such rates.

(5) INTERRUPTIBLE GAS SERVICE RATE

AVAILABILITY - This rate is available only on a contract basis to commercial or industrial customers whose use of natural gas is subject to interruption and periods of curtailment for reasons including, but not limited to, protecting the service of Grantee's firm gas users.

RATE - The rate of interruptible gas service shall be such rate as may be mutually agreed upon between the customer and the gas service company.

(6) ENVIRONMENTAL COSTS

Grantee may defer expenses reasonably incurred after December 1, 1999, as a result of monitoring, testing, cleanup, and the cost of reasonable efforts made by Grantee to recover remediation costs (herein after referred to generally as "manufactured gas plant")

costs), if any, at the five manufactured gas plant sites allocated to Rate Area Three. No carrying costs will be calculated on any such balance of deferred manufactured gas plant costs. At the time of its next general rate case, Grantee may request recovery of any deferred manufactured gas plant costs and, if recovery is sought, must demonstrate in its rate application or sixty (60) days prior to the deadline for filing the Municipal Report that the manufactured gas plant costs were prudently incurred and reasonable, and that Grantee made reasonable efforts to recover remediation costs from potentially responsible third parties (which may include, but are not limited to, Grantee's predecessors in interest.)

In any future rate application, Grantee will reduce any deferred manufactured gas plant costs by the proportional amount of manufactured gas plant costs previously recovered (i.e., \$62,846 per year from December 1, 1999) from Rate Area Three as a credit to the deferred expenses allocated to Rate Area Three. Issues as to whether the deferred remediation costs were prudently incurred and reasonable; and whether the length of the amortization period for "past" manufactured gas plant costs requested by Grantee for recovering any such deferred remediation expenses is reasonable will be determined in the next rate case following the incurrence of such deferred manufactured gas plant costs.

Seventy-five percent (75%) of any funds (or the value of any other benefits) recovered from third parties by or on behalf of Grantee which are attributable to remediation of any or all of the five manufactured gas plant sites allocated to Rate Area Three shall be credited to the deferred account. Grantee may keep twenty-five percent (25%) of any funds (or the value of other benefits) recovered from third parties.

(7) GENERAL TERMS AND CONDITIONS

The General Terms and Conditions and associated Rate Schedule Tariff Sheets applicable to the natural gas service subject to the Municipal Natural Gas Regulation Act and provided for under this ordinance will be kept on file with the Municipal Clerk. The General Terms and Conditions may be changed from time to time by Grantee unless contrary provision is made by an ordinance adopted in the course of future rate proceedings.

(8) FINDING OF FACT AND CONCLUSIONS OF LAW

The Finding of Fact and Conclusions of Law, which were made a part of the official record at an Area Rate Hearing, are hereby adopted. (*Amended by Ord. No. 00-1, 2/21/00; Ord. 15-07, 7/21/15*)

§ 54.04 FRANCHISE.

The Governing Body has granted to Black Hills Energy the right, permission, and authority to lay, install, maintain, and operate a gas transmission and distribution system within the Municipality. Actual details of the franchise are available at the Municipal Clerk's office. (*Amended by Ord. No. 98-7, 5/4/98; Ord. 15-07, 7/21/15*)

§ 54.05 RATES.

Regulatory Authority. The Franchisee shall at all times be subject to all rights,

power and authority now or hereafter possessed by the City to regulate and control and direct the rates and tariffs charged for natural gas service in the City, as more specifically set forth in the Waverly Municipal Code as amended from time to time.

§ 54.06 RATE SCHEDULES.

The Franchisee shall provide to the City, for informational purposes, copies of all rate schedules and contracts for all rates charged and the requirements for service under each schedule within the City. It shall also show separately the base rate and the purchased gas rate. The base rate shall be based on the Franchisee's cost of providing service to the City and shall exclude all purchased gas costs and purchased gas adjustments shall be collected solely through the purchased gas rate. Such rates shall not be in conflict with the Waverly Municipal Code as amended from time to time.

§ 54.07 REFUND.

Any refund, including interest thereon, if any, received by the Franchisee from its supplier related to increased rates paid by the Franchisee subject to refund and applicable to natural gas purchased for resale within the City shall be passed on to presently served customers by an appropriate adjustment shown as a credit on subsequent bills during a period selected by the Franchisee, not to exceed twelve (12) months from the date the Franchisee received the refund, or by a single cash refund at the Franchisee's option within three (3) months from the date the Franchisee received the refund or by such other method as may be established by ordinance.

§ 54.08 ADJUSTMENT FOR PURCHASED GAS COST.

The purchased gas cost prescribed in the foregoing rate schedules shall reflect all purchased gas costs and purchased gas adjustments (PGA's) incurred by the Franchisee for resale in the City. The purpose of the PGA is as follows:

1. To allow the Franchisee to recover all purchased gas costs.
2. To prevent a continuing over or under collection of purchased gas costs.
3. To provide an equitable method of returning to the ratepayers any over-collected purchased gas costs and refunds plus interest received by the Franchisee from its suppliers.
4. To provide an equitable method of recovering from the ratepayers any under-collected purchased gas costs.

In the event the rates authorized to be charged the Franchisee for any natural gas purchased for resale within the City are increased or decreased, either temporarily or permanently, the purchased gas cost portion of the retail gas rates in effect may be increased or shall be decreased correspondingly to reflect the change in the cost of purchased gas. The Franchisee may change the purchased gas cost portion of the retail gas rates by filing documentation detailing the change with the City Clerk.

On or before October 31, 1988 and each October thereafter during the Franchise term, the Franchisee shall file a "Cost of Purchased Gas Reconciliation" with the City. The filing shall compare the net cost of gas purchased with actual billed revenue arising from the purchased gas cost portion of the retail rates and shall apply to the 12-month period ending the immediately preceding August 31st. The filing shall specify a reconciliation rate adjustment resulting from any over or under recovered gas costs. Such adjustment shall be made effective as of the following December 1.

§ 54.09 OTHER RATE CHANGES.

In the event the Franchisee desires to change its rates for firm natural gas service within the City other than to reflect an adjustment for the cost of purchased gas, the Franchisee will present to the City copies of present and proposed rate schedules and information supporting the proposed rates to be charged for firm natural gas service within the City. The rate schedules and information submitted with the rate schedules shall be referred to as the Rate Filing. Any such Rate Filing shall be deemed filed upon receipt of the same by the City Clerk. A filing fee in the amount of \$300.00 shall be paid to the City with the Rate Filing. Such fee will be considered as an operating cost of the Franchisee and shall not be separately itemized on any customer billings.

The Governing Body of the City shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, and other experts as deemed necessary and desirable to advise and represent the Governing Body in evaluating any proposed rate change. The Franchisee shall reimburse the City within ninety (90) days of the presentation of a bill by the City for the reasonable costs of those services only to the extent that said costs exceed the filing fee for the Rate Filing.

If the proposed rates sought by the Franchisee in its Rate Filing have not been passed on final reading by the City Council within ninety (90) days after it was filed, the proposed rates shall be put into effect as interim rates, and shall be collected subject to refund pursuant to section 18-415 of the Nebraska Revised Statutes, 1943, as the same may be amended from time to time. Such interim rates shall remain in effect pending final determination by the City, which determination shall be made within one hundred eighty (180) days after the Rate Filing is filed, or in the event of litigation, final rate determination by the Courts. Proposed increased rates shall become final and no longer subject to refund if the City Council has not taken final action within one hundred eighty (180) days after the Rate Filing is filed.

The rates proposed to be charged for firm natural gas service within the City shall be based on the Franchisee's cost of providing service to the City or the representative costs in that part of the Franchisee's service area which includes the City. The period for which the cost of service is to be recognized is to be a projected twelve (12) month period commencing not later than the proposed effective date of the increase. The cost of service shall be determined in a manner consistent with regulated public utility practices and shall include (1) appropriate costs as defined and set forth in the Federal Energy Regulatory Commission Uniform System of Accounts Prescribed for Natural Gas Companies FERC Accounts, and (2) a reasonable return on the Franchisee's rate base.

In determining a reasonable return, a rate (percentage) shall be employed that is

representative of the Franchisee's cost of debt, preferred stock, and common equity capital. The rate base shall consist of the applicable net investment in utility plant (as defined in the FERC Accounts), allowance for working capital, and such other items as may reasonably be included; less such investment as may, unless otherwise prevented by law, be attributed to other than investor capital.

The Franchisee's appropriate costs and items of rate base shall include allocated or apportioned expenses and rate base items, when such allocations or apportionments are reasonably representative of assigned common costs and arise from the manner in which the Franchisee's operations are conducted or from an avoidance of excessive and costly financial recordkeeping.

Rate filings, not including rate adjustments permitted for changes in the purchased gas cost, shall be limited to a maximum of one (1) in twelve (12) calendar month period.

§ 54.10 INFORMATION TO BE PROVIDED.

The Franchisee shall provide in its Rate Filing three (3) copies of the most recent annual report to the stockholders and three (3) signed copies of a summary of the proposed rate change which shall include the information outlined in Subparagraphs A through G hereunder.

- A. A financial summary showing aggregate rate base, operating revenues, operating expenses, dollar return on rate base and rate of return on rate base:
 - 1. Actual for the most recent calendar year preceding the date of submission.
 - 2. For the projected twelve (12) month period using natural gas rates currently in effect.
 - 3. For the projected twelve (12) month period using the proposed natural gas rates.
- B. Rate base schedules, on an original cost basis, showing for the most recent twelve month period available and for the projected 12-month period:
 - 1. For utility plant and accumulated depreciation and amortization components - the beginning and end of period balances by account, explanations of changes in balances during the period and calculated rate base amounts.
 - 2. For cash working capital - the manner in which rate base amounts are calculated.
 - 3. For other rate base components - beginning and end of period amounts, explanations of changes in balances during the period, and calculated rate base amounts.
 - 4. Explanations and calculations of allocated amounts included in (1), (2), and (3) above.
- C. Operating expense schedules, showing:

1. Expenses by FERC accounts or their equivalent for the most recent calendar year including filing fees and occupation taxes paid to the City.
 2. Explanations and calculations of allocated amounts included in (1).
 3. Expenses by FERC accounts or their equivalent for the projected twelve (12) month period.
 4. Explanation of methods employed to develop projected expenses.
 5. Explanations and calculations of allocated amounts included in (3).
- D. Rate of return/cost of capital schedules showing debt, preferred stock, and common equity amounts at the beginning and end of the projected twelve (12) month period, explanations of changes during the period, methods used to calculate or otherwise determine cost of capital, and table showing the requested and approved rate of return on rate base and common equity on all cases filed by the Franchisee during the previous five (5) years.
- E. Operating revenue schedules, showing:
1. Number of customers, volume of sales, and operating revenue by customer classes for the most recent calendar year.
 2. Number of customers and volume of sales by customer classes for the projected twelve (12) month period.
 3. Operating revenues by rate schedules for the projected twelve (12) month period using current rates.
 4. Operating revenue by customer classes for the projected twelve (12) month period using proposed rates.
 5. Detailed rates and calculations for (4) and (5), including customer usages (consumption analysis) data, peak demand, and load factor data by customer class, allocation methods and justifications, etc.
- F. Information Schedules showing for the City as a whole:
1. Cost of distribution plant.
 2. Number of customers, volume of sales, and operating revenue by customer classes for the most recent calendar year.
- G. The Franchisee shall clearly designate as part of its expenses, all expenditures for business gifts and entertainment, institutional, consumption inducing, and other

advertising or public relations expenses, and legislative-advocacy expenses. The City may not allow, for rate making purposes, any of such expenditures which the City determines not to be in the public interest. Franchisee has the burden of showing such expenses are in the public interest.

§ 54.11 NOTICE OF APPLICATION.

Other than to reflect an adjustment for purchased gas cost, the Franchisee shall not make changes in its rates except by a Rate Filing properly filed with the City Clerk at least ninety (90) days prior to the proposed effective date of the requested change. Notice of the filing shall be given within thirty (30) days of the date of filing by placing a notice to the public of the proposed change in a newspaper having general circulation in the City. However, notwithstanding the above, instead of the publication of newspaper notice stipulated above, the Franchisee may provide notice to the public by mailing such notice by United States mail, postage prepaid, to the billing address of each directly affected customer, or by including the notice in such customer's bill in a conspicuous form. By either method, publication or mailing, the notice must be in substantially the following form:

NOTICE OF RATE INCREASE

(Name of Franchisee) proposes to increase your rates by (amount of total annual increase requested) dollars per year, which is an overall increase of (percentage of increase over all revenues during the applicable test year) percent and is an increase in base rate of (percentage of increase over all revenues during the applicable test year which are not subject to escalation through some form of automatic adjustment clause) percent. Further information may be obtained from (name and address of an official of the Franchisee) or the application on file with the City Clerk.

An affidavit signed by an official of the Franchisee and describing the method of publication or of mailing of the notice shall be filed with the City Clerk within sixty (60) days or a rate filing being filed.

§ 54.12 PROVIDING OF GENERAL INFORMATION.

The Franchisee shall provide the City, at the request of the City, on a regular continuing basis, within thirty (30) days of publication, copies of documents, information, and data listed below for the Franchisee or its parent company as applicable:

Annual Report to Stockholders.

Quarterly Report to Stockholders.

Securities and Exchange Commission Form 10-K, as the same may be changed from time to time.

Securities and Exchange Commission Form 10-Q, as the same may be changed from time to time.

Prospectus for Debt Securities to be Issued.

Prospectus for Equity Securities to be Issued.

Distribution System Map of the City.

§ 54.13 VIOLATION; PENALTY.

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Section, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred dollars (\$100.00) for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

TITLE VII: TRAFFIC CODE

Chapter

- 70. GENERAL PROVISIONS
- 71. TRAFFIC REGULATIONS
- 72. PARKING REGULATIONS

CHAPTER 70: GENERAL PROVISIONS

Section

- 70.01 Definitions
- 70.02 Emergency regulations
- 70.03 Reserved
- 70.04 Refusal to obey
- 70.05 Reserved
- 70.06 Reserved
- 70.07 Reserved

§ 70.01 DEFINITIONS.

The words and phrases used in this title, pertaining to motor vehicles and traffic regulations, shall be construed as defined in Neb. RS Ch. 60, Art. 6, as now existing or hereafter amended. If not defined in the designated statute, or within this Section, the word or phrase shall have its common meaning. (Neb. RS 60-606 through 60-676)

COMMERCIAL DISTRICT. The term “commercial district” shall include those portions of the Municipality embraced within the Mixed Urban District (MX Zone), Limited Commercial District (LC Zone), Community Commercial District (CC Zone), Downtown Commercial District (DC Zone), General Commercial District (GC Zone) as described in the “Waverly Zoning Ordinance” and as shown on the “Official Zoning Map of the City of Waverly”.

INDUSTRIAL DISTRICT. The term “industrial district” shall include those portions of the Municipality embraced within the Limited Industrial District (LI Zone), and General Industrial (GI Zone) as described in the “Waverly Zoning Ordinance” and as shown on the “Official Zoning Map of the City of Waverly”.

RESIDENTIAL DISTRICT. The term "residential district" shall include all parts of the Municipality not included in the commercial or industrial districts.
(Amended by Ord. 02-02, 2/4/02)

§ 70.02 EMERGENCY REGULATIONS.

The Chief Law Enforcement Officer is hereby empowered to make and enforce temporary traffic regulations to cover emergencies.

§ 70.03 RESERVED.

§ 70.04 REFUSAL TO OBEY.

It shall be unlawful for any person to refuse or fail to comply with any lawful order, signal, or direction of a police officer. Penalty, see § 10.99

§ 70.05 RESERVED.

§ 70.06 RESERVED.

§ 70.07 RESERVED.

CHAPTER 71: TRAFFIC REGULATIONS

Section

General Provisions

71.01 Rules of the road; incorporated by reference

Traffic Control

71.15 Truck routes
71.16 One-way traffic
71.17 Traffic lanes; designation
71.18 Crosswalks
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71.23 Arterial streets; designation
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Traffic Rules

71.35 Careless Driving
71.36 Backing
71.37 Funeral processions
71.38 Riding outside vehicle
71.39 Turning; "U" turns
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71.43 Hitchhiking

***Bicycles, Skates, Motorcycles, Minibikes,
All-Terrain Vehicles, Utility-Type Vehicles, and
Wheelchairs and Other Power-Driven Mobility Devices***

- 71.70 Motorcycles, minibikes, and bicycles; prohibited on sidewalks
- 71.71 All-terrain, utility-type, and minitruck vehicles
- 71.72 Golf cart vehicles
- 71.73 Wheelchairs and Other Power-Driven Mobility Devices

GENERAL PROVISIONS

§ 71.01 RULES OF THE ROAD; INCORPORATED BY REFERENCE.

The State Rules of the Road, together with all subsequent amendments thereto, as adopted by this state relating to traffic regulations are incorporated by reference into this section and made a part of this chapter as though spread at large herein, except those provisions in conflict with this chapter when the City Council has the authority to alter those regulations. Three copies of the State Rules of the Road and amendments shall be on file with the Municipal Clerk and shall be available for public inspection at any reasonable time.

TRAFFIC CONTROL

§ 71.15 TRUCK ROUTES.

The City Council may, by resolution, designate certain streets in the City upon which trucks or trailers, in excess of three (3) tons gross loaded weight, shall not travel upon and it shall be unlawful for any person operating trucks or trailers to travel upon streets where such truck or trailer traffic is prohibited, except to pick up or make deliveries; Provided, however, that such restricted routes shall not be utilized where in order to pick up or make deliveries an alternate, non-restricted route is available. Penalty, see § 10.99

Any person, firm partnership, association, corporation, company, or organization of any kind violating this section shall be deemed guilty of a Class II Misdemeanor as defined by section 131.22 of this Code. If such violation is disposed of pursuant to a waiver of appearance and plea of guilty, the fine shall be twenty-five dollars (\$25.00). (*Amended by Ord. 07-05, 5/7/07*)

§ 71.16 ONE-WAY TRAFFIC.

The City Council may, by resolution, provide for one-way travel in any street or alley located in the municipality and shall provide for appropriate signs and markings when those streets have been so designated by resolution.

§ 71.17 TRAFFIC LANES; DESIGNATION.

The City Council may, by resolution, mark lanes for traffic on street pavements at those places as it may deem advisable.

§ 71.18 CROSSWALKS.

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

§ 71.19 SIGNS; SIGNALS.

The City Council may, by resolution, provide for the placing of stop signs or other signs, signals, standards, or mechanical devices in any street or alley for the purpose of regulating or prohibiting traffic thereon. The 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 the sign, signal, standard, or mechanical device shall be placed, and the hours when the regulation or prohibition shall be effective. It shall be unlawful for any person to fail, neglect, or refuse to comply with the regulation or prohibition.

However, no such slow or stop signs, buttons or signals shall be erected or established and maintained in, upon or over any public thoroughfare constituting a State highway within the City; Provided that at the intersection within the City of any State highway with any street, avenue, alley or public thoroughfare of the City, the City Council may, by resolution, erect or establish and maintain, at the confines of said State highway and in full view of the traffic thereon in both directions, such school-slow signs, buttons, or signals as the City Council deem expedient. Penalty, see § 10.99

§ 71.20 RESERVED.

§ 71.21 RESERVED.

§ 71.22 RESERVED.

§ 71.23 ARTERIAL STREETS; DESIGNATION.

The Governing Body may, by resolution, designate any street or portion thereof as an arterial street and shall provide for appropriate signs or markings when such street has been so designated.

§ 71.24 LOADS; SPILLING.

All vehicles used for carrying earth, sand, gravel, rock, asphalt, or any granular substance shall be so constructed, or secured so as to prevent the sifting, spilling, or falling of any of the contents onto the roadway.

Provided, that is shall be unlawful for any person to spill or allow to be spilled such substances which would be likely to be injurious to vehicular traffic without immediately causing the same to be removed from any street. (*Amended by Ord. 02-02, 2/4/02*)

§ 71.25 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, and 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.

§ 71.26 LITTERING.

It shall be unlawful for any person to drop, or cause to be left, upon any municipal highway, street, or alley, except at places designated by the Governing Body, any rubbish, debris, or waste, and any person so doing shall be guilty of littering.

TRAFFIC RULES

§ 71.35 CARELESS DRIVING.

Any person who drives any motor vehicle in this municipality carelessly or without due caution so as to endanger a person or property shall be guilty of careless driving. (Neb. RS 60-6,212) Penalty, see § 10.99

§ 71.36 BACKING.

It shall be unlawful for any person to back a motor vehicle on the municipal streets except to park in or to remove the vehicle from a permitted parking position, to move the vehicle from a driveway, or to back to the curb for unloading where unloading is permitted; provided, a vehicle shall be backed only when that movement can be made in safety, and in no case shall the distance of the backing exceed 1.5 lengths of the vehicle. (Neb. RS 60-6,169 and 60-680) Penalty, see § 10.99

§ 71.37 FUNERAL PROCESSIONS.

No vehicle, except police vehicles, Fire/Rescue Department vehicles, when responding to emergency calls or orders in their several departments, ambulances responding to emergency calls, or vehicles carrying U.S. mails, shall be driven through a funeral procession or cortege except with the permission of a police officer. (Neb. RS 60-6,140 and 60-680) Penalty, see § 10.99

§ 71.38 RIDING OUTSIDE VEHICLE.

No person shall permit any other person to ride on the running board, hood, top, or fenders of any motor vehicle. Nor shall any person ride on the running board, hood, top, or fenders of any motor vehicle. (Neb. RS 60-680) Penalty, see § 10.99

§ 71.39 TURNING; "U" TURNS.

No vehicle shall be turned so as to proceed in the opposite direction at any street intersection, or upon any street other than a cul-de-sac; Provided, this Section shall not apply to postal or emergency vehicles operated on official business with the drivers thereof making use of proper visual and audible signals.

§ 71.40 RESERVED.

§ 71.41 RESERVED.

§ 71.42 RESERVED.

§ 71.43 HITCHHIKING.

It shall be unlawful for any person to be found soliciting trucks, automobiles, or other vehicles to stop or slow down for the purpose of asking for a ride, or riding on the vehicle. (Neb. RS 60-6,144) Penalty, see § 10.99

***BICYCLES, SKATES, MOTORCYCLES, MINIBIKES,
ALL-TERRAIN VEHICLES AND UTILITY-TYPE VEHICLES***

§ 71.70 MOTORCYCLES, MINIBIKES, AND BICYCLES; PROHIBITED ON SIDEWALKS.

It shall be unlawful for any person or persons to ride a motorcycle, scooter, go cart, golf cart, minibike, bicycle, roller skates, or an all-terrain vehicle etc. on public sidewalks within the City; Provided, that children under the age of twelve (12) may ride a bicycle on the sidewalks.

Bicycles operated on any street within the City shall be subject to all traffic laws pertaining to motorized vehicles. (*Amended by Ord. 02-02, 2/4/02*) Penalty, see §10.99

§ 71.71 ALL-TERRAIN, UTILITY-TYPE, AND MINITRUCK VEHICLES.

(A) For purposes of this section:

(1) "All-terrain vehicle" means any motorized off highway vehicle which (a) is 50 inches or less in width, (b) has a dry weight of 900 pounds or less, (c) travels on four low pressure tires, (d) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger, (e) has a seat or saddle designed to be straddled by the operator, and (f) has handlebars or any other steering assembly for steering control.

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

(3) "Mini truck" means a foreign manufactured import vehicle or domestic manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, tail lights, turn signals,

windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

(4) "Street" or "highway" means the entire width between the boundary limits of any street, road, avenue, boulevard, or way, which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(B) All-terrain, utility-type, or mini truck vehicles may be operated on streets and highways within the corporate limits of the City only if the operator and the vehicle comply with the provisions of this section.

(C) All-terrain, utility-type, or mini truck vehicles may be operated only between the hours of sunrise and sunset and shall not be operated at a speed in excess of 30 miles per hour or less if the posted speed limit is less. When operating any of these vehicles as authorized in subsection (B) of this section, the headlight and taillights 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 level attached to the rear of such vehicle. The Bicycle safety flag shall be triangular in shape with an area of not less than 30 square inches and shall be day-glow in color.

(D) Any person operating an all-terrain, utility-type, or mini truck vehicle as authorized in subsection (B) of this section shall have:

(1) A valid Class O operator's license or a farm permit as provided in Neb. Rev. Stat. 60-4,126; and

(2) Liability insurance coverage for the all-terrain, utility-type, or mini truck vehicles while operating such vehicle on a street or highway. The person operating any of these vehicles shall provide proof of such insurance coverage to any peace officer requesting such proof within five days of such a request.

(E) It shall be unlawful for any person to operate all-terrain, utility-type, or mini truck vehicles on the City streets or alleys:

(1) until the owner has demonstrated proof of insurance to the City and obtained a license plate for the current year. The City will issue a license plate and/or decal for the current year that must be affixed to the rear of the all-terrain, utility-type, or minitruck vehicles in a conspicuous place. The City will charge a fee of twenty-five (\$25.00) dollars for the issuance of the license certificate and plate. The certificate shall be an annual certificate from January 1 through December 31 of each year. The operator shall have until January 31 of the following year to renew the certificate and plate for an annual fee of ten (\$10.00) dollars. During the first year that a certificate is purchased the fee will be prorated from the month that the certificate is obtained through December at one (\$1.00) dollar per month and a thirteen (\$13.00) dollar administrative fee. Any certificate purchased by a person for the same all-terrain, utility-type, or mini truck vehicles in a subsequent year shall not be prorated. The fee for any replacement plate shall be fifteen (\$15.00) dollars.

- (2) with more passengers on said vehicle than is recommended by the original manufacturer.
- (F) All-terrain, utility-type, or mini truck vehicles may be operated without complying with subsections (C), (D), and (E) of this section on streets and highways in parades which have been authorized by the State or any department, board, commission, or political subdivision of the State.
- (G) All-terrain, utility-type, or mini truck vehicles shall not be operated on any controlled-access highway with more than two marked traffic lanes, and the crossing of any controlled-access highway with more than two marked traffic lanes shall not be permitted.
- (H) Subject to subsection (G) of this section, the crossing of a street or highway shall be permitted by all-terrain, utility-type, or mini truck vehicles without complying with subsections (C) and (D) of this section only if:
- (1) The crossing is made at an angle of approximately ninety degrees to the direction of the street or highway and at a place where no obstruction prevents a quick and safe crossing;
 - (2) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the street or highway;
 - (3) The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;
 - (4) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and
 - (5) Both the headlight and taillight of the vehicle are on when the crossing is made.
- (I) If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain, utility-type, or mini truck vehicle involved in the accident shall give notice of the accident in the same manner as provided in Neb. Rev. Stat. §60-699.
- (J) Every All-terrain Vehicle (ATV), Utility-Type Vehicle (UTV), and Mini truck as defined by the Statutes of Nebraska or the Waverly Municipal Code, which are operated within the jurisdiction of the City of Waverly, are hereby declared to be a motor vehicle and subject to all of the motor vehicle Rules of the Road and traffic laws as defined in either the Nebraska State Statutes or the Waverly Municipal Code.
- (K) Penalty.
- (1) Any person who violates subsection (E)(1) shall be fined twenty-five (\$25.00) dollars. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be twenty dollars (\$20.00).

(2) Any person who violates subsection (E) (2) shall be guilty of a Class II Misdemeanor pursuant to §131.22 of the City Code. *(Added by Ord. 09-15, 12/21/09; amended by Ord. 10-11 8/16/10; Ord. 18-05)*

§ 71.72 GOLF CART VEHICLES.

(A) For purposes of this section:

(1) "Golf cart vehicle" means a 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.

(2) "Street" or "highway" means a public way for the purposes of vehicular travel in a city and includes the entire area within the right-of-way; and

(3) "Road" means a public way for the purposes of vehicular travel, including the entire area within the right-of-way.

(B) Golf cart vehicles may be operated on streets and highways within the corporate limits of the City only if the operator and the vehicle comply with the provisions of this section.

(C) Golf cart vehicles may be operated only between the hours of sunrise and sunset and on streets with a posted speed limit of thirty-five (35) miles per hour or less. The operator shall not operate such vehicle at a speed in excess of twenty (20) miles per hour. When operating a golf cart vehicle as authorized in subsection (B) of this section, the headlights and taillights of the vehicle shall be on (if equipped), turn signals used (if equipped), and the vehicle must be equipped with a safety flag, which extends not less than five (5) feet above the ground and extends at least six (6) inches above the highest point of the vehicle, when attached to the rear of the vehicle in a day-glow color, triangular shape, and at least 30 square inches. A golf cart 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 only if:

(1) the crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place no obstruction prevents a quick and safe crossing;

(2) the operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and

(3) in crossing a divided highway, the crossing is made only at an intersection of such highway with a street or road, as applicable.

(D) Any person operating a golf cart vehicle as authorized in subsection (B) of this section shall have:

(1) A valid Class O operator's license, and

(2) Liability insurance coverage for the golf cart vehicle while operating such vehicle on a street or highway. The person operating any of these vehicles shall provide proof of such insurance coverage to any peace officer requesting such proof within five days of 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 one person in any one accident and, subject to such limit for one person, fifty thousand dollars because of bodily injury to or death off 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.

(E) It shall be unlawful for any person to operate golf cart vehicles on the City streets or alleys:

(1) until the owner has demonstrated proof of insurance to the City and obtained a license plate for the current year. The City will issue a license plate and/or decal for the current year that must be affixed to the rear of the golf cart in a conspicuous place. The City will charge a fee of twenty-five (\$25.00) dollars for the issuance of the license certificate and plate. The certificate shall be an annual certificate from January 1 through December 31 of each year. The operator shall have until January 31 of the following year to renew the certificate and plate for an annual fee of ten (\$10.00) dollars. During the first year that a certificate is purchased the fee will be prorated from the month that the certificate is obtained through December at one (\$1.00) dollar per month and a thirteen (\$13.00) dollar administrative fee. Any certificate purchased by a person for the same all-terrain, utility- type, or mini truck vehicles in a subsequent year shall not be prorated. The fee for any replacement plate shall be fifteen (\$15.00) dollars.

(2) with more passengers on said vehicle than is recommended by the original manufacturer.

(F) Golf cart vehicles may be operated without complying with subsections (C), (D), and (E) of this section on streets and highways in parades which have been authorized by the State or any department, board, commission, or political subdivision of the State.

(G) Golf cart vehicles shall not be operated on any controlled-access highway with more than two marked traffic lanes, and the crossing of any controlled-access highway with more than two marked traffic lanes shall not be permitted.

(H) If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of a golf cart vehicle involved in the accident shall give notice of the accident in the same manner as provided in Neb. Rev. Stat. §60-699.

(I) Every Golf Cart Vehicle as defined by the Statutes of Nebraska or the Waverly Municipal Code, which are operated within the jurisdiction of the City of Waverly, are hereby declared to be a motor vehicle and subject to all of the motor vehicle Rules of the Road and traffic laws as defined in either the Nebraska State Statutes or the Waverly Municipal Code.

(J) Penalty.

- (1) Any person who violates subsection (C) or (E)(1) shall be fined twenty-five (\$25.00) dollars. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be twenty dollars (\$20.00).
- (2) Any person who violates subsection (E) (2) shall be guilty of a Class II Misdemeanor pursuant to §131.22 of the City Code. *(Added by Ord. 15-14, 10/13/15; Amended by Ord. 18-05, 5/8/18; Ord. 23-05, 6/6/2023; Ord. 23-08, 7/25/2023)*

§ 71.73 WHEELCHAIRS AND OTHER POWER-DRIVEN MOBILITY DEVICES

(A) For purposes of this section:

- (1) “Wheelchair” shall mean a manually operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of locomotion.
- (2) “Other Power-Driven Mobility Device (“OPDMD”)” means a mobility device powered by batteries, fuel, or other engines, used by an individual with a mobility disability for the purpose of locomotion. A fully enclosed mobility scooter may qualify as an OPDMD provided the standards contained in subsection (B)(2)(a)-(e) are met.

(B) Areas of Operation.

- (1) Wheelchairs may be operated in all public areas open for pedestrian use including, but not limited to, sidewalks, municipal parks and trails.
- (2) Unless otherwise posted, OPDMD may be operated on sidewalks, municipal parks and trails provided that the device meets the following standards:
 - (a) The device may not be operated at speeds in excess of ten (10) miles per hour;
 - (b) The device has an overall width of 41 inches or less;
 - (c) The device is electric-powered or battery-powered and not gas-powered;
 - (d) The device is not an “all-terrain vehicle,” “utility-type vehicle” or “mini truck” as defined in Section 5-210 or a “golf cart vehicle” as defined in Section 5-211.
 - (e) The device shall not be designed for or occupied by more than one person

CHAPTER 72: PARKING REGULATIONS

Section

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GENERAL PROVISIONS

§ 72.01 PARKING; GENERALLY.

No person shall park any vehicle, or approach the curb with a vehicle, except when headed in the direction of the traffic. Vehicles, when parked, shall stand parallel with and adjacent to the curb or edge of the roadway, in such manner as to have both right wheels within twelve inches (12") of the curb or edge of the roadway, and so as to leave at least four feet (4') between the vehicle so parked and any other parked vehicles, except where the Governing body designates that vehicles shall be parked at an angle so as to have the front right wheel at the curb or edge of the roadway. Where stalls are designated either on the curb or pavement, vehicles shall be parked within such stalls. Any parking restriction imposed by ordinance or resolution of the Governing Body shall become effective twenty-four (24) hours after appropriate signs have been posted or curbs have been painted and color coded at the direction of the Governing Body.

§ 72.02 PARKING; DESIGNATION.

The Governing Body may, by resolution, designate any street, or portion thereof, where vehicles shall be parked parallel with and adjacent to the curb or at an angle so as to have the right front wheel at the curb. Such designation shall be evidenced by white lines painted upon the surface of the street.

§ 72.03 PARKING; AREAS.

The Governing Body may, by resolution, entirely prohibit, restrict, or fix a time limit for the parking and stopping of vehicles in any parking facility owned and operated by the Municipality on any street, alley, public way, or portion thereof designated by the Governing Body and the parking and stopping of any vehicle in any such Municipal parking facility, street, alley, or public way for a period of time longer than that fixed by Resolution of the Governing Body shall constitute a violation of this Section. In addition, each period of time that any vehicle shall remain in any parking space beyond the period of time prescribed for such parking space shall constitute a separate and distinct offense.

§ 72.04 PARKING; LOADING ZONES.

It shall be unlawful for the driver of any commercial vehicle to stop, park or stand such vehicle at any designated loading zone for a period of time longer than is necessary for the expeditious loading or unloading of passengers, merchandise, or materials, and in no event shall the operator of a commercial vehicle into or from which merchandise or material is being loaded stop, park or stand such vehicle in any loading zone for a period longer than thirty (30) minutes, nor shall the operator of any non-commercial passenger vehicle stop, park, or stand such vehicle at any such loading zone for a period of time longer than ten (10) minutes. The Governing Body shall designate such loading zones by resolution.

§ 72.05 PARKING; COLOR LEGEND.

- A. Red. The use of red paint upon the curb on any street shall indicate that parking or stopping of vehicles within such area is entirely prohibited.
- B. Green. The use of green paint upon the curb on any street shall indicate that such space has been set aside for a loading zone.
- C. Yellow. The use of yellow paint upon the curb on any street shall indicate that that portion of the street has been restricted to fifteen (15) minute parking.
- D. White. The use of white paint upon the surface of the street, at crosswalks, shall indicate pedestrian lanes and the location of crosswalks.
- E. Blue. The use of blue paint upon the curb on any street shall indicate that such space has been set aside for handicapped parking.

Any person, partnership, corporation, or other entity, failing to observe the parking restrictions indicated by curb color legends provided for in this Section shall be deemed guilty of a misdemeanor. The Governing Body may, by resolution, cause the curb space to be painted and keep the same painted as provided for in this Article. No person, partnership, or other entity shall paint the curb of any street, or in any manner set aside, or attempt to prevent the parking of vehicles in any street, or part thereof, except at such places where the parking of such vehicles is prohibited by the provisions of this Article. The marking or designating of portions of streets or alleys where the parking of vehicles is prohibited or limited shall be directed by resolution of the Governing Body. (*Ref. 60-680 RS Neb.*)

§ 72.06 PARKING; LICENSE PLATES ON PARKED VEHICLES; OWNER OF VEHICLE RESPONSIBLE FOR PARKING.

Every vehicle parked or left standing upon any street, alley, public way, or parking facility, or other public property shall have license plates attached thereto which are issued for the vehicle to which said license plates are attached and are registered in the name of the owner of the vehicle in accordance with the laws of the State of Nebraska, or of the State wherein the license is issued. If any vehicle is found upon any street, alley, public way, or parking facility, or other public property in violation of any of the provisions of this Article regulating the stopping, standing, or parking of vehicles, and the identity of the driver cannot be determined, the owner or person in whose name such vehicle is registered shall be held prima facie responsible for such violation.

§ 72.07 PARKING; ALLEYS, OBSTRUCTION OF ENTRANCE.

No vehicle shall be parked within an alley in such a manner or under such conditions as to leave available less than ten feet (10') of the width of the roadway for the free movement of vehicular traffic, and no person shall stop, stand, or park a vehicle within any alley in such a position as to block the driveway entrance to any abutting property.

§ 72.08 PARKING; OBSTRUCTING PRIVATE DRIVEWAYS.

Except as otherwise provided herein, it shall be unlawful for any person to stop or park any vehicle so as to obstruct a private driveway in any manner which includes stopping or parking any vehicle within five feet (5') of the outer portion of a curb cut on a private driveway; Provided, however, that in the congested district a vehicle may be parked at the entrance of a driveway providing ingress and egress to a business conducted on the adjacent premises, only between the period of time after the business served by such driveway has been closed for the day and opening of business on the following business day, unless the same is prohibited by signs posted at the direction of the Governing Body.

§ 72.09 PARKING; UNLOADING COMMERCIAL VEHICLES.

It shall be unlawful for the operator of any commercial vehicle, regardless of the length thereof, to park such commercial vehicle with its end gate down and extending beyond the body of such vehicle into the street.

§ 72.10 PARKING; FIRE HYDRANTS AND STATIONS.

No vehicle shall be parked within fifteen feet (15') in either direction of any fire hydrant nor within twenty feet (20') of the driveway entrance to any fire station.

§ 72.11 PARKING; STREET INTERSECTIONS, SIDEWALKS.

Except in compliance with traffic control devices, or in compliance with the directions of a Law Enforcement Officer, or in case of accident or emergency, no vehicle shall be parked or left standing for any purpose, except momentarily to load or discharge passengers, within twenty feet (20') of any crosswalk; within twenty feet (20') of the intersection of curb lines or sidewalks, within thirty feet (30') of the approach to any traffic stop sign or signal within any street, intersection, or alley entrance; or, in such location as to obstruct any street crossing, sidewalk, crosswalk, or alley entrance; or within fifty feet (50') of the nearest rail of any railroad crossing; nor, shall parking be permitted on any sidewalk.

§ 72.12 PARKING; SCHOOLS, THEATERS.

The Governing Body may, by resolution, entirely prohibit or fix a time limitation for the parking or stopping of vehicles at the curb adjacent to any school grounds upon which are located school buildings used for school purposes during the parts of the day that such schools are in session. (*Amended by Ord. 02-02, 2/4/02*)

§ 72.13 PARKING; DISPLAY OR REPAIR; TRAILERS, BICYCLES, OR OTHER MOTORIZED VEHICLES.

It shall be unlawful for any person, partnership, corporation, or any other entity to park or cause to be parked upon any street, alley, or public place within this Municipality any vehicle displayed for sale. It shall be unlawful for any person, partnership, corporation, or any other entity to park or leave standing or cause to be parked or to be left standing upon any street, alley, public way or parking facility, or other public place within this Municipality, any vehicle for the purpose of washing, greasing, or repairing such vehicle, except repairs necessitated by an emergency, and it shall be unlawful for any person connected with a garage or repair shop or any other person to wash, grease, or repair any vehicle upon any street, alley, public way, or parking facility, or other public place within the City, except repairs which are necessary in order to move such vehicle and are necessitated by an emergency. No trailer, bicycle, or other unmotorized vehicle may be parked or left standing on any street within the Municipality. (*Ref. 60-680 RS Neb.*)

§ 72.14 PARKING; TWENTY-FOUR HOUR PARKING.

It shall be unlawful for any person, partnership, corporation, or any other entity, to park or cause to be parked, or to permit such vehicle to stand on one (1) side of a street within a block for a period longer than twenty-four (24) hours. (*Ref. 60-680 RS Neb.*)

§ 72.15 PARKING; PARKING ON STATE-OWNED PROPERTY.

It shall be unlawful for any person partnership, corporation, or any other entity to park or permit to be parked any motor vehicle on property owned or controlled by the State of Nebraska or any subdivision or institution thereof, within the corporate limits of the Municipality in violation of any rules or regulations established by such State institution or subdivision.

§ 72.16 PARKING; PETROLEUM, PROPANE, AND ANHYDROUS TRANSPORT VEHICLES.

It shall be unlawful for the operator of any petroleum, propane, or anhydrous transport vehicle or vehicles containing other explosive or inflammable materials, whether loaded or unloaded, except while expeditiously loading or unloading the contents thereof, to park or leave such vehicle standing within seventy-five feet (75') of any building.

§72.17 PARKING; PARKING TRUCKS AND TRAILERS.

It shall be unlawful for any person, partnership, corporation, or any other entity to park or cause to be parked any motor vehicle with an overall length in excess of twenty-five feet (25'), over ten (10) tons gross empty weight, with a maximum height in excess of eight feet (8'), or a trailer twenty-five feet (25') or greater, except such vehicle or trailer as it is

being used for the purpose of delivering or collecting goods, wares, merchandise, or materials, on any street, alley, or public way, for a period of time longer than is necessary for the expeditious delivery or collection of goods, wares, merchandise, or materials, and in no event for a period of time exceeding two (2) hours; Provided, however, that the provision of this section shall not apply to trucks or trailers being used in connection with building, repair, service, or moving operations.

Local law enforcement personnel are hereby authorized to remove or have removed any vehicle or trailer from a street, alley or public way to a lot, garage, or other similar facility designated by the Governing Body of the Municipality or the City Clerk when the vehicle or trailer is parked in violation of this section or any provision contained in this Chapter.

The cost of towing of any vehicle or trailer pursuant to this section, plus the applicable parking fine, shall be collected from the owner of such vehicle or trailer before any such vehicle or trailer shall be returned to the possession of the owner. (*Amended by Ord. No. 98-6, 4/6/98; 02-02, 2/4/02*)

§ 72.18 PARKING; STREET CLEANING; TEMPORARY BAN.

It shall be unlawful to park any vehicle on any public street or portion thereof in the Municipality at any time when such street is being cleaned. Signs indicating when such street or portion thereof has been scheduled for cleaning shall be posted not less than four (4) hours before the scheduled cleaning and shall be removed after the cleaning of the street has been completed.

§ 72.19 PARKING; SNOW EMERGENCY.

- A. Establishment of Snow Emergency Routes. The Governing Body of the Municipality may, by Resolution, establish Snow Emergency Routes upon any street or highway of the Municipality and/or direct the installation of appropriate signs, marks, lines, signals, or other traffic control devices indicating the existence of said Snow Emergency Routes. The designation of any street, highway, or portion thereof as a Snow Emergency Route shall in no way affect any previous designation of that street or highway as an arterial or other road designation.
- B. Declaration of Emergency; Prohibition of Parking on Snow Emergency Routes. Whenever the Mayor of the Municipality or his or her designated representative shall find, on the basis of falling snow, sleet, or freezing rain or on the basis of an official forecast by the United States Weather Bureau of snow, sleet, or freezing rain, that weather conditions will make it necessary that motor vehicle traffic be expedited and that parking on City Snow Emergency Routes be prohibited or restricted for snow plowing and other purposes, the Mayor or his or her designated representative may place into effect a parking prohibition on all Snow Emergency Routes by declaring that emergency conditions exist. In such declaration of emergency conditions, the Mayor or his or her designated representative shall state the time that said emergency shall be in effect, and from time to time so designated all parking of vehicles on Snow Emergency Routes shall be prohibited. While the prohibition is in effect, no person, partnership, corporation, or other entity, shall park or cause to be parked or allow to remain parked any vehicle on any portion of a Snow Emergency Route. Once in effect, the parking prohibition imposed under this Section shall remain in effect until terminated by declaration of the Mayor or his or her designated representative. However, nothing in

this Section shall be construed to permit parking at any time or place where it is forbidden by any other provision of law.

- C. Prohibition of Parking on Residential Streets. Whenever the Mayor or his or her designated representative shall find, on the basis of accumulated snow, that conditions make it necessary that parking on any streets be prohibited or restricted for snow plowing and other purposes, he or she may put into effect a parking prohibition on parts of or some of such streets by declaring that parking be prohibited on one (1) side of said streets, designating either the odd or even address numbered side, at his or her discretion. In such declaration, the Mayor or his or her designated representative shall state the date and time on which such parking prohibition shall take effect. The prohibition shall remain in effect until terminated by announcement of the Mayor or his or her designated representative, who may then declare that there shall be in effect a parking prohibition on the opposite side of those streets designated above, which prohibition shall remain in effect until terminated by announcement of the Mayor or his or her designated representative.
- D. Operation of Motor Vehicles on Snow Emergency Routes. Whenever an emergency has been declared pursuant to this section, no person, partnership, corporation, or other entity, operating a motor vehicle on a Snow Emergency Route shall allow such vehicle to become stalled or stuck. No person operating a motor vehicle on a Snow Emergency Route during the declaration of emergency snow conditions shall allow such vehicle to become stalled because the motor fuel supply is exhausted or because the battery has become inoperative. Whenever a motor vehicle becomes stalled for any reason, whether or not in violation of this Section, on any Snow Emergency Route on which there is a parking prohibition in effect, the person, partnership, corporation, or other entity, operating such vehicle shall take immediate action to have the vehicle towed or pushed off the roadway of such Snow Emergency Route, either into the nearest cross street which is not a Snow Emergency Route, or other appropriate location. No person, partnership, corporation, or other entity shall abandon his, her, or its vehicle in the roadway of a Snow Emergency Route, except for the purpose of securing assistance during the actual time necessary to go to a nearby telephone or to a nearby garage, gasoline station, or other place of assistance and return without delay.
- E. Emergency Declaration of the Mayor. The Mayor or his or her designated representative shall cause each declaration of a snow emergency made by him or her, pursuant to this Section, to be publicly announced by means of broadcast or telecast from broadcasting stations with a normal operating range covering the Municipality, and he or she may cause such declaration to be further announced in newspapers of general circulation when feasible. Each announcement shall describe the action taken by the Mayor or his or her designated representative, including the time it became or will become effective, and shall specify the streets or areas affected. The Mayor or his or her designated representative shall make or cause to be made a record of each time and date when any declaration is announced to the public by issuing an executive order as soon after the declaration of an emergency as is feasible.

Whenever the Mayor or his or her designated representative shall find some or all of the conditions which gave rise to a parking prohibition placed in effect pursuant to the provisions of this Section no longer exist, he or she may declare the prohibition terminated, in whole or in part, effective immediately upon announcement or at a later specified time.

The Mayor or his or her designated representative may, when he or she deems the same appropriate, institute a limited snow emergency parking ban by personally notifying, through his or her designated representative, the owner or operator of any vehicle parked on any street, alley, or public way, or by causing appropriate signs to be posted along such streets, alleys, or public ways. Such signs shall be posted no less than four (4) hours prior to the time the limited snow emergency parking ban is to become effective.

- F. Provisions Temporarily Effective to Take Precedence. Any provision of this Section which becomes effective by declaration of the Mayor or his or her designated representative upon the occurrence of a snow emergency, while temporarily in effect, take precedence over other conflicting provisions of law normally in effect, except that the same shall not take precedence over provision of law relating to traffic accidents, emergency travel of authorized emergency vehicles, or emergency traffic directions by a law enforcement official.
- G. Removal of Stalled or Parked Vehicles. Local law enforcement personnel are hereby authorized to remove or have removed a vehicle from a street, alley, or public way to another place or location on a street, alley, or public way, or to a lot, garage, or other similar facility designated by the Governing Body of the Municipality of the City Clerk when:
1. The vehicle is parked on a Snow Emergency Route on which a parking prohibition is in effect.
 2. The vehicle is stalled on a Snow Emergency Route on which there is a parking prohibition in effect and the person, partnership, corporation, or other entity who is operating said vehicle does not appear to be removing it in accordance with the provisions of this Section.
 3. The vehicle is parked on any street or other public area in violation of any parking prohibition or provision of law contained in this Section or is interfering or about to interfere with snow removal operation.

The cost of towing of any vehicle pursuant to the provisions of this Section, plus the applicable parking fine shall be collected from the owner of such vehicle before any such vehicle shall be returned to the possession of the owner.

§ 72.20 PARKING; RESERVED FOR HANDICAPPED PERSONS.

- A. Parking Spaces Designated. The Governing Body of the City may, by Resolution, designate parking spaces for the exclusive use of paraplegics whose vehicles display the distinguishing license plates to paraplegics pursuant to State law, and such other handicapped persons whose vehicles display a handicapped identification card issued by the Municipal Clerk.
- B. Specially Marked Spaces. Parking spaces for the handicapped shall be designated by a sign visible from such stall or space which is in substantial conformity with the latest edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices and may be further identified by blue paint on the curb or edge of the paved portion of the street.
- C. Off-Street Parking Spaces Designated. Any person, partnership, corporation, or other entity in lawful possession of an off-street parking facility may designate stalls or spaces

of the exclusive use of paraplegics whose vehicles display the distinguishing license plates issued to such individuals pursuant to State law, and such other handicapped persons, as certified by the City of Waverly, whose vehicles display the identification as determined by the Municipal Clerk. Such designation shall be made by posting immediately adjacent to and visible from each stall or space a sign which is in substantial conformity with the latest edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices.

- D. Off-Street Tow-In. The owner or person in lawful possession of an off-street parking facility, after notifying the Police or Sheriff's Department, as the case may be, and the Municipality when providing on-street parking or owning, operating, or providing an off-street parking facility, may cause the removal, from a stall or space designated exclusively for paraplegics or other handicapped persons of any vehicle not displaying proper identification or one of the distinguishing license plates specified in this Section if there is posted immediately adjacent to and visible from such designated handicapped parking stall or space a sign which clearly and conspicuously states that area so designated as a tow-in zone. Anyone parking in an on-street parking space which has been designated for handicapped persons, or in any so designated parking space in any off-street parking facility owned or operated by the Municipality without properly displaying the proper identification, shall be guilty of a traffic infraction as defined in Section Neb. Rev. Stat. § 18-1741.01, and shall be subject to the penalties and procedure set forth in Neb. Rev. Stat. §§ 18-1741.01 et seq. (*Ref. 18-1736 et seq. RS Neb.*)
- E. Violation and Penalty. The operator or owner of any vehicle or person in whose name such vehicle is registered, which is parked in a handicapped parking space without displaying a duly authorized permit from the State of Nebraska Department of Motor Vehicles or paraplegic license plates shall be deemed guilty of a Class II Misdemeanor as defined by 131.22 of this Code and be subject to a parking fine as provided for in this Article and/or may be towed at the discretion of any law enforcement personnel. Any non-permit holder person using the vehicle or card of a handicapped person and who shall park any motor vehicle in a space reserved for handicapped parking when he or she is not, in fact, providing transportation for such handicapped person shall be deemed guilty of a Class II Misdemeanor as defined by this Code.
- F. Applicable Law. The issuance of a handicapped permit shall in no manner waive or impair the application of any ordinance of the City of Waverly, including parking regulations established by the Governing Body of the Municipality. (*Amended by Ord. 07-05, 5/7/07; Ord. 17-05*)

§ 72.21 PARKING; BUREAU OF VIOLATIONS.

There is hereby created the Bureau of Violations within the powers and duties of the office of the Municipal Clerk. A copy of each citation issued for non-moving traffic violations shall be deposited with the Municipal clerk, whose duty it shall be to collect all fines and to maintain appropriate and accurate records of all such fines paid to him or her. Fines shall be payable at the office of the Clerk. Such fines shall be in accordance with the following schedule:

Violation of:	Fine, if paid within five days of issuance	Fine if not paid within five days of issuance but within ten days
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		of issuance
§72.14	\$25.00	\$35.00
§72.16	\$25.00	\$50.00
§72.17	\$25.00	\$35.00
§72.19	\$15.00	\$30.00
§72.20	\$10.00	\$20.00
Any § contained within Chap. 72, not listed above	\$ 5.00	\$10.00

Should any such fine not be paid within ten (10) days of the date of issuance, the Municipal Clerk shall ask the Municipal Attorney to file a complaint in the appropriate court. Persons who fail to pay the fine for any such violation within ten (10) days of the date of issuance or after judgment is entered against the violator shall be fined in accordance with the following schedule:

Violation of:	FINE: More than ten days after issuance	FINE: When paid pursuant to waiver and plea of guilty
§72.14	\$35.00	\$35.00
§72.16	Not less than \$50.00 nor more than \$100.00	\$75.00
§72.17	\$35.00	\$30.00
§72.19	\$30.00	\$30.00
§72.20	\$20.00	\$20.00
Any § contained within Chap. 72, not listed above	Not less than \$10.00 nor more than \$100.00	

plus applicable court costs. All money collected by the Municipal Clerk under this Section shall be transferred to the school district in which the Municipality lies. (*Ref. 18-1729 RS Neb., Constitution of the State of Nebraska Article VII, 5.*) (*Amended by Ord. 07-05, 5/7/07*)

§ 72.22 PARKING; PROHIBITED IN FRONT OF MAILBOXES.

It shall be unlawful for any person to park any vehicle in front of, or obstruct access to, any receptacle used for the deposit of mail by the United States Postal Service except on days when there is no mail delivery. (*Ord. No. 89-5, 4/17/89*)

TITLE IX: GENERAL REGULATIONS

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- 92. HEALTH AND SAFETY
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CHAPTER 90: LEISURE AND RECREATION

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PARKS

§ 90.01 OPERATION AND FUNDING.

The Municipality owns and operates the Municipal Parks and other Recreational Areas. The Governing Body, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Park may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Park Fund and shall remain in the custody of the Municipal Treasurer. The Park Committee shall have the authority to adopt rules and regulations for the management, use and operation of all parks and recreational facilities belonging to the Municipality. The Governing Body retains the authority to adopt all rules and regulations for the management, use and operation of all parks and recreational facilities belonging to the Municipality. (*Ref. 17-948 through 17-952 RS Neb.*) (*Amended by Ord. No. 92-4, 5/4/92*)

§ 90.02 INJURY TO PROPERTY.

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

§ 90.03 HOURS.

Municipal Parks, except Sharp Park, shall be closed to all vehicular traffic, except law enforcement vehicles, from the hours of ten o'clock (10:00) p.m. to six o'clock (6:00) a.m. between Labor Day and Memorial Day, and from eleven o'clock (11:00) p.m. to six o'clock (6:00) a.m. between Memorial Day to Labor Day. Sharp Park shall be closed at sunset. (*Amended by Ord. No. 08-17, 10/6/08; 12-23, 10/16/12*)

§ 90.04 ALCOHOLIC BEVERAGES PROHIBITED.

It shall be unlawful to possess or consume alcoholic beverages, including beer, in the Municipal Parks or on other municipally owned property.

§ 90.05 VEHICLES REGULATED.

It shall be unlawful to operate a motorized vehicle of any kind or description or a bicycle in the Municipal parks, except upon established, improved roadways or other areas of the parks designated for such use.

§ 90.06 SPEED LIMITS.

Speed limits for motor vehicles within park boundaries are hereby established at fifteen (15) miles per hour.

SWIMMING POOLS

§ 90.20 OPERATION AND FUNDING.

The Municipality owns and manages the Municipal Swimming Pool. The Governing Body, for the purpose of defraying the cost of the management, maintenance, and improvements of the Swimming Pool may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the Municipality that is subject to taxation. The revenue from the said tax shall be known as the Swimming Pool Fund and shall include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the Swimming Pool. The Swimming Pool Fund shall at all times be in the custody of the Municipal Treasurer. (*Ref. 17-948, 17-951, 17-952 RS Neb.*) (*Amended by Ord. No. 92-5, 5/4/92*)

§ 90.21 ADMISSION CHARGE.

The Park Committee shall annually review and recommend to the Governing Body a reasonable admission charge at the Municipal Swimming Pool for the use by any person of the Municipal Swimming Pool. The Governing Body retains the authority to adopt a reasonable admission charge at the Municipal Swimming Pool for the use by any person of the Pool. The said charges shall be on file at the office of the Municipal Clerk and shall also be posted in a conspicuous place at the Municipal Swimming Pool for public inspection. Such charges may be structured for classes of persons in a reasonable manner; Provided, that nothing herein shall be construed to permit or allow discrimination on the basis of race, creed, color, or national origin in the classification of persons for admission charges. (*Ref. 17-949 RS Neb.*) (*Amended by Ord. No. 92-5, 5/4/92*)

§ 90.22 RULES AND REGULATIONS.

The Park Committee shall annually review and recommend to the Governing Body appropriate rules and regulations for the management, use and operation of the Municipal Swimming Pool. The Governing Body retains the power to adopt rules and regulations for the management, use, and operation of the Municipal Swimming Pool. (*Ref. 17-949 RS Neb.*) (*Amended by Ord. No. 92-5, 5/4/92*)

MUNICIPAL CEMETERY

§ 90.70 NAME.

The name of the City cemetery shall be Rose Hill Cemetery.

§ 90.71 BURIAL PROHIBITED IN OTHER PLACES.

Burial shall be permitted only in the City cemetery, and specifically shall not be permitted in any church yard or any other place within the City.

§ 90.72 CEMETERY TAX; ANNUAL LEVY.

The Mayor and Council, for the purpose of defraying the cost of the care, management, improvement, beautification, and welfare of the City cemetery, may each year levy a tax not exceeding five and two-tenths cents (\$0.052) on each one hundred dollars (\$100.00) upon the actual value of all the taxable property in the City subject to taxation for general purposes, except intangible property, that is subject to taxation according to the laws of the State of Nebraska. Said tax shall be collected and paid to the City Treasurer as taxes for general municipal purposes are collected and paid to the City.

§ 90.73 CEMETERY FUND GENERALLY.

When collected and paid over to the City Clerk/Treasurer, all proceeds received from the Rose Hill Cemetery Association and the proceeds of the cemetery tax shall constitute and be known as the City cemetery general fund and shall be used for the general care, management, improvement, beautification, and welfare of the City cemetery and no other purpose. Such cemetery fund, and all moneys inuring thereto, shall remain in the custody of the City Clerk/Treasurer and shall be disbursed only in accordance with the provisions of this Article and applicable state law.

§ 90.74 CEMETERY RESERVE FUND CREATED.

There is hereby created a fund to be known as the cemetery reserve fund, the principal of which shall be invested by the City Clerk/Treasurer in the manner provided by law. The current income derived from the investment of these funds by the City Clerk/Treasurer will be available to the City for current repair and operational expense of the cemetery. The principal of the cemetery reserve fund shall be held intact as an invested fund and will not be available to the City except for development and improvement of new sections of the cemetery including, but not limited to, ornamentation, capital expenditures, and site development, or for new buildings or paving in any unpaved areas in the cemetery. From and after the effective date of this ordinance, one-half (½) of the proceeds received from the sale of lots shall be placed in this fund. The other half of the proceeds received from the sale of lots shall be available to the City for current repair and operational expense of the cemetery. This fund is further authorized to receive money from individual bequests or endowments when the restrictions on the use of said bequests or endowments do not conflict with the purpose of this reserve fund.

§ 90.75 PERPETUAL CARE.

Perpetual care on all lots in the City cemetery shall be furnished in consideration of the purchase price of any lot purchased after August 1, 1992. The perpetual care fund created prior to such date shall be maintained as a permanent fund, invested by the City Council as authorized by law, and the income shall be used in the care, ornamentation, and maintenance of the lots and burial spaces so endowed. All other monies accruing for cemetery purposes shall be credited, allocated, kept, and disbursed by the City Treasurer through the cemetery general fund.

§ 90.76 APPROVAL OF SERVICE CHARGES.

On or before the first (1st) day of May of each year it shall be the duty of the Cemetery Superintendent to submit to the City Council, a proposed schedule of charges which shall state the amount to be charged by the Superintendent for labor or services offered in connection with the operation and maintenance of the cemetery. Thereafter and not later than the first (1st) Monday in May of each year the Mayor and Council shall approve the proposed schedule of charges, if it deems the same reasonable, or if not, it shall, itself, establish a schedule of charges and the schedule of charges as approved by the Mayor and Council shall be in full force and effect until modified or superseded as herein provided. The term "services" shall include any and all charges such as grave digging, disinterring or reintering, setting of marker foundations, planting of shrubs, and all similar activities. It shall be the duty of the Superintendent to charge and collect for services as set out in the approved schedule of charges.

§ 90.77 PRICES FOR GRAVE SPACES.

The purchase price of the lots and burial spaces in the City cemetery shall be publicly exhibited in the City offices on a map or plat therein. The City Clerk's annual report to the Mayor and Council, shall include therein, among other things, a list of the lots or burial spaces sold during the preceding year, or since the date of his/her last report, legally describing them, together with the name of the purchaser and the price received for each lot or space. Future additions to said cemetery shall likewise be platted.

§ 90.78 LOTS; CONVEYANCE; RECORDING.

The Mayor and Council may convey for predetermined sums set by the Council annually cemetery lots by certificates signed by the Mayor, and countersigned by the Clerk, under the seal of the City, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number as laid down on such map or plat, for the purpose of interment; and such certificate shall vest in the proprietor, his or her heirs and assigns, a right and fee simple to such lot for the sole purpose of interment under the regulation of the City Council.

§ 90.79 TRANSFER OF CERTIFICATES.

Transfers of certificates shall be made by surrender of the original certificates to the City Clerk who shall cancel the same, note such cancellation on the cemetery lot records

and shall issue new certificates in lieu thereof upon receipt of the same fee for recording expense and service as in the case of the issuing original certificates.

§90.80 DUPLICATE CERTIFICATES.

Duplicate certificates may be issued by the City Clerk under authority of the City Council upon proof of loss or destruction of the original, upon payment of the specified fees.

§ 90.81 PERMITS.

Burial shall be permitted in the City cemetery only on presentation of the statutory burial or removal permit. Reinterments and disinterments shall require similar permits.

§ 90.82 FISCAL RESTRICTIONS.

No claim shall be allowed against cemetery funds, nor shall any warrant against said funds be issued or paid, for any service rendered in connection with the sale of or the collection of the proceeds of the sale of any lot, part of a lot or burial space in said cemetery; and it shall be unlawful for any person to accept or contract to accept any commission or fee arising out of such transaction.

§ 90.83 PROTECTION; RULES AND REGULATIONS.

The Mayor and Council may pass rules and ordinances imposing penalties and fines not exceeding one hundred dollars (\$100.00), regulating, protecting, and governing the cemetery, the owners of lots therein, visitors thereof, and trespasses therein.

§ 90.84 LOTS; OWNERSHIP AND USE; REGULATIONS.

The Mayor and Council may limit the number of cemetery lots which shall be owned by the same person at the same time. They may prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots. They may prohibit any diversion of the use of such lots and any improper adornment thereof; but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots. Rules as provided for herein shall be adopted by resolution of the Council.

§ 90.85 APPOINTMENT.

The Mayor, subject to the consent of the Council, is hereby authorized to appoint a superintendent for the cemetery.

§ 90.86 CEMETERY SUPERINTENDENT; TERM.

The Cemetery Superintendent shall serve until he/she is removed by the Mayor.

§ 90.87 CEMETERY SUPERINTENDENT; DUTIES GENERALLY.

The duties of the Cemetery Superintendent shall be the general supervision, maintenance, and care of the cemetery.

§ 90.88 BURIAL PERMIT.

All persons desiring to bury a deceased person shall first be required to file a completed death certificate the Registrar of the County before any body may be buried in the Cemetery. If it is impossible to complete the certificate of death within the legal period of time prescribed by State law, the funeral director shall notify the Registrar and obtain his written approval before the deceased person may be buried in the cemetery. The burial permit so issued by the Registrar shall then be filed with the City Clerk. It shall be unlawful for the Cemetery Superintendent, or other person, to allow the interment of a body without first receiving such permit. The burial permit shall then be countersigned and dated by the City Clerk. The interment of any body shall be performed under the direct supervision of a licensed funeral director. Upon completion of the requirements herein, the City Clerk shall then issue a Municipal Burial Permit which shall entitle the applicant to bury a deceased person in the cemetery.

In the event that the removal of the body of any deceased person is requested, the City Clerk shall issue no permit until the applicant shall have first complied with the laws of the State of Nebraska with respect to such disinterment. (*Ref. 71-605 RS Neb.*)

§ 90.89 LOT CURBING.

It shall be hereafter unlawful for the owner of any lot to construct, maintain, or suffer to remain any curbing around any lot or burial place therein of a height greater than one inch (1").

§ 90.90 SHRUBS AND TREES.

It shall be unlawful, without the written permission of the City Council, to plant, maintain, or suffer to remain on any cemetery lot a shrub or tree attaining a height of more than four feet (4').

§ 90.91 MONUMENTS.

Persons desiring to erect monuments, tombstones, or other structures shall first procure a permit from the City Clerk.

§ 90.92 GRAVE DEPTH.

Graves shall not be less than five feet (5') deep; provided, nothing herein shall be construed to prohibit the use of mausoleums or other recognized methods of interring deceased persons if such a burial procedure is approved by the City Council. (*Amended by Ordinance No. 92-16, 10/19/92*)

§ 90.93 DESTRUCTION OF PROPERTY.

Any person who shall willfully destroy, mutilate, deface, injure, or remove any tomb, monument, or gravestone placed in the cemetery, or any fence, railing, or other work for the protection or ornamentation of the cemetery, or who shall willfully destroy, cut, break, or injure any tree, shrub, or plant shall be deemed to be guilty of a misdemeanor. (*Ref. 28-519 RS Neb.*)

§ 90.94 VIOLATION; PENALTY

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Section shall be deemed guilty of a Class II Misdemeanor as defined by § 131.22 of this Code. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply. (*Amended by Ord. 02-05, 2/4/02, 07-05, 5/7/07*)

CHAPTER 91: FIRE REGULATIONS

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FIRE PREVENTION

§ 91.01 FIRE PREVENTION CODE.

The rules and regulations promulgated by the office of the State Fire Marshal of the State of Nebraska relating to fire prevention are incorporated by reference into this Code and made a part of this Article as though spread at large herein together with all subsequent amendments thereto. (*Ref. 18-132, 19-902, 19-922, 81-502 RS Neb.*) (*Amended by Ord. 02-04, 2/4/02*)

§ 91.02 FIRE PROHIBITED.

It shall be unlawful for any person to set out a fire at any location within the Municipality, except as expressly permitted by § 91.06.

§ 91.03 SKY LANTERNS PROHIBITED.

(1) Flying lantern-type devices are prohibited from sale, possession, and use in the City's jurisdiction.

(2) For purposes of this section, flying lantern-type devices means devices that require a flame which produces heated air trapped in a balloon-type covering allowing the device to float in the air. Flying lantern-type devices shall not include hot-air balloons used for transporting persons. (*Neb. Rev. Stat. § 28-1255*)

§ 91.04 DEFINITIONS.

For the purpose of this Article, certain words, phrases, and terms shall be construed as specified below, unless the context otherwise requires:

- A. Fire Pits shall mean constructed of steel, concrete or stone, and constructed above ground with heavy steel screen covering.
- B. Portable Fire Pit shall mean a structure that is manufactured and intended to confine and control outdoor wood fires. Designed as a portable or moveable fire pit.
- C. Chimineas shall mean an outdoor patio fireplace, usually made from clay, intended to confine and control outdoor fires with controlled burning. (*Est. by Ord. 10-08, 7/19/10*)
- D. Outdoor Fireplace shall mean any fire pit, portable fire pit, or chimineas. Outdoor fireplace does not include barbeque grills that are primarily for outdoor cooking.

§ 91.05 BUILDING PERMIT REQUIRED.

- A. A building permit is required for a fire pit, but not for a chiminea or portable fire pit. Barrels, half barrels, drums, or similarly constructed devices are not fire pits, and are not allowed. (*Est. by Ord. 10-08, 7/19/10*)
- B. The requirements for the issuance of a building permit by the City to have a fire pit are:
 - 1. A minimum of a ten foot clearance between the fire pit and combustible materials;
 - 2. Fire pit shall be constructed of concrete or an approved non-combustible material;
 - 3. Fuel fire area and openings shall be completely enclosed by a spark guard (wire mesh no greater than 1/2" square openings);
 - 4. Size of the fuel area shall not be larger than 3' in diameter and a height of no more than 3';

§ 91.06 USE OF AN OUTDOOR FIREPLACE.

- A. The requirements for use of an outdoor fireplace are as follows:
 - 1. Outdoor fireplaces shall be placed on a stable non-combustible surface such as a concrete pad and only at grade level;
 - 2. Permitted materials to be burned include untreated non-milled lumber or approved fireplace starter logs; Prohibited materials include leaves, grass, yard waste, construction materials, trash, plastic, or other materials that create hazardous waste or toxic unwanted fumes;
 - 3. Limit the amount of material being burned to ensure the flames are confined inside the fuel area of the fireplace;
 - 4. Keep a water supply, garden hose or fire extinguisher readily available in case of emergency;

5. Use of an outdoor fireplace is prohibited when a red flag warning has been issued for Lancaster County by the National Weather Service, or when a burn ban has been declared by the Waverly Fire Chief;
6. All outdoor fireplaces must be under supervision by a person over the age of 18;
7. Fires must be completely extinguished and embers cooled prior to 12:00 midnight;
8. Smoke shall not create a nuisance for neighbors;

§ 91.07 VIOLATION; PENALTY.

Any person who shall violate any of the provisions of Sections 91.01 through 91.06 shall be guilty of a Class II Misdemeanor as defined by § 131.22 of this Code. (*Est. by Ord. 10-08, 7/19/10. Amended by Ord. 24-11, 1/28/2025.*)

FIRES

§ 91.20 PRESERVATION OF PROPERTY.

The Fire Chief, or any officer in charge of the Waverly Fire and Rescue Department, shall have the authority and power to cause the removal of property whenever it shall become necessary for the preservation of more valuable property, the protection of human life, or to prevent the spreading of fire to adjoining property. The Fire Chief may direct the Municipal Firemen to remove any building, structure, or fence for the purpose of checking the progress of any fire. The Fire Chief shall have the authority to blow up, or cause to be blown up, with explosives any building or structure during the progress of a fire for the purpose of checking the progress of the same.

§ 91.21 ABATEMENT OF NUISANCE.

Whenever a nuisance exists as defined in this Code, the Municipality may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law.

Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as part of the judgment in the case. (*Ref. 18-1720, 18-1722 RS Neb.*)

§ 91.22 EQUIPMENT.

It shall be unlawful for any person except the Fire Chief and the members of the Waverly Fire and Rescue Department to molest, destroy, handle or in any other way to interfere with the use and storage of any of the fire trucks and other apparatus belonging to the Municipality.

§ 91.23 INTERFERENCE.

It shall be unlawful for any person or persons to hinder or obstruct the Municipal Fire Chief or the members of the Waverly Fire and Rescue Department in the performance of their duty. (*Ref. 28-908 RS Neb.*)

§ 91.24 DRIVING OVER HOSE.

It shall be unlawful for any person, without the consent of the Fire Chief or Assistant Fire Chief, to drive any vehicle over unprotected hose of the Fire Department. *(Ref. 60-6,184 RS Neb.)*

§ 91.25 TRAFFIC.

It shall be unlawful for the driver of any vehicle other than one on official business to follow any fire/rescue apparatus traveling in response to an alarm closer than five hundred feet or drive into or park such vehicle within the block where such apparatus has stopped in answer to an alarm. *(Ref. 60-6,183 RS Neb.) (Amended by Ord.02-04, 2/4/02)*

§ 91.26 FALSE ALARM.

It shall be unlawful for any person to intentionally and without good and reasonable cause, raise any false alarm of fire.

POISONOUS AND FLAMMABLE GASES; EXPLOSIVES

§ 91.30 GENERAL REGULATIONS.

No poisonous or flammable substances shall be stored or transported within the zoning jurisdiction of the Municipality except in accordance with the provisions of this Article. In every case, such substances shall be handled in accordance with the statutory requirements of the United States and the State of Nebraska. The Municipal Clerk shall at all times, maintain within in his or her office, the most current version of all standard codes adopted by reference within this Article; Provided, however, that failure of the Clerk to do so shall not relieve any person of obligations imposed by this Article.

§ 91.31 DEFINITIONS.

Unless the context is shown to clearly intend otherwise, for the purposes of this Article, the definitions set forth in this Section shall prevail. Where technical terminology is utilized, but not defined within this Section, such terminology shall be construed in accordance with the most current version of the applicable publications of the American National Standards Institute (ANSI), and the National Fire Protection Association (NFPA), or their successor bodies.

- A. **COMBUSTIBLE LIQUID** – The term "combustible liquid" shall mean and include all substances which are defined herein as flammable liquids.
- B. **FLAMMABLE LIQUID** – The term "flammable liquid" shall mean and include all liquid having a flash point at or below 37.8° C. (100° F.).
- C. **FLAMMABLE SUBSTANCE** – The term "flammable substance" shall mean and include anhydrous ammonia and all substances which are defined herein as flammable liquids, combustible liquids, and/or liquefied petroleum gases.

- D. LIQUID – the term "liquid" shall be defined in accordance with the National Fire Protection Association Publications Number Thirty (30) (1973), as the same may be amended from time to time or at any time.
- E. LIQUEFIED PETROLEUM GAS – The term "liquefied petroleum gas" shall mean and include any material composed predominantly of the following hydrocarbons, either by themselves or as mixtures:
- PROPANE
PROPYLENE
BUTANE (normal butane or isobutane), and
BUTYLENE (including isomers).
- F. POISONOUS – The term "poisonous" when applied within this Article to any substance shall mean and include substances which are capable in reasonably anticipated strengths of causing death or permanent injury to human, animal, or plant life.
- G. TRAVELED ROUTE – The term "traveled route" shall mean and include the outer boundaries of any dedicated highway, street, alley, sidewalk, or other public right-of-way.
- H. ABOVE GROUND STORAGE FACILITY – The term "above ground storage facility" shall mean and include any facility, at least 90% of which lies above the earth's surface, which is permanently secured to the surface, and which is intended to be used as a permanently situated facility. *(Amended by Ord. No. 87-16, 1/4/88)*

§ 91.32 FLAMMABLE AND COMBUSTIBLE LIQUIDS.

Flammable and combustible liquids located within the Municipality shall be handled in accordance with the National Fire Protection Association Publication Number Thirty (30) (1973), as the same may be amended from time to time and at any time. The Municipality may, at any time, however, adopt supplemental standards which are more restrictive than the above referenced standard, either by ordinance or by resolution.

§ 91.33 LIQUEFIED PETROLEUM GAS.

Liquefied petroleum gas located within the Municipality shall be handled in accordance with the National Fire Protection Association Publication Number Fifty-Eight (58) (1974), as the same may be amended from time to time and at any time. The Municipality may, at any time, however, adopt supplemental standards which are more restrictive than the above referenced standard, either by ordinance or by resolution.

§ 91.34 ANHYDROUS AMMONIA.

Anhydrous ammonia located within the Municipality shall be handled in accordance with the American National Standards Institute Publication Number K61.1 (1972), as the same may be amended from time to time and at any time. The Municipality

may, at any time, however, adopt supplemental standards which are more restrictive than the above referenced standard, by ordinance or by resolution.

§ 91.35 GASES.

No person shall construct, enlarge, add to, or replace any facility constructed, used or intended to be used for the storage of poisonous gases within the zoning jurisdiction of the Municipality without first obtaining a permit issued by the Municipality. As a prerequisite to the issuance of such permit, the applicant must show within the application for such permit, the name of the substance to be stored, the place of storage, and the volume of the substance to be stored; the applicant shall further show that all interested State and Federal Departments and Agencies have been contacted and that the storage facility or the plans for such facility have been reviewed by such authorities. Permit requirements for the initial construction or location of storage facilities shall not apply to those facilities in existence on the effective date of this Article; Provided, however, that a present use which is discontinued for sixty (60) days shall not be revived without a permit. The fee for issuance of such permit shall be ten dollars (\$10.00) and shall be paid to the Municipal Clerk at the time of initial application. Any fee assessed to the Municipality, by the Inspecting Department, or Agency shall be paid by the applicant to the Municipality in addition to the initial application fee. Such payment must be made prior to the issuance of the permit contemplated by this Section.

§ 91.36 PERMIT REQUIRED.

No person shall construct, enlarge, add to, or replace any facility constructed, used, or intended to be used for the storage of flammable or combustible liquids, liquefied petroleum gas, or anhydrous ammonia within the zoning jurisdiction of the Municipality without first obtaining a permit issued by the Municipality. As a prerequisite to the issuance of such permit, the applicant must show within the application for such permit, the name of the substance to be stored, the place of storage, and the volume of the substance to be stored; the applicant shall further show that the Nebraska State Fire Marshal's Office has been contacted and that the storage facility or the plans for such facility have been approved by the Nebraska Fire Marshal's Office. Permit requirements for the initial construction or location of storage facilities shall not apply to those facilities in existence on the effective date of this Article; Provided, however, that no present use which is discontinued for sixty (60) days shall not be revived without a permit. The fee for issuance of such permit shall be ten dollars (\$10.00) and shall be paid to the Municipal Clerk at the time of initial application. Any fee assessed to the Municipality, by the Inspecting Department, or Agency shall be paid by the applicant to the Municipality in addition to the initial application fee. Such payment must be made prior to the issuance of the permit contemplated by this Section.

§ 91.37 RAILROAD TANK CARS UNLOADING.

It shall be unlawful for the operator of any train comprised of railroad tank cars containing any poisonous or flammable substance, including anhydrous ammonia, liquid fertilizer, liquefied petroleum gas, or flammable liquids, to stop or park such tank car or cars within the City of Waverly, Nebraska, and its zoning jurisdiction except to unload such

substances, and then only for a time not to exceed a reasonable time necessary to unload. (Ref. 17-123 RS Neb.)

§ 91.38 ABOVE GROUND STORAGE OF FLAMMABLE LIQUIDS PROHIBITED.

It shall be unlawful to store flammable liquids in above ground storage facilities within the zoning jurisdiction of the Municipality. This prohibition shall not apply to those storage facilities in existence on the effective date of this Article; Provided, however, that the use of such above ground flammable liquid storage facility shall be discontinued within five (5) years of the effective date of this Article. No present use of the above ground flammable liquid storage facility which is discontinued for a period of sixty (60) days subsequent to the effective date of this Article shall be resumed. Above ground flammable liquid storage facilities existing on the effective date of this Article may be repaired in place only, so long as their use is not discontinued for a period longer than the time allowed in this paragraph; but, no above ground flammable liquid storage tank which must be removed from its place of permanent installation in order to be repaired, may be restored to service.

§ 91.39 INSPECTION OF FUEL STORAGE FACILITIES REQUIRED.

Within thirty (30) days of the effective date of this Article all persons maintaining storage facilities for flammable liquids within the zoning jurisdiction of the Municipality shall report the same to the Municipal Clerk. Within ninety (90) days of the effective date of this Article, all facilities for the storage of flammable liquids located within the zoning jurisdiction of the Municipality shall be inspected, at the request of the Municipality, by the Nebraska State Fire Marshal's Office and the findings of the State Fire Marshal's Office shall be reported to Municipal Building Inspector. The Municipal Building Inspector shall maintain a list of all such facilities and shall request the Nebraska State Fire Marshal's Office to conduct annual inspections of all such facilities on or before April 1 of each year, and the Building Inspector shall maintain accurate records of each such inspection. The Municipal Building Inspector may at any time request the State Fire Marshal's Office to conduct supplemental inspections of any individual storage facility whenever he/she has reason to believe that such storage facility may pose a serious safety hazard to the Municipality. (Amended by Ord. 02-04, 2/4/02)

§ 91.40 ABATEMENT ORDERS; TERMINATION OF UNSAFE STORAGE FACILITIES.

The Nebraska State Fire Marshal's Office shall recommend to the Building Inspector that the use of any fuel storage facilities deemed to pose a serious safety hazard to the Municipality be immediately discontinued. Once such a recommendation has been made by the State Fire Marshal's Office such facility shall be deemed a public nuisance and it shall be the duty of the Building Inspector to issue an abatement order requiring the owner of such facility to immediately terminate its use and, at the owner's cost, to dismantle or remove the facility under the direction of the State Fire Marshal's Office. However, if in the judgment of the State Fire Marshal's Office, the facility can be restored to a safe condition through in place repairs (without removing the storage tank from its place of permanent installation), then the Building Inspector shall issue an abatement order requiring the owner of said facility, at the owner's cost, to restore the fuel storage facility to a safe

condition within a reasonable period of time. Such Abatement Orders may be issued in lieu of prosecution for violation and failure to comply with any such Abatement Order shall be deemed a violation of this Article. *(Amended by Ord. 02-04, 2/4/02, 02-16, 6/3/02)*

§ 91.41 STORAGE OF POISONOUS AND FLAMMABLE SUBSTANCES IN CLOSE PROXIMITY TO STRUCTURES, TRAVELED ROUTES, AND RAILROADS PROHIBITED.

- A. No person shall store poisonous or flammable substances within the zoning jurisdiction of the Municipality within seventy-five feet (75') of any structure, traveled route, or the centerline of any railroad track; Provided, however, that the same may be stored underground, not less than twenty-five feet (25'), from any structure, traveled route, or the centerline of any railroad track, so long as such installation is approved by the Nebraska State Fire Marshal's Office, and provided that such storage is otherwise permissible under the provisions of this Code.

- B. The prohibition imposed by paragraph A of this Section shall not apply to those storage facilities which fail to meet the standards set forth in paragraph A which are in existence on the effective date of this Article; Provided, however, that the use of such facilities shall be discontinued within five (5) years of the effective date of this Article. No present use of facilities prohibited by paragraph A of this Section which is discontinued for a period of sixty (60) days subsequent to the effective date of this Article shall be resumed. Above ground flammable substance storage facilities not in compliance with the provisions of paragraph A of this Section, and existing on the effective date of this Article, may be repaired in place only, so long as their use is not discontinued for a period longer than the time allowed in this paragraph; but, no such above ground flammable substance storage tank which must be removed from its place of permanent installation in order to be repaired, may be restored to service.

§ 91.42 AUTHORITY TO ENTER PRIVATE PROPERTY FOR INSPECTION OF STORAGE FACILITIES.

The Municipal Building Inspector and his or her designated representatives, including personnel of the Nebraska State Fire Marshal's Office, may enter private property at any reasonable time for the purpose of conducting inspections mandated by this Article. *(Amended by Ord. 02-04, 2/4/02)*

§ 91.43 INJUNCTION AS ADDITIONAL REMEDY.

The Mayor or local law enforcement officer shall take such action as is necessary and legal to enforce the provisions of this Article. As an additional remedy, the operation or maintenance of any facility in violation of any provision hereof which endangers the comfort, repose, health, safety, or peace of persons within the zoning jurisdiction of the Municipality shall be deemed, and is declared to be, a public nuisance, and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. No provisions of this Article shall be construed to impair any common law or statutory cause of action or legal remedy arising therefrom, nor shall the same preclude any person from maintaining any action for injury or damage arising from any violation of this Article or from any other law.

§ 91.44 VIOLATIONS AND PENALTIES.

A. NOTIFICATION OF VIOLATION. The Municipal Building Inspector shall notify the owner or authorized agent of the owner, of the storage facility which is found to be in violation of this Article, of such violation. The Building Inspector shall set a reasonable time for the owner to have the violation removed or corrected.

B. FINES. The owner or agent authorized by the owner to obtain facilities regulated by this article who knowingly permits a violation to remain uncorrected after the expiration of time set by the Building Inspector shall, upon conviction thereof by the court, be required to pay a fine of one hundred dollars (\$100.00) for each violation and shall stand committed to jail until such fine and costs of prosecution are paid. Each day of failure to comply with the requirements of this Section, after the specified time provided herein, shall constitute a separate violation.

Any person upon whom a duty is placed by the provisions of this Article who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined the sum of one hundred dollars (\$100.00) and shall stand committed to jail until such fine and costs of prosecution are paid. Each day of failure to comply with the requirements of this Section, after the specified time provided herein, shall constitute a separate violation.

§ 91.45 EXPLOSIVES; STORAGE REGISTRATION.

Any person, firm, or corporation storing or keeping for any period of time dynamite, gunpowder, nitroglycerine, or other high explosives within the Municipality shall register such information with the Municipal Clerk within ten (10) days after such explosives are brought into the Municipality. The Clerk shall provide such information to the Municipal Fire Chief and to the Governing Body. Transfer of explosives to another individual within the Municipality shall require the individual receiving the explosives to register the transfer and the new location of the explosives with the Municipal Clerk. Also, moving explosives to a new location by the owner shall require registration of that fact to the Municipal Clerk.

All high explosives, including dynamite, gunpowder and nitroglycerine shall be stored in a proper receptacle which shall be closed at all times, except when actually in use. Such cement, metal, or stone receptacle shall not be located in any room where there is a flame or flammable materials. The area surrounding storage facilities shall be kept clear of rubbish, brush, dry grass, or trees for not less than twenty-five feet (25') in all directions. Any other combustible materials shall be kept a distance of not less than fifty feet (50') from outdoor storage facilities.

§ 91.46 EXPLOSIVES; TRANSPORTATION.

Any person wishing to transport high explosives in the Municipality shall first acquire a permit from the Chief Law Enforcement Officer and shall take such precautions and use such route as the Governing Body may prescribe. Nothing herein shall be

construed to apply to Law Enforcement Officers, or any of the Armed Services of the United States. No vehicle transporting explosives shall make an unscheduled stop for longer than five (5) minutes within the Municipality and in the event of mechanical failure, immediate notice of such breakdown shall be given to the Chief Law Enforcement Officer who shall then proscribe such precautions as may be necessary to protect the residents of the Municipality and a reasonable time for removal of the vehicle from the Municipality.

FIREWORKS

§ 91.70 DEFINITIONS AND GENERAL AUTHORITY.

For the purpose of this Article, the City's requirements for fireworks are the same as those contained in Title 157 NEB. ADMIN. CODE. To the extent anything herein conflicts with such Title 157, the requirements of Title 157 shall control. Certain words, phrases, and terms shall be construed as specified below, unless the context otherwise requires:

- A. Fireworks means 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 of the Code of Federal Regulations.
- B. Permissible Fireworks shall mean only sparklers, Vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, lady fingers, not to exceed seven-eighths of an inch in length or one-eighth inch in diameter, total explosive composition not to exceed fifty milligrams (50 mg.) each in weight, color wheels and any other fireworks approved by the State Fire Marshal. Permissible fireworks shall mean only those fireworks annually listed and promulgated by the State Fire Marshal in Title 157, Chapter 8, "Fireworks Acceptable in the State of Nebraska for the Year 20__".
- C. Sale shall include barter, exchange, or gifts, or offer thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.
- D. Retailer shall mean any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than distributors or jobbers. A retail license shall not be used to purchase fireworks for personal use outside the June 24 to July 5 selling window.

§ 91.71 UNLAWFUL ACTS.

Except as provided in Section 91.76, it shall be unlawful for any person to possess, sell, offer for sale, bring into the City or discharge, explode, or use any pyrotechnics, commonly known as fireworks, other than permissible fireworks.

§ 91.72 PERMISSIBLE; RETAIL SALE, LICENSE REQUIRED, FEE.

It shall be unlawful for any person to sell, hold for sale, or offer for sale at retail, any permissible fireworks in the City unless such person has first obtained a license from the City as a retailer.

Any person desiring to sell, or offer for sale, any permissible fireworks as a retailer shall make application to the City for a license authorizing the same. Applications shall be for proposed sales for the current calendar year only and shall be submitted to the City on or between March 1 and March 30 of the year in which the license is sought. Such application shall include the following information and such additional information as the City shall deem necessary:

1. The name, residence, and address of the applicant.
2. The location of the premises for which the license is sought.
3. When the license is sought in a permanent building, the applicant shall provide an accurate drawing or plan showing the location of the sales display within the building, together with aisles, exits, etc.
4. When the license is sought in a temporary structure or facility, the applicant shall provide a legal description of the premises.
5. A copy of the applicant's valid License for Sale of Fireworks issued by the Nebraska State Fire Marshall.

After consideration of the information contained in the application for license, the Administrator/Clerk/Treasurer may issue a permit after March 30th upon payment by the applicant of a fee of one thousand dollars (\$1,000.00). Any license issued under the provisions of this Section shall be valid only for the period of June twenty-fifth (25th) through and including July fourth (4th) and December twenty-ninth (29th) through and including December thirty-first (31st) of the year in which issued.

Factors that may be considered by the City in deciding whether to issue a license include, but are not limited to:

- A. Presence or absence of any past violations of applicant;
- B. Experience and expertise of applicant;
- C. Safety record of applicant; and
- D. Whether applicant is a civic organization committed to the betterment of the City.

The funds received under the provisions of this Section shall be deposited in the General Fund of the City. One-half of the funds collected may be provided for the July 4th community fireworks display. (*Amended by Ord. No. 98-19, 19/7/98, 02-08, 3/4/02; 09-14, 12/7/09; 10-13, 9/7/10*)

§ 91.73 PERMISSIBLE FIREWORKS.

Only permissible fireworks may be sold, held for sale or offered for sale at retail in the City pursuant to this Code and Title 157 NEB. ADMIN. CODE.

§ 91.74 RESERVED.

§ 91.75 CONSUMER; SALE, USE, HOURS RESTRICTED.

Consumer fireworks may be sold at retail, offered for sale at retail, discharged, exploded, or used within the City of Waverly, only from June twenty-fifth (25) through and including July fourth (4) and from December twenty-ninth (29) through and including December thirty-one (31) of each year; provided it shall be unlawful to discharge, explode or use permissible fireworks on said dates before eight (8:00) a.m., and after eleven (11:00) p.m., except on July fourth (4) and December thirty-one (31) when permissible fireworks may be lawfully discharged, exploded or used between the hours of eight (8:00) a.m. and twelve (12:00) midnight. (*Amended by Ord. No. 10-12, 8/16/10*)

§ 91.76 PROHIBITION NOT APPLICABLE.

The provisions of Section 91.71 shall not apply to:

- A. Any fireworks for purposes of public exhibitions or displays purchased from a distributor licensed under State law or the holder of a display license issued by the State Fire Marshal as provided by State law;
- B. Any public exhibition or display under the auspices of any governmental subdivision of the State; and
- C. Toy cap pistols or toy caps, each of which does not contain more than twenty-five hundredths of a gram of explosive material.

§ 91.77 FIREWORKS; UNLAWFUL DISCHARGING, FIRING, LAUNCHING, OR THROWING PROHIBITED.

It shall be unlawful for any person to discharge, fire, launch, or throw any fireworks or any object which explodes upon contact with another object:

- A. From or into any motor vehicle;
- B. Onto any street, highway, or sidewalk;
- C. At or near any person;
- D. Into or upon any building;
- E. Into or at any group of persons; or
- F. Into or upon the premises of another person.

For the purposes of this section, person shall mean any natural person or any private or public firm, corporation, or partnership.

§ 91.78 VIOLATION, PENALTY.

Any retailer violating any of the provisions of Sections 91.70 through 91.77 shall be guilty of a Class I Misdemeanor as defined by § 131.22 of this Code.

Any other person who shall violate any of the provisions of Sections 91.70 through 91.77 shall be guilty of a Class II Misdemeanor as defined by § 131.22 of this Code. (Amended by Ord. 07-05, 5/7/07)

CHAPTER 92: HEALTH AND SAFETY

Section

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GENERAL PROVISIONS

§ 92.01 HEALTH REGULATIONS.

For the purpose of promoting the health and safety of the residents of the municipality, the Board of Health shall, from time to time, adopt those rules and regulations relative thereto and shall make those inspections, prescribe those penalties, and make those reports as may be necessary toward that purpose.

§ 92.02 ENFORCEMENT OFFICIAL.

The Police Chief, as the quarantine officer, shall be the chief health officer of the municipality. It shall be his or her duty to notify the City Council and the Board of Health of health nuisances within the municipality and its zoning jurisdiction.

§ 92.03 COUNTY BOARD OF HEALTH.

It shall be the duty of the Board of Health to work closely with the County Health Board in protecting the health and welfare of the residents of the municipality.

NUISANCES

§ 92.20 DEFINITION.

(A) *General definition.* A **NUISANCE** consists in doing any unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health, or safety of others.
- (2) Offends decency;
- (3) Is offensive to the senses;
- (4) Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the municipality;
- (5) In any way renders other persons insecure in life or the use of property; or
- (6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others;
- (7) Constitutes graffiti. Graffiti, for purposes of this Article, shall mean any inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was unauthorized by the owner or occupant of the property. (Ref. 18-1720 RS Neb.)(Amended by Ord. 11-04, 2/22/11)

(B) *Specific definition.* The maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, omissions, places, conditions, and things are hereby declared to be ***NUISANCES***:

(1) Any odorous, putrid, unsound, or unwholesome grain, meat, hides, skins, feathers, vegetable matter, or the whole or any part of any dead animal, fish, or fowl;

(2) Privies, vaults, cesspools, dumps, pits, or like places which are not securely protected from flies or rats, or which are foul or malodorous;

(3) Filthy, littered, or trash-covered cellars, houseyards, barnyards, stable yards, factory yards, mill yards, vacant areas in rear of stores, granaries, vacant lots, houses, buildings, or premises;

(4) Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any ordinance of the municipality;

(5) Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish, or any waste vegetable or animal matter in any quantity, provided that nothing herein contained shall prevent the temporary retention of waste in receptacles in a manner provided by the health officer of the municipality, nor the dumping of non-putrefying waste in a place and manner approved by the health officer;

(6) Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, and all trash or abandoned material, unless the same be kept in covered bins or galvanized iron receptacles;

(7) Trash, litter, rags, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw, or other packing material, lumber not neatly piled, scrap iron, tin, or other metal not neatly piled, old automobiles or parts thereof, or any other waste materials when any of the articles or materials create a condition in which flies or rats may breed or multiply, or which may be a fire danger or which are so unsightly as to depreciate property values in the vicinity thereof;

(8) Any unsightly building, billboard, or other structure, or any old, abandoned, or partially destroyed building or structure or any building or structure commenced and left unfinished, which buildings, billboards, or other structures are either a fire hazard, a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity thereof;

(9) All places used or maintained as junk yards, or dumping grounds, or for the wrecking and disassembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn out, wrecked, or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places are kept or maintained so as to essentially interfere with the

comfortable enjoyment of life or property by others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof;

(10) Stagnant water permitted or maintained on any lot or piece of ground;

(11) Stockyards, granaries, mills, pig pens, cattle pens, chicken pens, or any other place, building, or enclosure, in which animals or fowls of any kind are confined or on which are stored tankage or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when the places in which the animals are confined, or the premises on which the vegetable or animal matter is located, are maintained and kept in such a manner that foul and noxious odors are permitted to emanate therefrom to the annoyance of inhabitants of the municipality or are maintained and kept in such a manner as to be injurious to the public health; or

(12) The existence of graffiti;

(13) All other things specifically designated as nuisances elsewhere in this code. (Ref. 18-1720 RS Neb.) (Amended by Ord. 02-01, 2/4/02; 11-04, 2/22/11) Penalty, see § 10.99.

§ 92.21 ABATEMENT PROCEDURE.

It shall be the duty of every owner, occupant, lessee, or mortgagee of real estate in the Municipality to keep such real estate free of public nuisances. Upon determination by the Lancaster County Health Department that said owner, occupant, lessee, or mortgagee has failed to keep such real estate free of public nuisances, the Governing Body shall thereupon cause notice to be served upon the owner, occupant, lessee, mortgagee or agent thereof, by publication and by certified mail. Such notice shall describe the condition as found by the Lancaster County Health Department and state that said condition has been declared a public nuisance, and that the condition must be remedied at once. If the person receiving the notice has not complied therewith or taken an appeal from the determination of the Lancaster County Health Department within five (5) days after receipt of certified mail or within five (5) days after date of publication whichever is later, the Lancaster County Health Department shall notify the Governing Body of such non-compliance and the Governing Body shall, upon receipt of such notice, cause a hearing date to be fixed and notice thereof to be served upon the owner, occupant, lessee, or mortgagee, or agent of the real estate. Such notice of hearing shall be by personal service or certified mail, and require such party or parties to appear before the Governing Body to show cause why such condition should not be found to be a public nuisance and remedied. A return of service shall be required by the Governing Body. Such notice shall be given not less than five (5) days prior to the time of hearing, provided that whenever the owner, lessee, occupant, or mortgagee of such real estate is a non-resident or cannot be found in the State, then the Municipal Clerk shall publish, in a newspaper of general circulation in the Municipality, such notice of hearing for two (2) consecutive weeks, the last publication to be at least one (1) week prior to the date set for the hearing. Upon the date fixed for the hearing and pursuant to notice, the Governing Body shall hear all objections made by interested parties and shall hear evidence submitted by the Lancaster County Health Department. If after consideration of all of the evidence, the Governing Body shall find that

the said condition is a public nuisance, it shall, by resolution, order and direct the owner, occupant, lessee, or mortgagee to remedy the said public nuisance at once; Provided, the party or parties may appeal such decision to the appropriate court for adjudication, during which proceedings the decision of the Governing Body shall be stayed. Should the owner or occupant refuse or neglect to promptly comply with the order of the Governing Body, the Governing Body shall proceed to cause the abatement of the described public nuisance. Upon completion of the work by the Municipality, a statement of the cost of such work shall be transmitted to the Governing Body, which is authorized to bill the property owner or occupant, or to levy the cost as a special assessment against the land. Such special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments. (*Ref. 17-573, 18-1720 RS Neb.*) (*Amended by Ord. 02-01, 2/4/02*)

§ 92.22 JURISDICTION.

The City Clerk and Building Inspector of the Municipality are directed to enforce this Municipal Code against all nuisances. The jurisdiction of the Municipality and court shall extend to, and the territorial application of this Chapter shall include, all territory adjacent to the limits of the Municipality within one (1) mile thereof and all territory within the corporate limits. (*Ref. 18-1720 RS Neb.*)(*Amended by Ord. 02-01, 2/4/02*)

§ 92.23 ADJOINING LAND OWNERS; INTERVENTION BEFORE TRIAL.

In cases of appeal from an action of the City Council condemning real property as a nuisance or as dangerous under the police powers of the municipality, the owners of the adjoining property may intervene in the action at any time before trial. (Neb. RS 19-710) (Ord. 2339, 9-3-85)

§ 92.24 DEAD OR DISEASED TREES.

(A) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the municipality.

(B) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees on private property within the corporate limits of the municipality. For the purpose of carrying out the provisions of this section, the Police Department shall have the authority to enter upon private property to inspect the trees thereon.

(C) Notice to abate and remove this nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given as provided in Section 92.21 of this Code.(Ord. 2633, 2-21-95) Penalty, see § 10.99

POLLUTION

§ 92.40 AIR POLLUTION PROHIBITED.

It shall be unlawful for any person, firm, or corporation to permit the emission of smoke from any source that is injurious or offensive to the residents of the Municipality, in the judgment of the Lancaster County Health Department. Air shall be considered to be polluted when the discharge into the open air of dust, fumes, gases, mist, odors, smoke, or any combination thereof is of such character and in a quantity which to any group of persons interferes with their health, repose, or safety, or causes severe annoyance or discomfort or is offensive and objectionable to normal persons and causes injury to real and personal property of any kind. The standards for air pollution established or adopted by the State of Nebraska shall be presumptive evidence as to when the air is deemed to be polluted under this Section. It is hereby unlawful for any such person, firm, or corporation to permit or cause the escape of the aforesaid nuisances, and the escape of the said dust, fumes, gases, mists, odors, and smoke is hereby declared to be a nuisance, and shall be summarily abated upon written notice by the Municipality to the violator. Such abatement may be in addition to the penalty for air pollution in the Municipality. (*Ref. 18-1720 RS Neb.*) (*Amended by Ord.02-01, 2/4/02*)

§ 92.41 WATER POLLUTION PROHIBITED.

It shall be unlawful for any person, firm, or corporation to obstruct or impede without legal authority any river or collection of water, or to corrupt and render unwholesome or impure any watercourse, stream, or other water. The standards for water quality established or adopted by the state shall be presumptive evidence as to when the water is deemed to be polluted under this section. Such a corruption of the water in or about the municipality shall constitute a nuisance and shall be summarily abated upon written notice to the violator by the Board of Health. The abatement may be in addition to the penalty for water pollution. (Neb. RS 18-1720 and 28-1321) Penalty, see § 10.99

§ 92.42 NOXIOUS USE OF BUILDING OR PREMISE.

It shall be unlawful for any person to use a building or premise in any part of the Municipality for any trade, industry, or other purpose that is detrimental to the public health, safety, and welfare. Such a noxious or offensive use is hereby declared to constitute a public nuisance. (*Ref. 18-1720 RS Neb.*)

RODENTS AND INSECTS

§ 92.55 EXTERMINATION REQUIRED.

It shall be the duty of the owner, lessee, or occupant of any dwelling or building to be responsible for the active and continued extermination of any insects, rodents, or other pests therein, or on the premises. In the event that the owner, lessee, or occupant of any dwelling or building neglects, fails, or otherwise refuses to control and actively exterminate the insects, rodents, and other pests in and about his or her premises, the Board of Health shall issue notice for him or her to do so. If that owner, lessee, or

occupant has not made a good faith effort to exterminate the pests within 5 days, the premises shall be deemed to be a nuisance and a health hazard. (Neb. RS 18-1720 and 28-1321) Penalty, see § 10.99

§ 92.56 OCCUPANT RESPONSIBILITY.

It shall be the responsibility of the occupant in a single dwelling unit whether or not the dwelling unit is located in a multiple unit structure to exterminate the rodents and insects infesting the premises when it is found by the Board of Health that only the occupant's dwelling is so infested. (Neb. RS 18-1720 and 28-1321) Penalty, see § 10.99

§ 92.57 OWNER RESPONSIBILITY.

The owner of a multiple dwelling unit shall have the duty to exterminate therein for rodents and insects when infestation exists in two or more units, when infestation exists in shared or public areas of a multiple unit structure when the infestation is due to failure by the owner to maintain the dwelling in an insect and rodent proof condition. The owner of a single dwelling unit shall have the duty to exterminate therein notwithstanding the occupancy of a renter or lessee when the infestation of insects or rodents is due to the owner's failure to construct or maintain the premises in a manner so as to make it reasonably resistant to the entrance and habitability of pests. (Neb. RS 18-1720 and 28-1321) Penalty, see § 10.99

NOISE CONTROL

§ 92.58 DEFINITIONS.

For the purposes of this Article only, certain words and phrases used therein are defined as follows:

AMBIENT NOISE shall mean the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far.

A-WEIGHTED SOUND LEVEL shall mean the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

COMMERCIAL AREA shall mean any area in the MX, LC, CC, DT, or GC Zoning Districts as designated in the Waverly Zoning Ordinance in Article 4.

CONSTRUCTION shall mean any site preparation, assembly, erection, substantial repair, alteration, or similar action on public or private property.

DECIBEL (dB) shall mean a logarithmic and dimensionless unit for measuring the volume of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure which is twenty (20) micropascals [twenty (20) micronewtons per square meter.]

EMERGENCY shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demand immediate action.

EMERGENCY WORK shall mean any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

EQUIVALENT A-WEIGHTED SOUND LEVEL (L_{eq}) shall mean the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. For the purposes of this Article, a time period of one (1) hour shall be used, unless otherwise specified.

GROSS VEHICLE WEIGHT RATING (GVWR) shall mean the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GVWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

HEALTH OFFICER shall mean the director of the Lincoln-Lancaster County Health Department, or his representatives, agents, or employees.

IMPULSIVE SOUND shall mean sound of short duration, usually less than one (1) second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms. The C-weighting filter network shall be used for measurement purposes.

INDUSTRIAL AREA shall mean any area in the LI or GI Zoning Districts as designated in the Waverly Zoning Ordinance in Article 4.

MOTOR VEHICLE shall mean any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck trailers, semi-trailers, campers, go-carts, snowmobiles, amphibious craft on land, dune buggies, racing vehicles, or all-terrain vehicles but not including motorcycles.

MOTORBOAT shall mean any vessel which operates on water which is propelled by a motor, including, but not limited to, boats, barges, amphibious craft, water ski towing devices, and hover craft.

MOTORCYCLES shall mean an unenclosed motor vehicle having a saddle for the use of the operator and two (2) or three (3) wheels in contact with the ground, including, but not limited to motor scooters, mini-bikes, and motor-driven cycles.

MUFFLER shall mean a device for diminishing the sound of projected noise from an internal combustion engine, commercial, or industrial blowers, where necessary.

NOISE shall mean any sound not occurring in the natural environment which causes or tends to cause an adverse psychological or physiological effect on humans.

NOISE DISTURBANCE shall mean any sound not occurring in the natural environment which would tend to annoy or disturb humans with reasonable sensitivities, or which injures or endangers the comfort, health, welfare, hearing, peace, or safety of other persons.

NOISE DISTURBANCE shall mean any sound not occurring in the natural environment which would tend to annoy or disturb humans with reasonable sensitivities, or which injures or endangers the comfort, health, welfare, hearing, peace, or safety of other persons.

NOISE SENSITIVE ZONE shall mean any area designated pursuant to the Waverly Zoning Ordinance, adopted by reference in this Code, for the purpose of insuring exceptional quiet.

PERSON shall mean any individual, association, partnership, or corporation.

POWERED MODEL VEHICLE shall mean any self-propelled airborne, waterborne, or landborne plane, vessel, or vehicle which is not designed to carry passengers, including but not limited to, any model airplane, boat, car, or rocket.

PUBLIC RIGHT-OF-WAY shall mean any street, avenue, boulevard, highway, sidewalk, or alley or similar place which is owned or controlled by a government entity.

PUBLIC PLACE shall mean real property or structures thereon which are owned or controlled by a government entity.

PURE TONE shall mean any sound which can be distinctly heard as a single pitch or a set of single pitches.

REAL PROPERTY BOUNDARY shall mean an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one (1) person from that owned by another person, but not including intra-building real property divisions.

RESIDENTIAL AREA shall mean any area in the R-1, R-2, R-3, and R-4 Zoning Districts as designated in the Waverly Zoning Ordinance in Article 4.

RMS SOUND PRESSURE shall mean the square root of the time-averaged square of the sound pressure, denoted Prms.

SOUND shall mean an oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and rarefaction of that medium. The description of the sound may include any characteristic of such sound, including duration, intensity and frequency.

SOUND LEVEL shall mean the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, C, Flat, or Linear, as specified in American National Standards Institute specifications for sound meters (ANSI S1.4-1971, or the latest approved revision thereof.) If the frequency weighting employed is not indicated, the A-weighting shall apply.

SOUND LEVEL METER shall mean an instrument which includes a microphone, amplifier, RMS Detector, integrator or time averager, output meter, and weighting networks used to measure sound pressure levels.

SOUND PRESSURE shall mean the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

SOUND PRESSURE LEVEL shall mean twenty (20) times the logarithm to the base of ten (10) of the ratio of the RMS sound pressure to the reference pressure of twenty (20) micropascals ($20 \times 10^6 \text{ N/m}^2$). The sound pressure level is denoted l_p or SPL and is expressed in decibels.

VIBRATION shall mean an oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity, or acceleration with respect to a given reference.

WEEKDAY shall mean any day Monday through Friday. (*Amended by Ord. 02-01, 2/4/02*)

§ 92.59 ADMINISTRATION.

The noise control program established by this Article shall be administered by the Lincoln-Lancaster County Health Department. In order to implement and enforce this Article and for the general purpose of sound and vibration abatement and control, the Health Officer shall have, in addition to any other authority vested in it, the power to:

- A. Conduct, or cause to be conducted, research, monitoring, and other studies related to sound and vibration.
- B. Conduct programs of public education regarding the causes, effects, and general methods of abatement and control of noise and vibration, or regarding the actions prohibited by this Article or by any applicable state or federal regulations.
- C. Work to coordinate the noise and vibration control activities of the Municipality, and cooperate with all appropriate local, state, and federal agencies or private persons or organizations to promote compliance with this Article and to promote uniform noise and vibration standards.
- D. Consult with any Municipality official or agency responsible for any proposed or final standard, or similar action on the advisability of revising such action if the Health Officer has reason to believe that such action is not consistent with this Article.
- E. Review public projects which are subject to mandatory review or approval by Municipal commissions and/or committees, department for compliance with this Article, if such projects are likely to cause sound or vibration in violation of this Article.

- F. Conduct inspections, surveys and examinations of properties for the purpose of determining compliance with or violation of this Article. (*Amended by Ord. 02-01, 2/4/02*)

§ 92.60 HEALTH OFFICER DUTIES.

In order to implement and enforce this Article effectively, the Health Officer shall within reasonable time after the effective date of this Article:

- A. Prepare recommendations, to be approved by the City Council, for the designation of noise-sensitive areas or zones which contain noise sensitive activities. Noise-sensitive activities include, but are not limited to houses within commercial areas, (excluding apartments located within commercial structures), operations of schools, libraries open to the public, churches, retirement homes, hospitals, nursing homes, auditoriums, concert halls, and music shells.
- B. Investigate and pursue possible violations of this Article, and take any legal and proper action necessary to abate such violations.
- C. Study the existing transportation systems, such as truck routes within the community; determine areas with sensitivity to sound and vibration caused by transportation; recommend changes or modifications to transportation systems to minimize the sound and vibration impact on residential areas and noise-sensitive zones; and assist in or review the total transportation planning of the community, including new roads, highways, bus routes, airports, and other systems for public transportation, to ensure that the impact of sound and vibration receives adequate consideration.
- D. Develop a generalized sound level map of the City, a long-term plan for achieving quiet in the City and integrate this plan into the planning process of the City.
- E. Administer noise program grants and other funds and gifts from public and private sources, including the State and Federal governments.

§ 92.61 HEALTH OFFICER, PERIODIC REPORTS.

The Lincoln-Lancaster County Health Department Health Officer shall evaluate and report, as needed, on the effectiveness of the City Noise Control Program and make recommendations for any legislative or budgetary changes necessary to improve the program. This report shall be made to the City Council. (*Amended by Ord. 02-01, 2/4/02*)

§ 92.62 NOISE DISTURBANCES PROHIBITED.

- A. No person shall make, continue, or cause to be made or continued, any noise disturbance. Without limiting the foregoing, the following acts and the causing thereof, are declared to be in violation of this prohibition:
 - 1. Radios, television sets, musical instruments, and similar devices: Operating, playing, or permitting the operation or playing of any radio, television,

phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces or amplifies sound in such a manner as to create a noise disturbance across a residential real property boundary or within a noise-sensitive zone, except for activities open to the public and for which any required permit has been issued.

2. Loudspeakers/public address systems: Using or operating for any purpose any loudspeaker, public address system, or similar device in such a manner as to cause a noise disturbance across a residential property boundary or within a noise-sensitive zone.
3. Animals and birds: Owning, possessing, or harboring any animal or bird which makes sounds which create a noise disturbance across a residential property boundary or within a noise-sensitive zone.
4. Loading and unloading: Loading, unloading, opening, closing, or handling of boxes, carts, containers, building materials, or similar materials in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise-sensitive zone.
5. Construction: Operating or permitting the operation of any tools or equipment used in construction, drilling or demolition work:
 - a. Between the hours of ten o'clock (10:00) p.m. and six o'clock (6:00) a.m. the following day on any day in such a manner as to create a noise disturbance across a residential real property boundary or noise-sensitive zone, except for emergency work of public service utilities or by variance issued pursuant to this Article.
 - b. This Section shall not apply to the use of domestic power tools of a type normally found in the home.
6. Vehicle or motorboat repairs and testing: Repairing, rebuilding, modifying or testing any motor vehicle, motorcycle, or motorboat in such a manner as to cause a noise disturbance across a residential property boundary or within a noise-sensitive zone.
7. Powered model vehicles: Operating or permitting the operation of powered model vehicles so as to create a noise disturbance across a residential real property boundary, in a public space or within a noise-sensitive zone. Maximum sound levels in the public space shall conform to those set forth for residential land use in Table 4, Section 92.64. Maximum sound levels for residential property and noise-sensitive zones shall be governed by Section 92.64 and Subsection 9(a) of this Section, respectively.
8. Stationary non-emergency signaling devices: Sounding or permitting the sounding of any signal from any stationary bell, chime, whistle, siren, or similar device intended primarily for non-emergency purposes, from any place, in such a manner as to create a noise disturbance across a residential property boundary or within a noise-sensitive zone.

Devices used in conjunction with places of religious worship, public and private educational institutions, and railroad grade crossing warning devices shall be exempt from the operation of this provision.

9. Within noise-sensitive zones:
 - a. Creating or causing the creation of any sound within any noise-sensitive zone designated in Section 92.60, so as to disrupt the activities normally conducted within the zone or interfere with the functions of such activity, provided, that conspicuous signs are displayed indicating the presence of the zone; or

- b. Creating or causing the creation of any unnecessary or unusually loud sound within any noise-sensitive zone, designated pursuant to Section 92.60 while such zone is in use for any of the activities for which exceptional quiet is necessary; Provided, that conspicuous signs are displayed indicating the presence of the zone.
10. Tampering: Removing, impairing, or rendering inoperative by any person other than for purposes of maintenance, repair or replacement, of any muffler, or noise control device, or noise label of any product, or use of a product which has a muffler, or noise control device or noise label removed or rendered inoperative, with knowledge that such action has occurred.
11. Horns, signaling devices, etc.: The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any street or public place of the City so as to create a noise disturbance across a residential real property boundary or noise-sensitive zone except as a danger warning.
12. Portable air compressors: No person shall operate a portable air compressor which produces an average sound level in excess of seventy-six (76) dBA.
13. Tampering with sound monitoring equipment: The removing or rendering inaccurate or inoperative any sound equipment monitoring device positioned by or for the Health Officer; provided such device or the immediate area is clearly labeled to warn of the potential illegality.
14. Adequate mufflers:
 - a. No person shall operate or cause to be operated any motor vehicle or motorcycle not equipped with a muffler in good working order and in constant operation;
 - b. No person shall remove, impair, or render inoperative, or cause to be removed, impaired;
15. Refuse collection vehicle:
 - a. No person shall operate or permit the operation of the compacting mechanism of any motor vehicle which compacts refuse between the hours of four o'clock (4:00) p.m. and six o'clock (6:00) a.m. the following day in a residential area or noise-sensitive zone; or
 - b. Collect refuse with a refuse collection vehicle between the hours of four o'clock (4:00) p.m. and six o'clock (6:00) a.m. the following day in a residential area or noise-sensitive zone.
16. Standing motor vehicles: No person shall operate or permit the operation of any motor vehicle with a gross weight rating (GVWR) in excess of ten thousand (10,000) pounds, or any auxiliary equipment attached to such vehicle, for a period longer than five (5) minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion, within one hundred fifty feet (150') [forty-six meters (46m)] of a residential area or designated noise-sensitive zone in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise-sensitive zone. Emergency vehicles in the performance of their duty shall be exempt from this subsection.
17. Fans or blowers: Operating or permitting the operation of fans or blowers for the purpose of drying, cooling, or transfer of air in such a manner as to cause a noise disturbance across a residential real property or commercial real property boundary or within a noise-sensitive zone, in accordance with Table 4, Section 4-509.

B. When the maximum sound levels listed in Table 4 of Section 92.64 are deemed necessary to determine the existence of a noise in Subparts (1), (2), (4), (6), (7), and (16) of Subsection A., the time base for determination of the maximum Leq level shall be ten (10) minutes rather than one (1) hour.

§ 92.63 RAIL CARRIER OPERATION.

A. No rail carrier shall operate any locomotive(s), singly or in combination, in a stationary condition, for a period that exceeds five (5) minutes in any one (1) hour period within six hundred feet (600') of any residential area or noise sensitive zone.

B. No rail carrier shall operate any locomotive or combination of locomotives when moving at any time under any condition of grade, load, acceleration, or deceleration in such a manner that the sound level emitted by the locomotive exceeds the level set forth in Table 3 below.

All readings shall be taken at one hundred feet (100') [thirty meters (30m)] from the centerline of any section of track which exhibits less than a two degree (2°) curve or a radius of curvature greater than two thousand eight hundred sixty-five feet (2,865') [eight hundred seventy-three meters (873m)].

TABLE 3
RAIL CARRIER OPERATIONS UNDER MOVING CONDITIONS

	Sound Level Limit, in dBA
Manufactured on or before December 31, 1979	96 dBA
Manufactured after December 31, 1979	90 dBA

No rail carrier shall operate any rail car or combination of rail cars which while in motion produce sound levels in excess of:

1. Eighty-eight (88) dBA at rail car speeds up to and including forty-five (45) mph [seventy-two(72) km/hr]; or
2. Ninety-three (93) dBA at rail car speeds greater than forty-five (45) mph [seventy-two (72) km/hr].

All measurements shall be taken in accordance with procedures outlined in this Section and on any section of track which is free of special track work or bridge or trestles.

C. Nothing in this Section shall be construed to prohibit, restrict, penalize, enjoin, or in any other manner regulate the movement of rail carriers which are in all respects conducted in accordance with, or pursuant to, applicable Federal laws or regulations.

§92.64 MAXIMUM PERMISSIBLE SOUND LEVELS BY RECEIVING LAND USE.

A. No person shall create or operate or cause to be created or operated on any property in the AG, R-1, R-2, R-3, R-4, MX, LC, CC, DT, GC, LI, AND GI Zoning Districts as designated pursuant to Article 4 of the Waverly Zoning Ordinance, any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category in Table 4 below when measured at or within the property boundary of the receiving land use.

TABLE 4.
SOUND LEVELS BY RECEIVING LAND USE

Receiving Land-Use Category	Time	Maximum One-Hour *Leq Level
R1, R2, R3, R4	7:00 a.m. – 10:00 p.m.	65
MX, LC, CC, DT, GC, LI	10:00 p.m. – 7:00 a.m.	55
GI, AG	7:00 a.m. – 10:00 p.m.	65
	10:00 p.m. – 7:00 a.m.	55

*Leq is the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. It is the average sound level and accurately portrays the sound the human ear actually hears.

B. Exemptions. The provisions of this Article shall not apply to:

1. Activities covered by the following Sections: 92.62(5) (Construction), 92.62(8) (Stationary Non-Emergency Signaling Devices), and 92.62(15) (Refuse Collection Vehicles).
2. The unamplified human voice;
3. Interstate railway locomotives and cars, and any railway facility subject to regulation by the U.S. Environmental Protection Agency;
4. Agricultural activities conducted on agriculturally zoned land;
5. Domestic lawn and garden tools.

§ 92.65 EMERGENCY EXCEPTION.

The provisions of this Article shall not apply to:

- A. The emission of sound for the purpose of alerting persons to the existence of an emergency, or
- B. The emission of sound in the performance of emergency work.

Nothing in this Section, however, shall be construed to permit law enforcement, ambulance, fire or other emergency personnel to make excessive noise in the performance of their duties when such noise is clearly unnecessary.

§ 92.66 VARIANCES, APPEAL.

- A. The City Council shall have the authority to grant an initial variance to the strict application of Sections 92.62, 92.63(A), 92.64(4) for a period of not to exceed fifteen (15) calendar days. Any person seeking such a variance shall contain the information which demonstrates that bringing the source of sound activity for which a variance is sought into compliance with this Article would constitute an unreasonable hardship on the applicant, on community or other persons.
- B. The City Council shall have the authority to grant an extension to any variance. Any person seeking such an extension shall file an application with the City Clerk. Notice of an application for an extension shall be posted by a sign placed in a conspicuous place on or near the property upon which action is pending. No extension shall be granted for a period of two (2) days from and after posting of the property.
- C. Any individual who claims to be adversely affected by allowance of any requested extension of a variance may, prior to the end of the two (2) day period after posting of the property, file a statement with the City Clerk containing any information to support the claim. If the City Council finds that a sufficient controversy exists regarding an application, a public hearing shall be held. All such hearings shall be during the next regularly scheduled council meeting. In determining whether to grant or deny any application, the City Council shall balance the hardship to the applicant, the community, and other persons of not granting the variance or extension against the adverse impact on the health, safety, and welfare of persons affected, the adverse impact on property affected, and any other adverse impacts of granting the variance or extension. Applicants for variances of extensions and persons contesting extensions may be required to submit any information the municipality may reasonably require. In granting or denying an application, the City Clerk shall place on public file a copy of the decision and the reasons for denying or granting the variance or extension and the criteria to be considered in deciding whether to grant variances and extensions.

Variances or extensions shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The variance or extension shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the variance or extension shall terminate such variance or extension and subject the applicant to those provisions of this Article regulating the source of sound or activity for which the variance or extension was granted.

The City Council may issue guidelines defining the procedures to be followed in applying for a variance or extension and the criteria to be considered in deciding whether to grant variances and extensions. (*Amended by Ord.02-01, 2/4/02*)

§ 92.67 ABATEMENT ORDERS.

- A. The city council or other agency responsible for enforcement of any provision of this Article may issue an order requiring abatement of any source or sound alleged to be in violation of this Article within a reasonable time period. Such abatement orders may be issued in lieu of prosecution for violation, and failure to comply with any abatement order shall be a violation for this Article.

- B. The city council shall order an immediate halt to any sound which exposes any person to continuous sound levels in excess of those shown in Table 5 below or to impulsive sound levels in excess of those shown in Table 6 below; Provided, that no such order shall be issued if the only persons exposed to sound levels in excess of those listed in Tables 5 and 6 are exposed as a result of:
 - 1. Trespass,
 - 2. Invitation upon private property by the person causing or permitting the sound, or
 - 3. Employment by the person or contractor of the person causing or permitting the sound.

- C. Any person, firm, partnership, association, corporation, company or organization of any kind who violates an order issued pursuant to this Section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense.

TABLE 5
CONTINUOUS SOUND LEVELS WHICH POSE AN
IMMEDIATE THREAT TO HEALTH AND WELFARE*

Sound Level Limit in dBA	Duration
90	24.0 Hours
93	12.0 Hours
96	6.0 Hours
99	3.0 Hours
102	1.5 Hours
105	45.0 Minutes
108	22.0 Minutes

* Use equal energy time intensity trade-off if levels vary, find energy equivalent over twenty-four (24) hours.

TABLE 6
 IMPULSIVE SOUND LEVELS WHICH POSE AN
 IMMEDIATE THREAT TO HEALTH AND WELFARE

Sound Level Limit in dBA	Number of Repetitions Per 24-Hour Period
145	1
135	10
125	100

(Amended by Ord. 02-01, 2/4/02, 07-05, 5/7/07)

§ 92.68 PENALTY.

- A. Any person, firm, partnership, association, corporation, company, or organization of any kind violating any of the provisions of this Article, except Section 92.67 shall be deemed guilty of a Class II Misdemeanor as defined by §131.22 of this Code. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense.

- B. The fines listed for the various increments above the decibel (dBA) limits do not include court costs.

TABLE 7
 FINE SCHEDULE FOR VIOLATIONS OF SOUND LEVEL
 LIMITS FOR MOTORIZED VEHICLES AND MOTORCYCLES
 ON PUBLIC RIGHT-OF-WAY

Incremental Range in Excess of Sound Level Limit (dBA)	Amount of Fine (\$)
1-3	10
4-6	25
7-10	35
11-13	45
14-17	55
18-21	65
22-25	75
26-29	85
30+ 100	

(Amended by Ord. 07-05, 5/5/07)

§ 92.69 ADDITIONAL REMEDY, INJUNCTION.

The Municipality shall take such action as necessary and legal to enforce the provisions of this Article. As an additional remedy, the operation or maintenance of any device, instrument, vehicle, or machinery in violation of any provisions hereof and which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health, or peace of residents in the area shall be deemed, and is

declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. No provision of this Article shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, or any person for injury or damage arising from any violation of this Article of from other law. (*Amended by Ord. 02-01, 2/4/02*)

CHAPTER 93: PUBLIC WAYS AND PROPERTY

Section

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- 93.03 Obstructing view on corner lots; sight triangle obstructions
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MUNICIPAL PROPERTY

§ 93.01 MAINTENANCE AND CONTROL.

The Governing Body shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the Municipality, and shall cause the same to be kept open and in repair, and free from nuisances. (*Ref. 17-567 RS Neb.*)

§ 93.02 SALE AND CONVEYANCE.

The Municipality shall have the power by ordinance to sell and convey all public squares, streets, and alleys, but not including land used for park purposes within the Municipality; Provided, a petition containing the signatures of three-fourths ($\frac{3}{4}$) of the property holders of the Municipality, has been presented to the Governing Body, and a notice of the petition has been published not less than four (4) weeks in each paper of general circulation in the Municipality. (*Ref. 17-567 RS Neb.*)

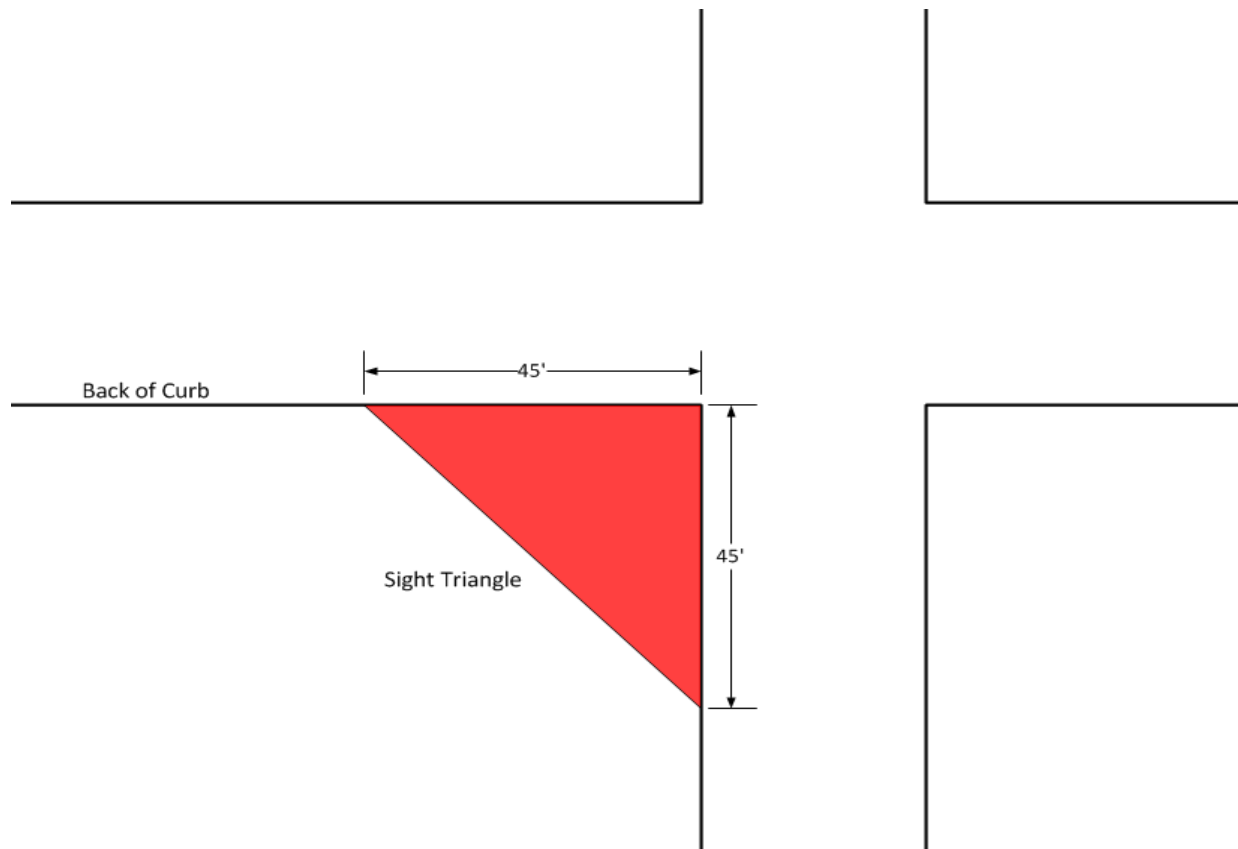
§ 93.03 OBSTRUCTING VIEW ON CORNER LOTS; SIGHT TRIANGLE OBSTRUCTIONS.

Specified areas along street intersection approach legs and across their included corners should be clear of obstructions that might block a driver's view of potentially conflicting vehicles. These specified areas are known as clear sight triangles. The dimensions of the legs of the sight triangles are dependent upon design speed of the intersecting roadways and the type of traffic control used at the intersection. Intersection sight distance in the City of Waverly shall be maintained per paragraphs A and B as described below:

A. Except as otherwise provided in the Waverly Municipal Code, it is hereby determined that in order to protect and preserve the public welfare and safety, within the defined intersection sight triangle area defined in paragraph B, it shall be unlawful for any person to install, plant, place, set out, or maintain, or to allow to be installed, planted, placed, set out, or maintained, or to permit to exist any tree, hedge, shrubbery, plant, natural growth, sign, fence, or other obstruction to the view which is higher than thirty inches (30") above either:

1. the top of the curb return at the applicable corner of the intersection; or,
2. the nearest paved roadway surface, where there is no curb; or,
3. the existing traveled roadway at the corner in question where there is no curb or paved roadway.

B. For major controlled intersections (e.g. stop, yield, signals etc.) and intersections with collector streets and arterial streets, the intersection sight distance triangles shall be defined as per the AASHTO Policy on Geometric Design of Highways and Streets, latest edition. For all other minor and uncontrolled intersections (residential streets) the intersection sight distance triangles on each leg of an intersection shall be defined as a triangle formed by the adjacent curb lines of intersecting streets and the line joining points 45 feet on each side line from their point of intersection (as shown below). No landscaping shall be planted in such areas, which will materially obstruct the view of drivers approaching the street intersection.



At intersections of a sidewalk and alley or non-residential driveway or parking lot access, the intersection sight triangle is defined as a triangle whose legs extend 10 feet back from the sidewalk along the nearest edge of the alley or driveway, and 20 feet parallel to and along the back of the sidewalk back from the intersecting alley or driveway.

C. Any obstruction maintained or existing in violation of this Article shall be deemed a public nuisance and shall be removed within one hundred twenty (120) days of the effective date of this Article as provided for herein. (*Amended by Ord. #02-14, 5/20/02; 05-08, 7/18/05; 06-06, 1/3/06; 15-09, 12/8/15*)

§ 93.04 OBSTRUCTING VIEW ON CORNER LOTS; EXCEPTIONS TO RESTRICTIONS.

The restrictions imposed within §8-103 of this Code shall not apply to the following:

- A. Buildings and accessory buildings constructed prior to the original effective date of this Article. The definitions of "building" and "accessory building" found in the Waverly Zoning Ordinance, as the same may be amended from time to time and at any time, shall apply for the purposes of this Article.
- B. Public utility poles.
- C. Official traffic control devices.
- D. Locations where the contour of the ground on the original effective date of this Article is such that there can be no cross visibility at the intersection.
- E. Trees trimmed to the trunk so as to permit unobstructed cross visibility to a line at least eight feet (8') above the level of the reference point as defined in §8-103 of this Code, or trimmed to one half (½) the height of the tree, whichever is less.
- F. Coniferous trees which were planted and have grown to a height of no less than four feet (4') prior to the original effective date of this Section, when and only when, in the judgment of the Governing Body acting by motion, and on the recommendation of a representative of the Nebraska State Highway Department, the intersection at which they are situated can be safely controlled with traffic control devices, notwithstanding the presence of such trees.

§ 93.05 OBSTRUCTION OF PUBLIC RIGHT-OF-WAY, GENERALLY.

It shall be unlawful for any person to obstruct or encumber by fences, gates, signs, buildings, accessory buildings, other structures, vegetation, or otherwise, any of the streets, alleys, or sidewalks of the Municipality. Such obstructions shall be deemed a public nuisance and may, after notice, be removed by the Municipality without compensation to the property owner, and at the expense of the owner of the property involved, in accordance with the procedures set forth within this Article.

§ 93.06 PERMITTED OBSTRUCTION OF STREET, SIDEWALK, AND ALLEY SPACE.

Persons engaged in the erection, construction, reconstruction, wrecking, or repair of any building, or the construction or repair of a sidewalk along any street, sidewalk, or alley may occupy the public street, sidewalk, or alley space with such building material and equipment as long as it is necessary; Provided, that such persons shall make application to and receive a permit in writing from the Building Inspector and/or Zoning Administrator authorizing such obstruction. No permit for the occupancy of the street, sidewalk, or alley space and more than one-third (1/3) of the roadway adjacent to the real

estate upon which any building is to be constructed, erected, reconstructed, wrecked, or repaired, shall be granted; and Provided further, that a suitable passage way shall be maintained within the public space included in the permit which shall be protected and lighted in the manner required by the Building Inspector and/or Zoning Administrator. *(Amended by Ord. #02-14, 5/20/02)*

§ 93.07 SIDEWALKS; OVERHANGING BRANCHES.

The owner or occupant of any real estate abutting or adjacent to any street, sidewalk, alley, or other public way over which there extend branches of trees, shrubs, or other bushes, shall at all times keep the branches or limbs thereof trimmed to a height of not less than eight feet (8') above the surface of any sidewalk and fourteen feet (14') above the surface of any street, alley, or other public way, and shall not allow the same to interfere with the lighting from street lights of such street, sidewalk, or alley. *(Amended by Ord. No. 97-9, 11/4/97; 09-13, 11/2/09)*

§ 93.08 NOTICE TO REMOVE OBSTRUCTIONS.

If any tree, hedge, shrubbery, planting, natural growth, sign, fence or other obstruction is installed, planted, placed, set out, maintained, or permitted to exist in violation of this Article, the Building Inspector and/or Zoning Administrator shall give to the owner of the premises upon which or adjacent to which such obstruction exists, written notice that said obstruction violates the requirement of this Article, creating a hazard to the safety of the public.

Such notice shall notify the owner or occupant that if the obstruction is not destroyed, removed, or trimmed to comply with the provisions of this Article within five (5) days from the date of the mailing of the notice, or in the event that it is not possible to determine the owner of the real estate or to locate the owner of said real estate, then and that event, within five (5) days from the date of the posting of the notice, that the Municipality shall perform the required act and shall assess the costs against the property. Such notice shall be given the owner or occupant by publication at least once in a daily newspaper in general circulation in the City of Waverly, no less than five (5) days prior to the date the obstruction is to be removed, and by postage prepaid United States Certified Mail, return receipt requested, no less than five (5) days prior to the date the obstruction is to be removed as follows:

A. In the event that the owner is a resident of the Municipality, then said notice shall be mailed to resident owner at the address of the resident property owner as listed on the current tax rolls at the time the notice is given, and, in addition, it shall be the duty of the Building Inspector or his or her agent to post a copy of the notice on the premises.

B. In the event that the owner is a non-resident of the Municipality or cannot be found therein, then said notice shall be given by postage prepaid Certified United States Mail return receipt requested, addressed to the last known address of any tenant or other person having the care, custody, or control of such real estate, and, in addition, it shall be the duty of the Building Inspector or his or her agent to post a copy of the notice on the premises.

C. In the event that the owner is a non-resident of the Municipality and there is no tenant, occupant, or other person with the Municipality to whom the notice can be given, then said notice shall be mailed to the non-resident owner at the address of the non-resident property owner as listed on the current tax rolls at the time the notice is given, and, in addition, it shall be the duty of the Building Inspector or his or her agent to post a copy of the notice on the premises.

D. In the event that it is not possible to determine the owner of the real estate or if it is not possible to locate the owner of said real estate, then it shall be the duty of the Building Inspector and/or Zoning Administrator or his/her agent to post a copy of the notice on the premises, and such posted notice shall, together with the publication required herein, be deemed sufficient notice. *(Amended by Ord. #02-14, 5/20/02)*

§ 93.09 REMOVAL AND ASSESSMENT OF COST.

In the event that any obstruction is not removed or abated by the date required within the notice given hereunder, the Governing Body may, by motion, order the obstruction removed under the direction of the Building Inspector and/or Zoning Administrator, and the costs thereof shall be chargeable to the property owner at the same rate as that set by resolution (or otherwise), for the removal of weeds. Such action shall take place at the regular or special meeting of the Governing Body and shall be placed upon the agenda thereof according to law. *(Amended by Ord. #02-14, 5/20/02)*

§ 93.10 VIOLATIONS AND PENALTIES.

Any person who permits a violation of this Article to remain uncorrected after service of the notice required hereunder, and after the expiration of time set by the Building Inspector and/or Zoning Administrator shall, upon conviction thereof by the court, be required to pay a fine of fifty dollars (\$50.00) for each violation and shall stand committed to jail until such fine and costs of prosecution are paid. Each day of failure to comply with the requirements of this Section, after the specified time provided herein, shall constitute a separate violation.

Any person upon whom a duty is placed by the provisions of this Article who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined the sum of fifty dollars (\$50.00) and shall stand committed to jail until such fine and costs of prosecution are paid. Each day of failure to comply with the requirements of this Section, after the specified time provided herein, shall constitute a separate violation. *(Amended by Ord. #02-14, 5/20/02)*

§ 93.11 ENFORCEMENT; ENTRY UPON PRIVATE PROPERTY.

The Mayor, or any department or person designated by the Mayor, is charged with the enforcement of this Article, and to that end any enforcement official authorized by the Mayor may enter upon private property at reasonable hours for the purpose of determining whether there is a violation of this Article and may then, when required under this Article, enter private property for the purpose of clearing prohibited obstructions or encroachments.

§ 93.12 VEHICLES PARKED IN SIDEWALK SPACE.

It shall be unlawful for any person within a residentially zoned district to park or place, or cause to be parked or placed, any motor vehicle or trailer upon any part of the sidewalk space or that space between the curb line and the lot line that hasn't been designated for parking. *(Amended by Ord. 02-05, 2/4/02)*

SIDEWALKS

§ 93.30 DEFINITIONS; DUTY TO KEEP CLEAN.

- A. For the purposes of this Article, unless the context is shown to clearly intend otherwise, the following words, terms, and phrases shall be given the meaning set forth below:
1. Sidewalk shall mean a walkway, which whether paved or unpaved, and which, whether or not within a street right-of-way, is situated along or is associated with a Municipal street; Provided, that the term sidewalks shall include walkways which the Governing Body has the authority to construct or order constructed and maintained as sidewalks along or in conjunction with the Municipal streets, but which with the permission of the Governing Body are constructed outside the street right-of-way, a reasonable distance from the paved roadway, in order to protect pedestrians, and in lieu of a sidewalk with the street right-of-way.
 2. Private walkway shall mean any walkway which is situated on real estate in private ownership and which does not fall within the definition of "sidewalk" as set forth in ¶(A)(1) of this Section.
 3. Other public walkway shall mean any walkway which is situated on real estate held by the United States, the State of Nebraska, or any governmental subdivision other than the City of Waverly, Nebraska, which does not fall with the definition of "sidewalk" as set forth in ¶(A)(1) of this Section.
 4. Municipal walkway shall mean any walkway which is situated within a Municipal right-of-way or on other real estate held by the Municipality which does not fall within the definition of "sidewalk" as set forth in ¶(A)(1) of this Section.
- B. It shall be unlawful for the occupant or owners of any lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substances to accumulate on the sidewalks along or contiguous to said property or to permit any snow, sleet, ice, mud, or other substances to remain upon said sidewalk. All sidewalks within the Municipality shall be cleared of precipitation within five (5) hours after the cessation of a storm, unless the storm or fall of snow shall have taken place during the night, in which case the sidewalk shall be cleaned before ten o'clock (10:00) a.m. the following day. Whenever substances other than precipitation shall accumulate upon sidewalks, the same shall be removed within forty-eight (48) hours of accumulation after service of notice upon such owners of occupants.

- C. Municipal walkways shall be cleared by the Municipality.
- D. Responsibility for clearing private walkways and other public walkways shall rest with the persons or entities who or which hold title to such walkways, and the same shall not be subject to the provisions of this Section. *(Ref. 17-557 RS Neb.) (Amended by Ord. No. 8-200.01 4/5/82)*

§ 93.31 NOTICE TO CLEAN; ASSESSMENT.

Notice to remove any encroachment or substance from a sidewalk shall be made upon the owner, agent or occupant of the abutting property, said notice to demand the removal of such encroachment and/or substance. Notice may be given by personal service or by publication. In the event the property owner or occupant refuses or neglects to remove all such encroachments within: (a) twenty-four (24) hours after personal service, or (b) within five (5) days if notice is by publication, then the City may cause such encroachments and/or substances to be removed, and the cost of such removal to be paid out of the Street Fund. The Governing Body shall assess the cost of the notice and removal against such abutting property as a "special sidewalk assessment," which shall be levied and collected as special taxes in addition to general revenue taxes, and shall be subject and shall draw interest from the date of the assessment. *(Amended by Ord. No. 07-17, 12/17/07)*

§ 93.32 MAINTENANCE.

- A. Every owner of any lot, lots, or piece of land within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to said lot, lots, or pieces of land, as the case may be, in good and proper repair, and in a condition reasonably safe for travel for all travelers thereon. In the event that the owner or owners of any lot, lots, or lands, along or contiguous with any sidewalk shall fail to construct or repair any sidewalk along or contiguous with his, her, or their lot, lots, or lands, within the time and in the manner as directed and required herein after having received due notice to do so, the Municipality shall accept no liability for damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the Governing Body shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. *(Ref. 17-557.01 RS Neb.)*
- B. Municipal walkways shall be maintained by the Municipality.
- C. Responsibility for maintaining private walkways and other public walkways shall rest with the persons or entities who or which hold title to such walkways, and the same not shall be subject to the provisions of this Section. *(Amended by Ord. No. 8-200.03, 4/5/82)*

§ 93.33 REPAIR.

- A. The Governing Body may require sidewalks within the Municipality to be repaired. Notice to the owners of property along or contiguous with sidewalks in disrepair shall require said owners, within forty-eight (48) hours from issuance of notice, to make arrangements to have the sidewalk repaired. Said repairs shall be completed within twenty-one (21) days after issuance of said notice. No special assessment shall be levied against the property unless said owner shall neglect or refuse to repair within the time prescribed, and in the event that such owner fails to repair, the Municipality shall cause the repairs to be made and assess the property owner the expense of such repairs. In the event the property owner is a non-resident of the county in which the property is situated, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.
- B. Municipal walkways shall be repaired by the Municipality.
- C. Responsibility for the repair of private walkways and other public walkways shall rest with the persons or entities who or which hold title to such walkways, and the same shall not be subject to the provisions of this Section. *(Amended by Ord. No. 8-200.04, 4/5/82)*

§ 93.34 CONSTRUCTION BY OWNER.

All new residential construction shall install sidewalks within twelve (12) months from the date of the Building Permit. 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 at the City Office. The permit shall give a description of the lot, or piece of land along which the sidewalk is to be constructed. The Building Inspector 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 Building Inspector shall submit the application to the Governing Body who shall determine whether the permit should be granted or denied. It shall be unlawful for any person to construct, or cause to be constructed said sidewalk at any other location, grade, or elevation than so designated by the Municipality. All sidewalks shall be built and constructed on the established grade, or elevation, and if there is no established grade, then on the grade or elevation indicated by the Building Inspector. *(Amended by Ord.02-05, 2/4/02)*

§ 93.35 MUNICIPAL CONSTRUCTION.

The Governing Body may, by resolution, order the construction of a sidewalk on any lot or piece of ground within the Municipality. Notice of the Governing Body's intention to construct said sidewalk shall be given by the Municipal Clerk by publication of notice one (1) time in a legal newspaper of general circulation in the Municipality.

A copy of said notice shall be personally served upon the occupant in possession of such property, or, when personal service is not possible, said notice shall be posted upon such premise ten (10) days prior to the commencement of construction. The notice required in this Section shall be prepared by the Municipal Attorney in accordance with the provisions of this Section. Such service shall include a form of return evidencing personal service or posting as herein required.

Said notice shall notify the owner of the premise of the passage of the resolution ordering him to construct or cause to be constructed a sidewalk within thirty (30) days after the date of publication and further that if he fails to construct the sidewalk or cause the same to be done within the time allowed, the Municipality will cause the sidewalk to be constructed and the cost thereof shall be levied and assessed as a special tax against the premise; Provided, the notice shall contain the official estimate of the cost of said construction and no special assessment in excess of this estimate shall be assessed against the property. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against the property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (*Ref. 17-522, 17-523 RS Neb.*)

§ 93.36 CONSTRUCTION BIDS.

Whenever the Municipality shall construct, widen, replace, or reconstruct any sidewalk, notice prepared by the Municipal Attorney, specifying the work to be done and calling for bids for doing such work and supplying the necessary materials and labor shall be published in at least one (1) issue of a legal newspaper of general circulation in the Municipality; Provided, bids so invited shall be filed in the office of the Municipal Clerk within ten (10) days after the date of publication. Bids shall be opened at the next regular or special meeting of the Governing Body, and the Governing Body shall then award the work to the lowest responsible bidder. Upon approval of the work, the Governing Body may require the contractor to accept payment in certificates issued to him by the Municipal Clerk entitling him to all assessments or special taxes, against such real estate whenever such assessments or special taxes, shall be collected together with the interest or penalty collected thereon. Each certificate shall give the legal description of the lot, lots, or parcel of ground against which the assessments or special taxes are assessed. Such certificate or certificates may be assigned and transferred, entitling the holder to the same rights as if held by the original contractor. The County Treasurer shall pay over to such contractor or other holder of the certificate or certificates all assessments or special taxes against such real estate, together with the interest and penalty thereon, at any time upon presentation of such certificate or certificates after said assessments or special taxes against such real estate together with interest or penalty thereon shall have been collected.

§ 93.37 CONSTRUCTION BY PETITION.

If the owners of the record title representing more than sixty percent (60%) of the front footage of the directly abutting property, subject to assessment for sidewalk improvements, petition the Governing Body to make the same, the Governing Body shall proceed in all things as though such construction had been ordered by it. Upon the petition of any freeholder who is an abutting owner in fee simple of property subject to assessment

for sidewalk improvements, the Governing Body may order permanent sidewalks built in accordance with this Article upon the freeholder making, executing, and delivering to the Municipality an agreement to the effect that the petitioning freeholder will pay the engineering service fee and all other incidental construction costs until paid shall be a perpetual lien upon the real estate along which the freeholder desires such sidewalk to be constructed and that the petitioner gives and grants to the Municipality the right to assess and levy the costs of such construction against the freeholder's real estate abutting the sidewalk improvement and promises to pay such costs with the interest. The total cost of such improvement shall be levied, allocated, financed, and specially assessed as provided by law. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

§ 93.38 WHERE PLACED.

Sidewalks in residential areas shall be four feet (4') in width and placed on the street at the lot line. Sidewalks shall slope one fourth inch ($\frac{1}{4}$ ") per foot toward the street and shall be placed at a grade that will not impede the flow of water to the street. Where special problems arise as to grade, or conformity with existing sidewalks, the owner shall apply to the City Council for direction in placing the sidewalk and the council may make such deviations as seem reasonable to achieve the best sidewalk system under the prevailing conditions.

Owners of property at the intersection of curb lines shall extend their sidewalks to the curb lines.

Sidewalks in the business section of the City shall be eight feet (8') in width and plumb with the curb line and shall slope one-fourth inch ($\frac{1}{4}$ ") per foot to the curb.

§ 93.39 MATERIAL TO BE USED; EXTENT OF REPAIRS PERMISSIBLE.

All sidewalks on either side of the streets and avenues of this City, in front of or along any lot, lots, or lands abutting upon the same, shall be constructed of cement. No person shall construct, reconstruct, or replace any sidewalk of any other material within the limits of this City. In no case shall a permit be granted where the amount of repairs in the aggregate exceeds one third ($\frac{1}{3}$) of the running feet in said walk.

§ 93.40 MANNER OF CONSTRUCTION.

All cement sidewalks shall be laid upon a four inch (4") bed or foundation of well compacted gravel, coal cinders, or well-tamped dirt, having a covering of at least one inch (1") of sand and having an inclination toward the gutter. All sidewalks of cement hereafter constructed shall be four inches (4") in thickness and the first three inches (3") above the foundation shall conform to the above specifications.

§ 93.41 CONSTRUCTION NOT IN ACCORD WITH REGULATIONS.

In case any lot owner or the owners of a piece of land within the corporate limits of this City, under notice given or otherwise, shall construct a sidewalk in violation of this Article, the officer or officers in charge of streets and highways may stop the work of such construction and order the same to be constructed in accordance with this Article and the work already done to be changed, and on the failure of such owner to change any such work, the Municipal and City Council shall forthwith change said work and the expense of the same shall be assessed and taxed to said lot and collected as if taxed, as provided by law.

STREETS

§ 93.50 NAMES AND NUMBERS.

The Governing Body may at any time, by ordinance, rename any street or provide a name for any new street. Buildings used for residence or business purposes and located along such streets shall retain such numbers as the Governing Body may require. It shall be the duty of the Municipal Clerk upon the erection of any new building or buildings to assign the proper numbers to said building or buildings and give notice to the owner or owners and occupant or occupants of the same.

§ 93.51 CROSSINGS.

The Governing Body may order and cause to be constructed, under the supervision of the Municipal official in charge of streets, such street, avenue, and alley crossings as the Governing Body shall deem necessary. When a petition for the construction of any such crossings is filed by an interested resident in the office of the Municipal Clerk, said Municipal Clerk shall refer such application to the chief street official who shall investigate and make his recommendation to the Governing Body. Action by the Governing Body on such application, whether the application is approved or rejected, shall be considered final.

§ 93.52 WIDENING OR OPENING.

The Governing Body shall have the power to open or widen any street, alley, or lane within the limits of the Municipality; to create, open, and improve any new street, alley, or lane; Provided, all damages sustained shall be ascertained in such manner as shall be provided by ordinance. (*Ref. 17-558, 17-559, 76-704 et seq. RS Neb.*)

§ 93.53 EXCAVATION.

It shall be unlawful for any person to make an excavation in any street or streets for any purpose whatsoever unless a written permit is issued by the chief Municipal street official authorizing such excavations.

§ 93.54 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 chief Municipal Street official.

§ 93.55 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.

§ 93.56 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.

§ 93.57 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 Municipality 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 where it is found to be impossible to drain said eave spouts into the alley.

§ 93.58 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, any protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent, or otherwise injure or damage any pavement, gutter, or curb; Provided, where heavy vehicles, structures, and machines move along paved or unpaved streets the Municipal Police are hereby authorized and empowered to choose the route over which the moving of such vehicles, structures, or machines will be permitted and allowed. Nothing in this Section shall be construed to apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths of an inch (5/16") in diameter inclusive of the stud-casting with an average protrusion beyond the tread surface of not more than seven sixty-fourths of an inch (7/64") between October 1, and April 15; Provided, that school buses and emergency vehicles shall be permitted to use metal or metal-type studs all year; it shall be permissible to use farm machinery with tires having protuberances which will not injure the streets; and it shall be permissible to use tire chains of reasonable proportions upon any vehicle

when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide or skid. (*Ref. 39-6,131 RS Neb.*)

§ 93.59 PIPELINES AND WIRES.

Poles, wires, gas mains, pipelines, and other appurtenances of public service companies shall be located, or erected over, upon, or under the streets, alleys, and common grounds of the Municipality. Application for location of the above shall be made to the Governing Body in writing. Approval by that body shall be issued in writing. Any public service company granted a right-of-way for the erection and maintenance of poles, conduits, gas mains, pipelines, and wires shall at all times erect and locate their poles, wires, gas mains, pipelines, and other appurtenances at such places and in such manner as shall be designated by the Governing Body. Such poles, wires, gas mains, pipelines, and other appurtenances, shall be removed or relocated by said companies at their own expense when requested to do so by the Governing Body. Any such relocation shall be ordered by resolution of the Governing Body and the Municipal Clerk shall notify any and all companies affected. Said companies shall, within twenty-four (24) hours after receiving notice, at their own expense, cause the poles, wires, gas mains, pipelines, or other appurtenances to be removed. The Governing Body shall designate another location as closely as possible where said poles, wires, gas mains, pipelines, or other appurtenances, may be reset or placed. All poles, wires, gas mains, pipelines, or other appurtenances, shall be reset, placed, or erected in such a manner that they will not interfere with the water system; sewerage system; poles, wires, and mains of any public utility; adjacent buildings; or with travel on the public ways and property. Whenever possible, all pole lines, wires, gas mains, pipelines, or appurtenances shall be confined to the alleys of the Municipality. Streets, sidewalks sidewalk spaces, and other public property disturbed in the course of work shall be restored in a manner satisfactory to the Municipality and to a condition at least equal to that before the work commenced.

§ 93.60 CONSTRUCTION ASSESSMENT.

To defray the costs and expenses of street improvements, as may be authorized by law, the Governing Body shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, abutting upon, or especially benefiting from, the street, avenue, alley, or sidewalk in whole or in part opened, widened, curbed, curbed and guttered, graded, paved, repaired, graveled, macadamized, parked, extended, constructed, or otherwise improved or repaired. The Governing Body sitting as the Board of Equalization shall review all such improvements in accordance with the procedure provided by law. All special assessments shall be made by the Governing Body at a regular or special meeting by resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements and the amount charged against same. The vote shall be recorded in the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in some legal newspaper published, or of general circulation, in the Municipality at least four (4) weeks before the same shall be held. In lieu of such aforementioned notice, personal service may be had upon the persons owning or occupying the property to be assessed. Such assessments shall be known as "special assessments for improvements" and with the cost of notice shall be levied and collected as a special tax in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other

Municipal taxes and shall be certified to the County Clerk by the Municipal Clerk forthwith after the date of levy, for collection by the Treasurer of said County unless otherwise specified. After it shall become delinquent, said assessment shall draw interest at the legal interest rate per annum. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (*Ref. 17-511, 17-524 RS Neb.*)

§ 93.61 PETITION FOR IMPROVEMENTS.

Whenever a petition signed by the owners of record title representing more than sixty percent (60%) of the front footage of the property directly abutting upon the street, streets, alley, alleys, public way, or the public grounds proposed to be improved, shall be presented and filed with the Municipal Clerk, petitioning therefore, the Governing Body shall by ordinance create a paving, graveling, or other improvement district or districts, and shall cause such work to be done or such improvement to be made, and shall contract therefore, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley, or alleys, especially benefited thereby in such district in proportion to such benefits, to pay the cost of such improvement. The Governing Body shall have the discretion to deny the formation of the proposed district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the Governing Body should deny a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties. (*Ref. 17-510 RS Neb.*) (*Amended by Ord. No. 83-23, 10/11/83*)

§ 93.62 IMPROVEMENT DISTRICTS, OBJECTIONS.

Whenever the Governing Body shall deem it necessary to make any improvements allowed by statute, the Governing Body shall by ordinance create a paving, graveling, or other improvement district or districts, and after the passage, approval, and publication or posting of such ordinance, shall publish notice of the creation of any such district or districts for six (6) days in a legal newspaper of the Municipality, if a daily newspaper, or for two consecutive weeks, if the same be a weekly newspaper. If the owners of the record title representing more than fifty percent (50%) of the front footage of the property directly abutting on the street, streets, alley, or alleys to be improved, shall file with the Municipal Clerk within twenty (20) days after the first publication of said notice, written objections to the creation of such district or districts, said improvements shall not be made as provided in said ordinance; but said ordinance shall be repealed. If said objections are not filed against the district in the time and manner aforesaid, the Governing Body shall forthwith cause such work to be done or such improvements to be made, and shall contract therefore, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley, or alleys especially benefited thereby in such district in proportion to such benefits, to pay the cost of such improvement. (*Ref. 17-511 RS Neb.*)

§ 93.63 IMPROVEMENT OF STREETS ON CORPORATE LIMITS.

The Mayor and Council shall have the power to improve any street or part thereof which divides the Municipal corporate area and the area adjoining the Municipality. When creating an improvement district including land adjacent to the Municipality, the Council shall have power to assess, to the extent of special benefits, the costs of such improvement upon the properties found especially benefited thereby. (*Ref. 17-509 RS Neb.*)

§ 93.64 CURB AND GUTTER; CUTTING CURB; CLOSING CUTS.

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, or to close any existing cut into any paving, curb, or sidewalk, without first having obtained a written permit from the Governing Body therefore. The maximum residential curb cut shall not exceed thirty (30) feet. A maximum of one curb cut shall be allowed per residential lot per street frontage. Before any person shall obtain a permit, he shall inform the Municipal Clerk of the place where such cutting is to be done, and it shall be the chief street official's duty to inspect the place of entry into the paving, sidewalk, or curb, before the same is cut or closed. When cutting into any paving, curb, or sidewalk, it shall be the duty of the party to cut or close the paving, curb, or sidewalk under such rules and regulations as may be prescribed by the Governing Body; Provided that the use of jack hammers or other similar crushing devices to cut into or remove any paving, curb, or sidewalk is prohibited. When the applicant is ready to close the opening made, he shall inform the chief street official, who shall supervise and inspect the materials used and the work done in closing the cut. It shall be discretionary with the Governing Body to order the chief street official to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit. The Governing Body may consent to the work of cutting and closing the paving, curb or sidewalk to be done by the party holding such permit. Before any permit is issued by the Governing Body, the applicant for such permit shall deposit with the Municipal Treasurer a sum set by resolution of the Governing Body for all work to be done. Such sum shall be set on a per square foot cost of construction basis. The deposit shall be retained by the Municipality for the purpose of replacing the paving, curb, or sidewalk, in the event the work is done by the Municipality. In the event the Municipality elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the Municipality until the work is completed to the satisfaction of the chief street official or of the committee of the Governing Body on streets and alleys.

In addition to making the deposit above set forth, the applicant shall, before any permit is issued, execute a bond to the Municipality, or at the discretion of the Governing Body, demonstrate proof of insurability, with a good and sufficient surety or sureties to be approved by the Governing Body in a sum set by resolution of the Governing Body. Any unused cuts in the paving, curb, or sidewalk shall be closed by the owner of the property which would have been served by the cut as provided in this Ordinance. (*Amended by Ord. No. 90-7, 6/18/90; 02-05, 2/04/02*)

§ 93.65 DEFERRAL FROM SPECIAL ASSESSMENTS.

Whenever the Governing Body of a Municipality creates a paving district which includes land adjacent to the Municipality which is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments. For purposes of this Section, the terms agricultural use and agricultural use zone shall have the meaning specified in Section 77-1343 Reissue Revised Statutes of Nebraska 1943.

Any owner of record title eligible for the deferral granted by this Section shall, to secure such assessment, make application to the Governing Body of the Municipality within ninety (90) days after creation of the paving district. Any owner of record title who makes application for the deferral provided by this Section shall notify the County Register of Deeds of such application in writing prior to approval by the Governing Body. The Governing Body shall approve the application of any owner of record title upon determination that the property (a) is within an agricultural use zone and is used exclusively for agricultural use, and (b) the owner has met the requirement of this Section.

The deferral provided for in this Section shall be terminated upon any of the following events:

1. Notification by the owner of record title to the Governing Body to remove such deferral;
2. Sale or transfer to a new owner who does not make a new application within sixty (60) days of the sale or transfer, except as provided in subdivision 3 of this Section;
3. Transfer by reason of death of a former owner to a new owner who does not make application within one hundred twenty-five (125) days of the transfer;
4. The land is no longer being used as agricultural land; or
5. Change of zoning to other than an agricultural zone.

Whenever property which has received a deferral pursuant to this Section becomes disqualified for such deferral, the owner of record title of such property shall pay to the Municipality an amount equal to:

- A. The total amount of special assessments which would have been assessed against such property, to the extent of special benefits, had such deferral not been granted; and
- B. Interest upon the special assessments not paid each year at the rate of six percent (6%) from the dates at which such assessments would have been payable if no deferral had been granted.

In cases where the deferral provided by this Section is terminated as a result of a sale or transfer described in subdivision 2 or 3 of this Section the lien for assessments had interest shall attach as of the day preceding such sale or transfer. (*Ref. 19-2428 et seq. RS Neb.*) (*Ord. No. 83-22, 10/17/83*)

CHAPTER 94: ANIMALS

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GENERAL PROVISIONS

§ 94.01 DEFINITIONS AND SHORT TITLE.

- A. This Ordinance shall be known and may be cited as "The Waverly Animal Protection Ordinance." For the purpose of this Article, the following definitions shall prevail.
- B. Person. The word person shall include all natural persons, artificial persons, including, but not limited to, firms, partnerships, associations, corporation, companies, political and corporate bodies, societies, communities, the public generally, individuals, joint stock companies, and shall include all aggregate organizations of any character whatsoever.
- C. Pet Shop. The term "pet shop" shall mean any commercial retail establishment or premises or part thereof maintained for the purchase, sale, or breeding of animals of any type, and shall also include any places where cleaning, caring, and grooming services are provided for animals; Provided, however, that the term shall not include livestock auction houses, the place of business of licensed veterinarians, boarding kennels, or animal shelters.
- D. Owners. The term "owner" as used in this Article, shall mean any person or persons, who shall harbor or permit any animal to be in or about his, her, or its house, store, or enclosure, or to remain to be fed in or about his, her, or its house, store, or enclosure for a period of ten (10) days or more.

- E. Animal. The term "animal" shall mean any vertebrate member of the animal kingdom, excluding humans.
- F. Unusual Animal. The term "unusual animal" shall mean any poisonous or potentially dangerous animal not normally considered domesticated and shall include animals prohibited by the City of Waverly, State of Nebraska, or by Federal requirements, and also:
 - 1. Class Mammalia; Order Carnivora, Family Felidae, (Such as lions, tigers, jaguars, leopards, and cougars) except commonly accepted domesticated cats and hybrids involving same; Family Canidae, (such as wolves, coyotes, and fox) except domesticated dogs and hybrids involving same; Family Mustelidae, (such as weasels, martins, fishers, skunks, wolverines, mink, and badgers); Family Procyonidae, (such as raccoon); Family Ursidae, (such as bears); Order Primata (such as monkeys and chimpanzees); and, Order Chiroptera (such as bats).
 - 2. Poisonous reptiles, cobras, and their allies (Elapidae, Hydrophiidae); vipers and their allies (Crotalidae, Viperidae); boonslang and kirtland's tree snake; and gila monster (Heleodermatidae).
- G. Livestock. The term "livestock" shall mean any domestic cattle, horses, mules, donkeys, sheep, goats, swine, or fowl.
- H. Chicken. The term "chicken" shall mean a domesticated chicken (*Gallus domesticus*). (Amended by Ord. 10-01, 3/15/10)

§ 94.02 UNUSUAL ANIMALS AND LIVESTOCK PROHIBITED; EXCEPTIONS.

It shall be unlawful for any person to own, harbor, or have under his or its care, custody, or control any unusual animal or livestock within the corporate limits of the City, except as provided in this Section and Article. It shall be unlawful for any pet shop to sell, give, transfer, import into the corporate limits of the City any unusual animal or livestock.

- A. This Section shall not be construed to prohibit:
 - 1. a public zoo, circus, Humane Society, or other public exhibition or carnival from displaying unusual animals or livestock as exhibits;
 - 2. primary or secondary schools, colleges or universities from using unusual animals or livestock for research or teaching;
 - 3. commercial research and development laboratories operating in a non-residential zoned area creating products to be licensed to combat illnesses caused by venomous and unusual animals;
 - 4. wildlife rescue organizations with appropriate permits from the Nebraska Game and Parks Commission from rehabilitation or sheltering unusual animals;
 - 5. individuals authorized by the State of Nebraska from sheltering animals belonging to a public zoo that require rehabilitation; or individuals from owning or possessing chickens provided such ownership and possession complies with Section 94.11 of this Article and all applicable zoning and building regulations. (Amended by Ord. 10-01, 3/15/10; Ord. 18-08)

§ 94.03 SEIZURE OF UNUSUAL ANIMALS; IMPOUNDMENT; FEES; DISPOSITION.

- A. When any unusual animal is off of the premises and not under the direct physical control of the owner or is infected with a disease posing a threat to the public health and safety as determined by any Humane Officer or Law Enforcement Official, the same are hereby empowered to seize such animal. Such unusual animal may be impounded and in the case of the impoundment of such an animal it shall be subject to the same impoundment fees and costs and the owner shall be notified in substantially the same manner as provided for unlicensed dogs under the provisions of the Waverly Dog Ordinance as the same may be amended from time to time and at any time; Provided, however, in the event that the City Clerk determines that such animal should be sold, the owner shall, in addition to any other notice requirement imposed hereunder, be informed that unless the animal is claimed and the impoundment fees and all costs incident to impoundment paid within seventy-two (72) hours after notice, the animal will be sold at a time and place to be designated in such notice.
- B. Any such impounded animal shall be kept and maintained at the Municipal Animal Shelter or other appropriate place for a period of seventy-two (72) hours after notice or from the time it becomes eligible for release, whichever is later. If the owner shall fail to claim the animal within the above-specified time period, title to such animal shall immediately vest in the City of Waverly, Nebraska, and the City Clerk may sell, destroy, or otherwise dispose of such animal as he or she shall deem appropriate.
- C. In the event of sale, any funds received, less expenses and pound fees and costs incurred by the City of Waverly, Nebraska, shall be paid to the owner, any deficiency shall be the responsibility of the owner and shall be paid to the City of Waverly, Nebraska, within ten (10) days of the date of the sale. In the event the owner fails to claim the proceeds of any such sale, such funds, shall, after deducting expenses and pound fees and costs as aforesaid, be held for the owner by the City Treasurer for a period of one (1) year. If not claimed by the owner within one (1) year, title to said proceeds shall vest in the City of Waverly, Nebraska, and shall be deposited to the general fund. All pound fees collected by the City of Waverly, Nebraska, under this Article shall be deposited to the general fund.
- D. In the event such animal is destroyed, the cost of destruction together with the impoundment fees and other costs incurred by the City of Waverly, Nebraska, shall be paid to the City within ten (10) days of the date such animal is destroyed.
- E. Any impounded animal may be released immediately to the owner upon payment of the impoundment fees and all costs incurred by the City of Waverly, Nebraska, in connection with such impoundment and on the condition that the owner shall immediately remove such animal from the City. In the case of diseased animal, such animal may be released only after a Humane Officer has determined that the health and safety of the public is no longer threatened.
- F. In the event that the owner of any unusual animal, subsequent to the destruction of his/her animal, shall fail to pay the fees which have accrued hereunder, within the

time provided, or shall fail to remove such animal from the City after release from impoundment, he/she shall be deemed to be guilty of a misdemeanor, and the Municipal Attorney shall file a separate complaint against such owner for violation of this subsection. When any person shall be charged with violation of this subsection, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. If upon the trial for violation of this subsection it shall appear to the Judge of the County Court that such person charged be guilty as charged in said complaint said Judge may, in addition to the usual judgment or conviction, order the person so offending to pay to the City of Waverly, Nebraska, all fees which have accrued under this Chapter in connection with any animal which has been destroyed or, if approved, may order the destruction or removal from the City of any animal which the owner has failed to remove subsequent to release from impoundment.

§ 94.04 RUNNING AT LARGE.

It shall be unlawful for the owner of any livestock or unusual animal or other animal to permit the same to be driven or run at large on any of the public ways, parks, or other public property, or upon the property of another, or to be tethered or staked out in such manner so as to allow such animal to reach or pass into any public way within the corporate limits of the City of Waverly, Nebraska. (*Ref. 17-547 RS Neb.*)

§ 94.05 CRUELTY.

It shall be unlawful for any person to torture or torment, or to inhumanely, unnecessarily, or cruelly beat, misuse, overwork, or otherwise abuse any animal or to willfully or cruelly neglect to provide suitable and sufficient sustenance or shelter for such animal or animals at any season of the year within the City. (*Ref. 28-1008, 28-1009 RS Neb.*)

§ 94.06 KILLING AND INJURING.

No person shall kill or injure any animal by the use of firearms, stones, clubs, poisons, or any other manner unless the animal is vicious or dangerous and cannot be captured without danger to the persons attempting to effect a capture of the said animal. (*Ref. 28-1008, 28-1009 RS Neb.*)

§ 94.07 ANIMAL FIGHTS.

It shall be unlawful for any person or persons within the limits of the City of Waverly, Nebraska, to set dogs or other animals or fowls to fighting, by agreement or otherwise, or in any manner to urge, forward, or encourage the same.

§ 94.08 SELLING DYED ANIMALS.

No wild or domestic animal or fowl that has been dyed or otherwise colored artificially may be sold or offered for sale, raffled, offered or given as a prize, premium, or advertising device, or displayed in any store, shop, carnival, or other public place.

§ 94.09 DOMESTICATED DOGS AND CATS; SKINNING; SELLING OF SKINS; PROHIBITED.

It shall be unlawful for any person to skin, or to buy or sell, or to attempt to buy or sell, the skin or skins of any domesticated dog or cat within the City of Waverly, Nebraska, or to cause such animal to be skinned, or to cause such skin to be bought or sold within the City of Waverly, Nebraska.

§ 94.10 ENFORCEMENT.

The enforcement of the provisions of this Chapter shall be under the direction of the Mayor, the Humane Officers and the Law Enforcement Officials. For the purpose of enforcing this Chapter or abating any nuisance existing hereunder, any Humane Officer or Law Enforcement Official may enter private premises.

§ 94.11 CHICKENS; PERMIT REQUIREMENTS; RESTRICTIONS.

- A. It shall be unlawful for any person to permit or allow any chicken to run or fly at large within the corporate limits of the City.
- B. It shall be unlawful for any person to own, keep, harbor, or have under his or its care, custody or control any cock or rooster chicken two (2) months of age or older. The unlawful keeping or harboring of cocks or roosters is hereby declared to be a public nuisance.
- C. It shall be unlawful for any person to own, keep, harbor, or have under his or its care, custody or control any chicken without a valid annual permit issued by the City. The fee for an annual chicken permit shall be established by the City. No permit shall be assignable or transferable either as to permittee, location or chickens.
- D. The requirements for the issuance of a permit by the City to own, keep, harbor, or have custody or control over a chicken are:
 - a. No more than three (3) chickens shall be permitted on any lot of one (1) acre or less. No more than four (4) chickens shall be permitted on any lot of more than one (1) acre.
 - b. The chickens must be housed in a chicken facility and run approved by the City, such chicken facility and run to be maintained in compliance with all of the City's requirements as a condition of the permit. The requirements for the chicken facility and run include:
 - i. The chicken facility and run must be in good repair, capable of being maintained in a clean and sanitary condition, free of vermin, obnoxious smells and substances;
 - ii. The chicken facility and run shall not constitute a nuisance or disturb neighboring residents due to noise, odor or threats to public health;
 - iii. The chicken facility and run shall prevent chickens from roaming at large;
 - iv. The run shall be constructed to include metal wire fencing anchored to the ground and a fully enclosed roof or similar enclosure to prevent escape by chickens and entry by predators and general members of the public;

- v. The chicken facility shall be constructed of durable material and the flooring of any chicken facility shall be of a waterproof hard-surface non-porous material;
 - vi. The chicken facility shall provide not less than three (3) cubic feet per occupant chicken, and the run shall provide not more than five (5) cubic feet per occupant chicken;
 - vii. The chicken facility and run shall be located so as to be at least thirty (30) feet from any dwelling, sidewalk, street, alley, road, public building, park or recreation area; and
 - viii. The chicken facility and run shall comply with all applicable City building and zoning codes and must be consistent with the requirements of any land use regulation.
- c. Offal, manure and waste material shall not be permitted to accumulate nor be confined in any manner that is conducive to the breeding or attraction of flies, mosquitoes or other noxious insects or in any manner that endangers the public health or safety. All permit applicants must provide a statement of the method in which offal, manure and waste material accumulating from the chickens will be sanitarily disposed of at least once every seven (7) days;
 - d. All grain, feed and feedstuffs intended for use as food for chickens shall be kept in tightly-fitted containers constructed to keep out vermin and wild animals; and
 - e. The permit application shall be accompanied by adequate evidence, as determined by the City, that the applicant has notified all property owners and residents within 150 feet of the property lines of the property on which the chickens will be located, of the application. The City may consider resident objections in deciding whether to issue a permit under this Section.
- E. The slaughtering or destruction of chickens within the corporate limits of the City shall be prohibited. *(Amended by Ord. 10-1, 3/15/10)*

§ 94.12 PENALTY FOR VIOLATION.

Except as otherwise provided in herein, any person upon whom a duty is placed by the provisions of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a Class II Misdemeanor as defined by section 131.22 of this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be fifty dollars (\$50.00). Each day such violation continues shall be deemed a separate offense. *(Amended by Ord. 07-05, 5/7/07; Ord. 10-1, 3/15/10)*

DOGS; GENERAL PROVISIONS

§ 94.20 SHORT TITLE; DEFINITIONS.

This Article shall be known as and may be cited as "THE WAVERLY DOG ORDINANCE." For the purpose of this Chapter, the following definitions shall prevail:

- A. Dog: The term "dog", whenever used in this Chapter, shall mean an animal of Canine or Canidae family, regardless of sex.

- B. Inoculation, Vaccination, or Vaccination for Rabies: The terms "inoculations," "vaccination," or "vaccination for rabies," whenever used in this Chapter, shall mean the inoculation of a dog, cat, or other animal with a vaccine approved by the State Veterinarian and as required by the Nebraska Statutes, or approved by the Lincoln-Lancaster County Department of Health. (*Ref. 71-4401 to 71-4412 RS Neb.*)
- C. Own: The term "own," as used in this Chapter, unless otherwise indicated in the text, shall be deemed to mean and include, own, keep, harbor, or have charge, custody, or control of, a dog.
- D. Owner: The term "owner," as used in this Chapter, shall mean any person or persons, firm, association, corporation, or other entity, who shall harbor or permit any dog to be in or about his or her house, store, or enclosure, or to remain to be fed in or about his or her house, store, or enclosure, for a period of ten (10) days or more. (*Ref. 54-606, 71-4401 RS Neb.*)
- E. Person: The term "person," as used in this Chapter, shall mean and include any individual, firm, corporation, association, partnership, or any other entity.
- F. Kennel: The term "kennel," as used in this Chapter, shall be deemed to mean the house, store, yard, enclosure, or place where more than three (3) dogs over the age of six (6) months, are harbored or kept, provided, however, that this definition shall not apply to any animal shelter, not to the place of business of licensed veterinarians.
- G. Spayed Female Dog: The term "spayed female dog," as used in this Chapter, shall be construed to include any female dog which has been spayed or otherwise rendered incapable of reproduction.
- H. Neutered Male Dog: The term "neutered male dog," as used in this Chapter, shall be construed to include any male dog which has been neutered or otherwise rendered incapable of reproduction. (*Amended by Ordinance 03-01, 2/17/03*)
- I. Dangerous Dog: The term "dangerous dog" as used in this Chapter shall mean any dog that:
1. has killed or inflicted severe injury on a human being on public or private property;
 2. has killed a domestic animal without provocation while the dog was off the owner's property;
 3. has been previously determined to be a potentially dangerous dog according to this Chapter and such dog subsequently bites, attacks, or endangers the safety of humans or domestic animals;
 4. any dog that has been trained for dog fighting, animal fighting or animal biting, or is owned or kept for such purposes;

5. any dog trained to attack human beings, upon command or spontaneously in response to human activities except dogs owned by and under the control of a law enforcement officer or a law enforcement agency of the State of Nebraska or the United States or a branch of the armed forces of the United States;

Under (1) and (3) herein, a dog shall not be considered a dangerous dog if the conduct of the dog in question is directed at a person:

1. who, at the time, was committing a willful trespass or any other tort upon the property of the owner of the dog;
2. who, at the time, was tormenting, abusing, or assaulting the dog;
3. who has, in the past, been observed or reported to have tormented, abused or assaulted the dog; or
4. who, at the time, was committing or attempting to commit a crime against the person, against public peace, or relating to property.

J. Potentially Dangerous Dog: The term “potentially dangerous dog” as used in this Chapter shall mean:

1. Any dog that when provoked:
 - a. inflicts a wound on a human or injures a domestic animal either on public or private property, or
 - b. chases or approaches a person upon streets, sidewalks, or any public property in an outward appearance of aggressive or dangerous behavior; or
 - i. Any dog with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals. (*Amended by Ord. No. 05-12, 9/6/05; 15-18, 11/24/15*)

§ 94.21 VACCINATION AGAINST RABIES REQUIRED; VACCINATION TAG.

Any person within the City owning a dog six (6) months of age or older shall have such dog vaccinated against rabies. Young dogs shall be vaccinated within thirty (30) days when they have reached six (6) months of age. Unvaccinated dogs acquired or moved into the Municipality must be vaccinated within thirty (30) days after purchase or arrival, unless under six (6) months of age as specified above. It shall be the duty of every person owning, keeping, or harboring a dog within the City of Waverly to require their veterinarian, at the time of vaccinating any dog, to provide a copy of a uniform rabies vaccination certificate to the Lincoln-Lancaster County Department of Health and to the Waverly Municipal Clerk and to provide a rabies vaccination tag to the owner. It shall be the duty of every veterinarian administering any rabies vaccination within the City of

Waverly to provide a copy of the rabies vaccination certificate as required above. The rabies vaccination tag shall be attached to and kept upon the collar or harness of the dog. Dogs shall be vaccinated within the three (3) year period immediately prior to the last date of vaccination if the last vaccination was with chick embryo Low Egg Passage flurry vaccine or within the one (1) year period immediately prior to the last date of vaccination if the last vaccination was with killed or inactivated vaccine. Dogs may be vaccinated with any other vaccine approved by the State Veterinarian or otherwise authorized by the laws of the State of Nebraska, and the intervals of any other antirabies vaccines shall be set by the State Veterinarian. (*Ref. 71-4401 to 71-4412 RS Neb.*) (*Amended by Ord. No. 17-04,2/28/2017*)

§ 94.22 EXCEPTIONS TO RABIES VACCINATION; DOGS HELD FOR RESEARCH.

The vaccination provisions of this Article with respect to dogs assigned to a bona fide research institution shall not apply if such dogs are kept under strict supervision of research personnel, and are kept in a kennel or similar holding facility, nor shall such vaccination provisions apply to dogs which are otherwise exempt from vaccination requirements under Nebraska law.

§ 94.23 LICENSE.

Any person who shall own, keep, or harbor a dog over the age of six (6) months within the Municipality shall within thirty (30) days after acquisition of the said dog acquire a license for each such dog annually by or before the thirty-first (31st) day of January of each year. Such tax shall be delinquent from and after February first (1st); Provided, the possessor of any dog brought into or harbored within the corporate limits subsequent to January first (1st) of any year, shall be liable for the payment of the dog tax levied herein and such tax shall be delinquent if not paid within thirty (30) days thereafter. Licenses shall be issued by the Municipal Clerk upon the payment of a license fee in accordance with the following schedule:

Male Dog - \$20.00
Neutered Male Dog - \$10.00
Female Dog - \$20.00
Spayed Female Dog - \$10.00

Provided, that the sum of five dollars (\$5.00) shall be added to the license fees set forth in the foregoing schedule for each license obtained after February first (1st) or otherwise delinquent. Dogs shall be licensed for the reduced fee provided for spayed and neutered dogs only upon presentation of a certificate of neutering signed by a licensed veterinarian or upon presentation of other handwritten verification signed by a licensed veterinarian that such dog is no longer capable of reproduction.

Such license shall not be transferable and no refund will be allowed in case of death, sale, or other disposition of the licensed dog. The owner shall state at the time of the application is made and upon printed forms provided for such purpose, the following information:

- A. The name and address of the owner of the dog;
- B. The license number of the tag issued for such dog;

- C. The breed, age, color, name, and sex of the dog;
- D. Such other information as the Municipal Clerk may require for the purpose of identification.

A uniform certificate of rabies vaccination or reasonable facsimile thereof sufficient to comply with the requirement of Section 94.21 of this Code shall be presented when the license is applied for and no license or tag shall be issued until the certificate is shown. (*Ref. 17-526, 54-603, 71-4401 to 71-4412 RS Neb.*) (*Amended by Ord. No. 87-13, 9/8/87, 02-03, 2/4/02; 10-05, 5/3/10*)

§ 94.24 LICENSE TAGS.

Upon the payment of the license fee and the presentation of a satisfactory proof of vaccination, the Municipal Clerk shall issue to the owner of a dog a license certificate and a metallic tag for each dog so licensed. Said license certificate shall be issued in duplicate, the original of which shall be delivered to the owner of the dog, who shall retain it as evidence of the dog's license; the duplicate shall be retained by the Municipal Clerk. The metallic tags shall be of such design as shall be approved by the Municipal Clerk, shall bear the license number shown on the license, and shall have die-stamped thereon the license number, the words "DOG TAG – WAVERLY, NEBRASKA," and the year for which issued. The metallic tags so issued shall be properly attached to the collar or harness of all dogs so licensed and shall entitle the owner to keep or harbor said dog until the thirty-first (31st) day of December following such licensing. In the event that a license tag is lost and upon satisfactory evidence that the original plate or tag was issued in accordance with the provisions herein, the Municipal Clerk shall issue a duplicate or new tag for the balance of the year of which the license tax has been paid and shall charge and collect one dollar (\$1.00) for each duplicate or new tag so issued. All license fees and collections shall be immediately credited to the Governing Body. It shall be the duty of the Municipal Clerk to issue tags of a suitable design that are different in appearance each year. (*Ref. 17-526, 54-603 RS*)

§ 94.25 WRONGFUL LICENSING.

It shall be unlawful for the owner of any dog to permit or allow such dog to wear any other license tag than the identical one issued for such dog by the Municipality in which such owner resides, and for the license year for which issued. (*Ref. 17-526, 54-603*)

§ 94.26 WEARING OF COLLARS; IDENTIFICATION; REMOVAL OF LICENSE TAG; RELEASE FROM RESTRAINT; WHEN PROHIBITED.

Every dog within the Municipality shall wear a collar or harness and license tag at all times. It shall be unlawful for any person to remove, or cause to be removed, the collar, harness, or metallic license tag, or rabies vaccination tag from any licensed dog or release any dog from such restraint as is required by 94.31(B) of this Article without the permission of the owner. (*Ref. 54-605 RS Neb.*)

§ 94.27 EXCEPTIONS TO LICENSE; TRANSIENT DOGS.

The provisions of this Article with respect to licensing and vaccination against rabies shall not apply to a dog owned by any person temporarily remaining within the City for less than thirty (30) days. The provisions of this Article with respect to licensing and vaccination against rabies shall not apply to any dog owned by a bona fide resident of any other Municipality who works within the City of Waverly, whether or not, in excess of thirty (30) days; Provided, however, that such dogs must be vaccinated against rabies in accordance with the provisions of Nebraska law and properly licensed by the Municipality in which the owner resides.

§ 94.28 PROCLAMATION.

It shall be the duty of the Mayor, whenever in his or her opinion the danger to the public safety from rabid dogs is great or imminent, to issue a proclamation ordering all persons owning, keeping, or harboring any dog to muzzle the same, or to confine such dogs for a period of not less than thirty (30) days or more than ninety (90) days from the date of such proclamation, or until such danger is passed. The dogs may be harbored by any good and sufficient means in a house, garage, or yard on the premises wherein said owner may reside. Upon issuing the proclamation it shall be the duty of all persons owning, keeping, or harboring any dog to confine the same as herein provided. (*Ref. 17-526 RS Neb.*)

§ 94.29 KILLING AND POISONING.

It shall be unlawful to kill, or to administer, or cause to be administered, poison of any sort to a dog, or in any manner to injure, main, or destroy, or to place any poison, or poisoned food where the same is accessible to a dog, except as elsewhere specifically authorized in this Code or by Nebraska law. (*Ref. 54-604, 54-605 RS*)

§ 94.30 DOGS – OTHER ANIMALS; SEIZURE FOR PROTECTION OF ANIMAL.

When, in the judgment of any Humane Office, any dog or other animal is deprived of food or fresh water or maintained under cruel or inhumane circumstances, the Municipality may seize such dog or other animal and provide for its well-being until, in the judgment of the Humane Officer, such animal will be properly cared for if returned to its owner. While such dog or other animal is under the care of the Municipality, the owner of such animal shall be charged for boarding fees at the rates provided under this Chapter for dogs and cats or shall be charged the actual costs of maintaining any other animals. Failure to pay the costs which accrue under this or any other Section within Sections 94.20 to 94.73 shall be deemed a separate offense which may not be disposed of by waiver of appearance and plea of guilty. Upon conviction for violation of this Section the court may order the person so offending to pay to the City of Waverly all fees which have accrued under Sections 94.20 to 94.73 with respect to such defendant. When in the judgment of the Humane Officer, the owner of any animal seized under this Section is unwilling or unable to properly care for such animal, title to such dog or other animal shall immediately vest in the Municipality and the Municipality shall thereafter find a suitable home for such animal, or if the same is not possible within a reasonable period of time, the Municipality shall dispose of the animal in a humane manner.

§ 94.31 RUNNING AT LARGE.

- A. It shall be unlawful for the owner of any dog to allow such dog to run at large, whether licensed or not, at any time within the Municipality and any dog found to be running at large may be destroyed by the Municipality or may be impounded in a suitable animal shelter by any Humane Officer designated by the Municipality, by any Law Enforcement Officer, or by any Municipal Officer or employee at the direction of the Mayor or the Municipal Clerk.
- B. For the purposes of this Article, the term "running at large" is defined to mean any dog found off the premises of the owner and not physically restrained by means of a leash, cord, wire, rope, or chain, held by a responsible person no less than eight (8) years of age; confined to a cage or under other suitable and humane means of physical restraint.
- C. It shall be the duty of the Humane Office, or in his or her absence or unavailability, it shall be the duty of the Law Enforcement Officer on duty, to cause any dog found to be running at large within the Municipality to be taken up and impounded. No dog found running at large shall be released from impoundment until the owner of said dog shall have obtained a license as provided in this Chapter and the impoundment fee or other fees have been paid or other satisfactory arrangements have been made. *(Ref. 17-506, 54-607 RS Neb.)*

§ 94.32 UNCOLLARED.

All dogs found running at large within the Municipality without a collar or harness or without a current and valid license as required by this Article are hereby declared a public nuisance. Uncollared or unlicensed dogs found running at large may be destroyed by the Municipality or may be impounded in any suitable Animal Shelter by any Humane Officer designated by the Municipality, any Law Enforcement Officer, or any Municipal Officer or employee at the direction of the Mayor or the Municipal Clerk. *(ref. 17-526, 54-605 RS Neb.)*

§ 94.33 DANGEROUS AND POTENTIALLY DANGEROUS DOGS.

- A. **DANGEROUS AND POTENTIAL DANGEROUS DOGS; PROHIBITED:** It shall be unlawful for any person to keep or harbor a dangerous or a potentially dangerous dog within the City without complying with the provisions of this Chapter.
- B. **DANGEROUS AND POTENTIALLY DANGEROUS DOGS; PROCEDURE:** Whenever it shall come to the attention of the City that any person within the City's corporate limits is keeping or harboring a dangerous dog or a potentially dangerous dog as defined in this Chapter, the City Clerk shall notify the owner of such animal in writing that such dog must be registered as a dangerous or potentially dangerous dog within ten (10) days after the receipt of such written notice. Said notice shall be served either in person or by mailing such notice by certified or registered mail.

C. REGISTRATION REQUIREMENTS; DANGEROUS DOGS:

1. The owner of any dangerous dog shall register such dog with the City Clerk and upon registration shall provide the following:
 - a. The name, address, and telephone number of the owner;
 - b. A written description and representation indicating the owner has and will continue to comply with the confinement provisions of the Chapter;
 - c. Written evidence from a licensed veterinarian that the dog is currently neutered or spayed;
 - d. A written acknowledgement that the owner shall notify the City Clerk immediately if said dog is known by the owner to be running at large, unconfined, or when the owner has any knowledge of belief that the dog has bitten or is alleged to have bitten a human being or another animal;
 - e. A written acknowledgement that the owner of said dog shall notify the City Clerk of any changes in material recorded as a part of the registration within twenty-four (24) hours of said change. Changes in material recorded as part of the registration shall include information that the dog has been sold, given away, or otherwise transferred to any other person, and in the event the registered owner shall provide the Clerk with the name, address and phone number of such person; and
 - f. A non-refundable annual registration fee of Fifty Dollars (\$50.00), which fee shall be in addition to any other license fee required by this Chapter.
2. Upon satisfactory completion of all the requirements of this section the City Clerk shall issue a registration certificate which shall be used to assign the dog a permanent number. At the time of registration the City Clerk shall either order the owner to have any dangerous dog tattooed by a licensed veterinarian permanently marking the number assigned herein by tattoo upon the inner side of the dangerous dog's right ear or order the owner to have a microchip inserted in any dangerous dog by a licensed veterinarian within thirty (30) days of the date of registration. The owner shall provide the City Clerk with the animal's microchip number within thirty (30) days of the date of the registration. It shall be unlawful for any owner of such dangerous dog to fail to so mark, tattoo or microchip such dangerous dog as provided herein. It shall be unlawful to any person other than a licensed veterinarian to remove any tattoo, microchip or any other marking used for identification.
3. The registration requirements including the notification requirements acknowledged therein shall be construed as affirmative duties upon the owner, failure of which shall constitute a violation of this section.
4. It shall be unlawful for any person registering a dog to falsify or misrepresent material recorded as a part of registration.

A. REGISTRATION REQUIREMENTS; POTENTIALLY DANGEROUS DOGS:

1. The owner of any potentially dangerous dog shall register such dog with the City Clerk and upon registration shall provide the following:
 - a. The name, address, and telephone number of the owner;
 - b. A written acknowledgement that the owner shall notify the City Clerk immediately or when the owner has any knowledge or belief that the dog has bitten or is alleged to have bitten a human being or another animal;
 - c. A written acknowledgement that the owner of said dog shall notify the City Clerk of any changes in material recorded as a part of the registration within twenty-four (24) hours of said change. Changes in material recorded as part of the registration shall include information that the dog has been sold, give away, or otherwise transferred to any other person, and in the event the registered owner shall provide the director with the name, address, and telephone number of such person; and
 - d. A non-refundable registration fee of Twenty-Five Dollars (\$25.00), which fee shall be in addition to any other license fee required by this Chapter.
2. Upon satisfactory completion of all the requirements of this section the Clerk shall issue an annual registration certificate which shall be used to assign the dog a permanent number.
3. The registration requirements including the notification requirements acknowledge therein shall be construed as affirmative duties upon the owner, failure of which shall constitute a violation of this section.
4. It shall be unlawful for any person registering a dog to falsify or misrepresent material recorded as a part of the registration.

B. DANGEROUS DOGS; SECURELY CONFINED:

1. It shall be unlawful for the owner of a dangerous dog to fail, neglect, or refuse to securely confine such dog, in a humane manner, indoors or in a securely enclosed and locked pen or structure suitably designed to prevent the entry of young children and to prevent the dog from escaping. For materials used to provide a securely enclosed and locked pen or structure as required herein, such materials shall, at a minimum, comply with the following:
 - a. Any fencing material used shall not have openings with a diameter of more than two (2) inches, or in the case of wooden fence materials, gaps of more than two (2) inches wide;
 - b. Any gates within such pen or structure shall be lockable or of such design to prevent the entry of children or the escape of the dog.

2. The required pen or structure shall have secure sides and a secure top. Any top provided shall be a fence outrigger on the top of the fencing material or an equivalently secured top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground. The pen or structure shall also protect the dog from the elements.
3. The required pen or structure shall have secure sides and a secure top. Any top provided shall be a fence outrigger on the top of the fencing material or an equivalently secured top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground. The pen or structure shall also protect the dog from the elements.
4. The owner of a dangerous dog shall securely restrain such dog by chain or leash when moving the dog to or from such pen or structure.

C. DANGEROUS DOGS; LEASH REQUIRED: It shall be unlawful for any owner of a dangerous dog to permit such dog to go beyond the property of the owner unless the dog is restrained securely by a chain or leash and properly muzzled to reasonably prevent the dog from biting.

D. DANGEROUS DOGS; WARNING SIGNS: The owner of a dangerous dog shall display signs warning that there is a dangerous dog on the property. These signs shall be placed so as to be readily discernible and clearly visible from the public sidewalk or property line at any actual or customary point of entry to the premises. An additional sign shall be conspicuously displayed on any pen or structure provided for such dangerous dog.

E. DANGEROUS DOGS; CONFISCATION: Any dangerous dog may be immediately confiscated by a City Law Enforcement Officer if in violation of this Chapter. The owner shall be responsible for the reasonable costs incurred for the care of a dangerous dog confiscated or for the destruction of any dangerous dog as authorized herein. In addition to any other penalty, a Court may order the destruction of a dangerous dog in an expeditious and humane manner.

F. BITES UNLAWFUL: It shall be unlawful for the owner of any dangerous or potentially dangerous dog required to be registered under this section to permit or allow such dog to kill, bite, chase, attack, injure, wound, or endanger in such a way that the dog may be considered either a dangerous dog or a potentially dangerous dog. In addition, any such dangerous dog required to be registered under this section shall be immediately confiscated by a City Law Enforcement Officer, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

G. APPEALS: The determination that any dog is dangerous or potentially dangerous as defined herein shall be deemed to have been made upon notice to the owner of such dog as provided in subsection B herein. Upon such notification and after the expiration of eleven (11) days from the date of such notice, the determination shall be final and binding upon the City and upon the owner unless within ten (10) days after notice, the owner requests, in writing, a review of the determination by the Director of the Lancaster County Health Department. At such review the owner may present any written statements or documentary evidence relevant to the determination. The director

shall make a final and binding determination after such review within fifteen (15) days of the date of review. The owner may appeal any final determination to the district court as provided by law. (*Amended by Ord. No. 05-12, 9/6/05*)

§ 94.34 MULTIPLE BITING INCIDENTS; REMOVAL FROM MUNICIPALITY.

When any designated Municipal Humane Officer or the Municipal Clerk shall receive verification through the affidavit of any victim or eye-witness to any biting incident by any dog, through the official report of any Humane Officer or Law Enforcement Officer, or shall have first-hand personal knowledge that any dog has been involved in two (2) or more biting incidents in which said dog has bitten one (1) or more individuals or animals, he or she shall order that such dog be destroyed or removed from the Municipality (at the option of the owner), within ten (10) days of the date of the most recent biting incident or in the event such dog has been placed under mandatory observation, then immediately upon expiration of any mandatory observation period required under this Chapter. Notice of such order shall be sent by postage prepaid, certified United States mail, return receipt requested to the owner of such dog, shall include a copy of this Section, and shall specify the date on or before which such dog must be destroyed or removed from the Municipality. Any person who fails to comply with such order shall be deemed guilty of a misdemeanor. If upon trial for violation of this Section, it shall appear to the Judge of the County Court that such person be guilty as charged in said complaint, in addition to the usual judgment or conviction, said Judge may order such disposition of the offending dog as may seem reasonable and proper. When any person shall be charged with violation of this Section, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. (*Ref. 17-526 RS Neb.*)

§ 94.35 CAPTURE IMPOSSIBLE.

Any designated Humane Officer or any Law Enforcement Officer designated by the Municipality shall have the authority to tranquilize or to kill any dog showing vicious tendencies, or the characteristics of rabies which tendencies or characteristics make capture impossible because of the danger involved when such killing or tranquilizing appears reasonably necessary to prevent injury to any person. (*Ref. 54-605 RS Neb.*)

§ 94.36 LIABILITY OF OWNER; RESTITUTION; PROPERTY DAMAGE OR PERSONAL INJURY; WAIVER DISALLOWED.

It shall be unlawful for any person to allow a dog owned, kept, or harbored by him or her, or under his or her charge or control, to injure any person or to destroy any real or personal property of any description belonging to another person. If upon the trial for any violation of Sections 94.20 to 94.73 which involves personal injury or property damage, it shall appear to the Judge of the County Court that the person charged be guilty as charged in said complaint, said Judge may, in addition to the usual judgment and conviction, order the person so offending to make restitution to the party injured in an amount equal to the value of the property so damaged or destroyed together with medical expenses incurred by any injured person or persons. When any person shall be charged with a violation of any provision of this Chapter involving injury to person or damage to real or personal property, such complaint may not be disposed of by way of Waiver of

Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. (*Ref. 17-526, 54-601, 54-602 RS Neb.*)

§ 94.37 BARKING AND OFFENSIVE.

It shall be unlawful for any person to own, keep, or harbor any dog which by loud, continued, or frequent barking, howling, or yelping shall annoy or disturb any neighborhood, or person, or which habitually barks at or chases pedestrians, drivers, or owners of horses or vehicles while they are on any public sidewalks, street, or alleys in the Municipality. Upon written complaint of two (2) or more affected persons from different households, filed with any thirty (30) day period with the Municipal Clerk, that any dog owned by the person named in the complaint is an annoyance or disturbance, or otherwise violates the provisions of this Section, the Humane Officer or in his or her absence, the Law Enforcement Official on duty shall investigate the complaint and, if in his or her opinion the situation warrants, shall issue an appropriate citation for violation of this Section. The provisions of this Section shall not be construed to apply to any Animal Shelter or to the place of business of licensed veterinarians. (*Ref. 17-526 RS Neb.*)

§ 94.38 ODORS.

No person shall allow any dog or dogs which he or she owns, harbors, or keeps to be maintained in such manner that foul or offensive odors are produced on or around the premises on which such dog is kept. Upon conviction of violation of this Section the Judge of the County Court may declare that such odors constitute a public nuisance, and in addition to the usual judgment or conviction, order the abatement of such nuisance. When any person shall be charged with violation of this Section, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. (*Ref. 17-526 RS Neb.*)

§ 94.39 INTERFERENCE WITH POLICE.

It shall be unlawful for any person to hinder, delay, or interfere with any Law Enforcement Officer or designated Humane Officer who is performing any duty enjoined upon him or her by the provisions of this Article, or to break open, or in any manner directly or indirectly aid, counsel, or advise the breaking open of any animal shelter, any ambulance wagon, or other vehicle used for the collecting or conveying of dogs to such shelter. (*Ref. 28-906 RS Neb.*)

§ 94.40 FIGHTING.

It shall be unlawful for any person, by agreement or otherwise, to set dogs to fighting, or by any gesture or word to encourage the same to fight.

§ 94.41 KENNELS DEFINED, PROHIBITED.

More than three (3) dogs in excess of six (6) months of age, per family or residence, shall constitute a kennel. No kennels shall be maintained within the Municipality; provided, however, the provisions of this Section shall not apply to any

Municipal Animal Shelter, or to hospitals operated by veterinarians duly licensed under the laws of the State of Nebraska, keeping dogs for others for treatment or boarding.

If upon the trial of the offense mentioned in this Section, it shall appear to the County Judge that the person be guilty as charged in said complaint, said Judge may, in addition to the usual judgment of conviction, declare said dog kennel a public nuisance, order the party or parties so convicted to abate said nuisance forthwith, and in the event that the party or parties convicted shall fail to do so, order the Municipal Law Enforcement Personnel to remove to a suitable animal shelter said dog or dogs so kept and harbored in violation of this Section, there to be impounded and placed in suitable homes or disposed of in accordance with the terms of this Article. When a complaint is filed for violation of this Section, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty, and the complaint filed by the Municipal Attorney shall state such limitation. (*Ref. 17-526 RS Neb.*)

§ 94.42 MUNICIPAL ANIMAL SHELTER, HUMANE OFFICER.

The Municipality shall provide a temporary Municipal Animal Shelter. The Mayor may, when necessary, employ or appoint annually a Chief Humane Officer and one (1) or more additional Humane Officers who shall manage the temporary Municipal Animal Shelter, issue citations for violation of the provisions of Sections 94.20 to 94.73, and perform such duties as the Mayor shall direct and such other duties as may be imposed by Sections 94.20 to 94.73. (*Amended by Ord. 02-03, 2/4/02*)

§ 94.43 MUNICIPAL ANIMAL SHELTER, HUMANE OFFICER, CONTRACT WITH HUMANE SOCIETY.

The Mayor shall have the authority, with the approval of the City Council, to contract with any Humane Society or like institution to handle boarding and disposal of dogs or other animals required under this Chapter and to perform the duties assigned to Humane Officers under this Chapter and may designate such institution to fulfill the duties of the Humane Officers.

§ 94.44 IMPOUNDING.

- A. It shall be the duty of the Humane Officers or in the event of his, her, or their absence or unavailability it shall be the duty of the Law Enforcement Officer on duty to capture, secure, and remove in a humane manner to a Municipal Animal Shelter or other appropriate shelter any dog violating any of the provisions of this Article, except Section 94.37. The dogs so impounded shall be treated in a humane manner and shall be provided with a sufficient supply of food and fresh water each day.
- B. Each impounded dog except those impounded for lack of a current rabies vaccination shall be kept and maintained at an appropriate animal shelter for a period not less than seventy-two (72) hours after notice has been given unless reclaimed earlier by the owner. All dogs impounded for the lack of a current rabies vaccination shall be held for not less than one hundred twenty (120) hours, unless sooner redeemed or released as herein provided, and if not so redeemed or released at the expiration of the time limit of one hundred twenty (120) hours may be destroyed in a humane manner.

Unlicensed dogs shall be transported immediately to the Capital Humane Society or other animal shelter for impoundment or disposal as provided hereunder. Dogs licensed as required hereunder shall be held in the Municipal Animal Shelter for no less than twenty-four (24) hours after the notice required hereunder has been mailed and may thereafter be transported to any other appropriate animal shelter. Notice of impoundment of all animals, including any significant marks of identification, shall be posted at the office of the City Clerk and at the Municipal Pound within twenty-four (24) hours after impoundment. And in addition, if the name and/or address of the owner is known to the Municipal Clerk, or is reasonably ascertainable, notice of such impoundment shall be mailed to said owner by postage prepaid, certified United States mail, return receipt requested, within twenty-four (24) hours after impoundment. Such notice shall be deemed to be sufficient if it includes the following:

1. A copy of §94.44 of the Waverly Municipal Code;
2. The date the dog was impounded;
3. A description of the dog;
4. The address and telephone number of the Municipal offices;
5. The address and telephone number of any other agency or institution which at the time of the notice has, or may in the future have, the physical control of the impounded dog;
6. The accrued costs to date and an estimate of the costs which are expected to accrue on a daily basis incident to impoundment and/or destruction of the dog; and,
7. The date, time, and place at which the dog will be destroyed if not claimed.
(Amended by Ord. 22-01, 3/8/22)

- C. When any impounded dog is claimed and returned to the owner within twenty-four (24) hours of impoundment, the Municipal Clerk shall not be required to provide the notice which would otherwise be required hereunder.

Any dog may be reclaimed by its owner during the period of impoundment by payment of all accrued impoundment and boarding fees and the cost of certified mailing as provided for in this Article. Upon claiming any such dog, the owner shall be required to comply with the licensing and rabies vaccination requirements before said dog is released. If the dog is not claimed at the end of the applicable waiting period as required by this Section, the Municipality may, after the notice required by this Section has been given, cause the disposal of any such dog in accordance with the applicable rules and regulations pertaining to the same; Provided, however, that if, in the judgment of the Municipality, or its agent or any animal shelter, a suitable home can be found for any such dog within or without the Municipality, said dog shall be turned over to that person and shall not be destroyed and the new owner shall then be required to pay all fees required hereunder and meet all licensing and vaccinating requirements provided in this Chapter. The Municipality shall, after notice and the expiration of the applicable waiting period required by this Section, acquire legal title to any unlicensed dog impounded in the Animal Shelter or other authorized shelter.

- D. All dogs required hereunder to be destroyed shall be destroyed and buried in the summary and humane manner as prescribed by the Board of Health. *(Ref. 17-548, 71-4409 RS Neb.)*

§ 94.45 IMPOUNDMENT FEES.

- A. Fees. There shall be a boarding fee of three dollars (\$3.00) per day, or part thereof, payable to the City of Waverly for each day a dog is impounded by the Municipality. In addition there shall be a general impoundment fee of fifteen dollars (\$15.00) for each impoundment of any dog.

All such fees shall be paid to the City of Waverly before any dog is released. In the event the dog is being held by the Capitol Humane Society or other authorized animal shelter, said dog shall not be released until the owner presents a receipt to the authorized animal shelter showing that all fees required hereunder have been paid to the City of Waverly and, in addition, the owner shall pay the daily or flat rate boarding fee charged by the Humane Society or other authorized Animal Shelter.

- B. Dogs, Destruction; Applicable Fees. In the event that any dog is destroyed at the direction of the City of Waverly, the owner of the dog which is destroyed shall, within ten (10) days of the date of the destruction of such dog, pay all applicable pound fees levied by the City of Waverly and/or its agents, and shall pay a reasonable fee for destroying such dog, but no complaint shall be filed in the County Court against the owner of said dog; Provided, however, that in the event that the owner, subsequent to the destruction of his or her dog, shall fail to pay the fees which accrue under this Section, within the time provided herein, he or she shall be deemed to be guilty of a misdemeanor, and the Municipal Attorney shall file a separate complaint against such dog owner for violation of this subsection. When any person shall be charged with violation of this subsection, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty and the complaint filed by the Municipal Attorney shall state such limitation. If upon the trial for violation of this subsection, it shall appear to the Judge of the County Court that the person charged be guilty as charged in said complaint said Judge may, in addition to the usual judgment or conviction, order the person so offending to pay to the City of Waverly all fees which have accrued under this Chapter in connection with the dog which has been destroyed.

§ 94.46 DUTY TO PLACE UNDER OBSERVATION; WHEN REQUIRED, PROCEDURE.

When any person owning a dog or other animal has been notified by any person injured or by someone in his or her behalf, or has knowledge of said injury, that said person has been bitten or attacked by said dog, or other animal, or when any person owning a dog or other animal has been notified by any person that said dog or other animal has been bitten by a rabid animal, the owner shall immediately place the dog or other animal under the care and observation of the Municipality or a licensed veterinarian the expense thereof to be borne by the owner of such dog, and failure of the owner to submit said dog or other animal within twenty-four (24) hours after notice of said bite or attack to the Municipality or its authorized agent or a licensed veterinarian shall constitute a violation of this Chapter. The Municipality or its agent or a licensed veterinarian shall impound said dog or other animal for care and observation for a period of ten (10) days or for such other period as required by Chapter 71, Article 44, Reissued Revised Statutes of Nebraska, 1943, and the amendments thereto, in compliance with standards adopted by the Board of Health. It

shall be lawful for the Municipality or any agent of the Municipality or the custodial veterinarian to destroy in a humane manner any dog or other animal that has been determined by a licensed veterinarian to have rabies, or which has been impounded for observation after the period of observation has expired unless the owner shall, within five (5) days after notice of the expiration of impoundment has been given, redeem such dog by paying such expense incident to such impounding, observation, or treatment. It shall be illegal for any person to release any dog or other animal held for observation to any person prior to expiration of the period of observation. Before any such dog or other animal is released, the person to whom it is released shall submit proof, in the form of a certificate issued by a licensed veterinarian or other person authorized by law to administer rabies inoculation, that such dog or other animal does not have rabies and has been properly inoculated for rabies. (*Ref. 71-4406 RS. Neb.*)

§ 94.47 ENFORCEMENT.

The enforcement of the provisions of this Chapter shall be under the direction of the Mayor. For the purpose of enforcing Sections 94.20 to 94.73 or abating any nuisance existing hereunder, the designated Humane Officer or any Law Enforcement Officer may enter private premises.

§ 94.48 ANIMAL CONTROL VIOLATION, CITATION.

- A. Whenever a designated Humane Officer of the Municipality or any Law Enforcement Officer shall observe any violation of Sections 94.20 to 94.73, it shall be his, her, or their duty to issue an appropriate citation. It shall be the duty of the Municipal Attorney to promptly prosecute all violations of this Article.
- B. At the time of the commission of the alleged violation, the accused may be served with a printed notice requiring him or her to make such appearance on or before the date specified thereon and advising whether execution of a Waiver of Appearance and Plea of Guilty has been made available by the court for such violation. Said notice shall further apprise the accused that upon direct refusal or failure to so appear, a warrant shall be issued for his or her arrest, that he or she must appear at said court during the hours fixed by the Judges of the County Court as shown on said notice.

§ 94.49 GENERAL PROHIBITIONS AND DUTIES

- A. It shall be prohibited for any person to permit or allow an animal owned by that person or under that person's custody or control to defecate upon public property, park property, public right-of-way, or the property of another unless such person shall immediately thereafter clean up, remove and dispose of the feces so deposited.
- B. It shall be the duty of every person owning or having the custody or control of an animal to clean up, remove and dispose of the feces deposited by such animal upon public property, park property, public right-of-way or the property of another. (*Amended by Ord. 02-21, 8/19/02*)

§ 94.50 PENALTY FOR VIOLATION.

- A. Except as otherwise provided herein, any person upon whom a duty is placed by the provisions of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a Class I Misdemeanor as defined by section 131.22 of this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be fifty dollars (\$50.00).
- B. Any person upon whom a duty is placed by the provision of §94.31, §94.32, and/or §94.37, of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Sections, shall be deemed guilty of a Class I Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be ten dollars (\$10.00).
- C. Any person upon whom a duty is placed by the provisions of §94.41 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Section, shall be deemed guilty of a Class I Misdemeanor as defined by this Code.
- D. Any person upon whom a duty is placed by the provisions of §94.29 and §94.33 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Sections, shall be deemed guilty of a Class I Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be One Hundred Dollars (\$100.00).
- E. Any person upon whom a duty is placed by the provisions of §94.46 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Section, shall be deemed guilty of a Class I Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be seventy dollars (\$70.00).
- F. Any person upon whom a duty is placed by the provisions of §94.34 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Section, shall be deemed guilty of a Class I Misdemeanor as defined by this Code.
- G. Each day that a violation of any Section of this Article continues shall constitute a separate and distinct offense and shall be punishable as such. The penalties herein provided shall be cumulative with and in addition to any penalty or forfeiture elsewhere in this Article provided. *(Amended by Ord. 02-21, 8/19/02; amended by Ord. No. 05-12, 9/6/05, Ord. 07-05, 5/7/07)*

CATS

§ 94.60 SHORT TITLE; DEFINITIONS.

This Article shall be known as and may be cited as “THE WAVERLY CAT ORDINANCE”. For the purpose of this Article, the following definitions shall prevail:

A. Cat: The term “cat,” whenever used in this Article, shall mean any cat except feral cats and shall apply to all non-feral cats, whether male or female.

B. Inoculation, Vaccination, or Vaccination for Rabies: The terms “inoculation”, “vaccination”, or “vaccination for rabies”, whenever used in this Article, shall mean the inoculation of a cat with a vaccine approved by the Lincoln-Lancaster County Department of Health.

C. Own: The term “own”, as used in this Article, unless otherwise indicated in the text, shall be deemed to mean and include, own, keep, harbor, or have charge, custody, or control of, a cat.

D. Owner: The term “owner”, as used in this Chapter, shall mean any person or persons, firm, association, corporation, or other entity, who shall harbor or permit any cat to be in or about his or her house, store, or enclosure, or to remain to be fed in or about his or her house, store, or enclosure, for a period of ten (10) days or more.

E. Person: The term “person”, as used in this Article, shall mean and include any individual, firm, corporation, association, partnership, or any other entity.

F. Cattery: The term “cattery”, as used in this Article, shall be deemed to mean the house, store, yard, enclosure, or place where more than three (3) cats over the age of six (6)

G. months, are harbored or kept, provided, however, that this definition shall not apply to any animal shelter, nor to the place of business of licensed veterinarians.

G. Spayed Female Cat: The term “spayed female cat”, as used in this Article, shall be construed to include any female cat which has been spayed or otherwise rendered incapable of reproduction.

H. Neutered Male Cat: The term “neutered male cat”, as used in this Article, shall be construed to include any male cat which has been neutered or otherwise rendered incapable of reproduction. *(Amended by Ordinance 03-01, 2/17/03)*

§ 94.61 VACCINATION AGAINST RABIES REQUIRED; VACCINATION TAG.

Any person within the City owning a cat four (4) months of age or older shall have such cat vaccinated against rabies. Cats, cat owners, veterinarians, and other persons shall be subject to the same requirements which are imposed with regard to vaccination of dogs by the applicable sections of the Waverly Dog Ordinance; Provided, however, that cats

shall be vaccinated against rabies at the intervals and with the vaccine or vaccines approved by the Lincoln-Lancaster County Department of Health.

§ 94.62 EXCEPTIONS TO RABIES VACCINATION; CATS CONFINED TO A LICENSED CATTERY.

The vaccination provisions of this Article shall not apply with respect to cats which are constantly confined within a cattery which is duly licensed under the provisions of this Article; Provided, however, that in the event any cat which is confined to a licensed cattery which is maintained within the Municipality is found running at large and impounded, or the owner cited for allowing said cat to run at large, such cat shall thereafter be vaccinated periodically in accordance with §94.61 of this Code.

§ 94.63 LICENSE; LICENSE TAGS; WRONGFUL LICENSING; WEARING OF COLLARS, REMOVAL, IDENTIFICATION; REMOVAL OF LICENSE TAG; EXCEPTIONS TO LICENSE, TRANSIENT CATS.

Cats, cat owners, and persons shall be subject to the same requirements and duties imposed upon dogs, dog owners, and persons by the Waverly Dog Ordinance, with respect to licensing; license tags; wrongful licensing; wearing of collars; identification; removal of license tags; and exceptions to license transient cats; Provided, however, that the following exceptions to the above shall apply:

- A. License Fees: Cat licenses shall be issued by the Municipal Clerk upon payment of a license fee in accordance with the following schedule:
 - 1. Male Cat - \$20.00
 - 2. Neutered Male Cat - \$10.00
 - 3. Female Cat - \$20.00
 - 4. Spayed Female Cat - \$10.00

- B. License Tags. Cat license tags shall have die-stamped thereon the license number, the words "CAT TAG – WAVERLY, NEBRASKA," and the year for which issued. It shall be the duty of the Municipal Clerk to issue tags of a suitable design that are different in appearance each year and different in appearance from dog tags for the same year.

- C. Wearing of Collars or Harnesses. It shall be the duty of all persons owning cats to provide such cats with collars or harnesses which are elastic or otherwise constructed so as to prevent cats, to the extent possible, from becoming entangled, trapped, or injured due to the wearing of such collar or harness. *(Amended by Ord. No. 87-14, 9/8/87; 10-05, 5/3/10)*

§ 94.64 EXCEPTIONS TO LICENSE; CATS CONFINED TO LICENSED CATTERY.

The provisions of this Article with respect to licensing of cats shall not apply to cats constantly confined to a cattery licensed under the provisions of this Article; Provided, however, that in the event any cat which is confined to a licensed cattery which is maintained within the Municipality is found running at large and is impounded or the

owner cited for allowing such cat to run at large, such cat shall thereafter be licensed annually in accordance with this Code.

§ 94.65 PROCLAMATION; KILLING AND POISONING; MISTREATMENT; SEIZURE FOR PROTECTION OF ANIMAL.

The requirements and duties imposed upon dogs, dog owners, and persons by the Waverly Dog Ordinance with respect to proclamations by the Mayor, involving public danger involving rabies; killing and poisoning; and injuring of dogs; and seizure of mistreated animals for protection, shall apply to cats, cat owners, and persons with respect to cats.

§ 94.66 RUNNING AT LARGE; UNLICENSED.

- A. For the purposes of this Article the term "running at large" is defined to mean any cat which is not confined within a cage, dwelling house, or other structure or enclosure from which a cat is unable to escape.
- B. It is hereby declared unlawful for any owner, keeper, or harbinger of any cat to allow such cat to run at large, unless such cat is currently licensed and a valid registration tag is attached to its collar or harness.

§ 94.67 IMPOUNDING.

- A. It shall be the duty of the Humane Officer or in the event of his or her, absence or unavailability it shall be the duty of the Law Enforcement Officer on duty to cause any cat found to be running at large without a collar or harness to which a current and valid registration tag is attached, within the Municipality to be taken up and impounded. No cat found running at large without a collar or harness to which a current and valid registration tag is attached shall be released from impoundment until the owner of said cat shall have obtained a license as provided in this Chapter and the impoundment fee or other fees have been paid or other satisfactory arrangements have been made.
- B. Those portions of the Waverly Dog Ordinance contained within the provisions of this Code with respect to impounding, impoundment fees, and observation in the event of biting or attach by dogs shall be applicable to cats, cat owners, and persons.

§ 94.68 MULTIPLE BITING INCIDENTS; REMOVAL FROM MUNICIPALITY.

The provisions of the Waverly Dog Ordinance with respect to biting incidents set out in this Code shall be applicable to cats, cat owners, and persons.

§ 94.69 LIABILITY OF OWNER; RESTITUTION; PROPERTY DAMAGE OR PERSONAL INJURY; WAIVER DISALLOWED.

The provisions of the Waverly Dog Ordinance set out in this Code with respect to liability of owners; restitution for property damage or personal injury; and disallowance of waivers shall be applicable to cats, cat owners, and persons.

§ 94.70 INTERFERENCE WITH AUTHORITIES.

It shall be unlawful for any person to hinder, delay, or interfere with any Law Enforcement Officer or designated Humane Officer who is performing any duty enjoined upon him or her by the provisions of this Article, or to break open, or in any manner directly or indirectly aid, counsel, or advise the breaking open of any animal shelter, any ambulance wagon, or other vehicle used for the collecting or conveying of cats to such shelter.

§ 94.71 CATTERY REGISTRATION AND LICENSING.

More than three (3) cats in excess of six (6) months of age, per family or residence, shall constitute a cattery. No catteries shall be maintained within the Municipality; provided, however, the provisions of this Section shall not apply to any Municipal Animal Shelter, or to hospitals operated by veterinarians duly licensed under the laws of the State of Nebraska, keeping cats for others for treatment or boarding.

If upon the trial of the offense mentioned in this Section, it shall appear to the County Judge that the person be guilty as charged in said complaint, said Judge may, in addition to the usual judgment of conviction, declare said cattery a public nuisance, order the party or parties so convicted to abate said nuisance forthwith, and in the event that the party or parties convicted shall fail to do so, order the Municipal Law Enforcement Personnel to remove to a suitable animal shelter said cat or cats so kept and harbored in violation of this Section, there to be impounded and placed in suitable homes or disposed of in accordance with the terms of this Article. When a complaint is filed for violation of this Section, such complaint may not be disposed of by Waiver of Appearance and Plea of Guilty, and the complaint filed by the Municipal Attorney shall state such limitation. (*Ref. 17-526 RS Neb.*) (*Amended by Ord. 03-01, 2/17/03*)

§ 94.72 ANIMAL CONTROL VIOLATION, CITATION.

- A. Whenever a designated Humane Officer of the Municipality or any Law Enforcement Officer shall observe any violation of this Article, it shall be his or her duty to issue an appropriate citation; Provided, however, that a warning citation shall be issued for the first (1st) violation of § 94.66 of this Code by any person.

No complaint shall be filed by the Municipal Attorney when any person who is issued a warning citation for violation of § 94.66 of this Code shall pay all fees required under this Article and comply with the licensing and vaccination requirements within five (5) days of issuance of such warning citation. When a warning citation only is mistakenly issued for a second (2nd) or subsequent violation of § 94.66 of this Code by any person and in all other cases, it shall be the duty of the Municipal Attorney to promptly prosecute violations of this Article.

- B. At the time of the commission of the alleged violation, the accused may be served with a printed notice requiring him or her to make such appearance on or before the date specified thereon and advising whether execution of a Waiver of Appearance and Plea

of Guilty has been made available by the court for such violation. Said notice shall further apprise the accused that upon direct refusal or failure to so appear, a warrant shall be issued for his or her arrest, that he or she must appear at said court during the hours fixed by the Judges of the County Court as shown on said notice.

§ 94.73 PENALTY FOR VIOLATION.

- A. Except as otherwise hereafter provided in this Section, any person upon whom a duty is placed by the provisions of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a Class II Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be fifty dollars (\$50.00).
- B. Any person upon whom a duty is placed by the provision of § 94.66 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Section, shall be deemed guilty of a Class II Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be twenty-five dollars (\$25.00).
- C. Any person upon who a duty is placed by the provisions of § 94.71 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Section, shall be deemed guilty of a Class II Misdemeanor as defined by this Code. If such violation is disposed of a pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be twenty-five dollars (\$25.00).
- D. Any person upon whom a duty is placed by the provisions of § 94.67 of this Article which involves failure to submit a cat for observation and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of said Sections, shall be deemed guilty of a Class I Misdemeanor as defined by this Code. If such violation may be and is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be seventy dollars (\$70.00).
- E. Any person upon whom a duty is placed by the provisions of § 94.68 of this Article and who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Section, shall be deemed guilty of a Class I Misdemeanor as defined by this Code.
- F. Each day that a violation of any Section of this Article continues shall constitute a separate and distinct offense and shall be punishable as such. The penalties herein provided shall be cumulative with and in addition to any penalty or forfeiture elsewhere in this Article provided. *(Amended by Ord. 07-05, 5/7/07)*

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: BUSINESS LICENSING

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OCCUPATION TAX

§ 110.01 TELECOMMUNICATIONS OCCUPATION TAX: DEFINITIONS.

- A. “Telecommunications Company,” for purposes of this Article, is defined as every person, firm partnership, corporation, limited liability company or association engaged in the business of offering or providing telecommunication services to the public for hire in the corporate limits of the City. *(Established by Ord. 2-24, 11/4/02; 08-02, 2/4/08)*

§ 110.02 TELECOMMUNICATIONS OCCUPATION TAX: AMOUNT.

- A. There is hereby levied upon every Telecommunications Company an occupation tax as follows:

1. At the rate of five percent (5%) on the gross receipts resulting from any toll services and other charges on basic local exchange services, inter-exchange services, mobile services, and other telecommunication services as follows:
 - (a). “Basic local exchange services” shall include the access and transmission of two-way switched communications within the city, including local telephone and telecommunications services;
 - (b) “Inter-exchange services” shall mean the access and transmission of communications between two or more local exchange areas, provided that such inter-

exchange service either (i) originates from an end user within the City or (ii) terminates with an end user within the City, and is charged to a service address within the City regardless of where the charges are actually paid;

- (c) "Mobile telecommunication services" shall mean wireless communication services carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes: (i) both one-way and two-way wireless communications services; (ii) a mobile service which provides a regularly interacting group of base, mobile, portable and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and (iii) any personal communications service.

(i) If the telecommunication services provided are Mobile telecommunication services as defined herein, the tax shall be five percent (5%) of the gross income received from furnishing Mobile telecommunication services that originates and terminates in the same state to a customer with a place of primary use within the corporate limits of the City. Gross receipts shall not mean (i) the gross income, including division of revenue, settlements, or carrier access charges received on or after January 1, 2008, from the sale of a telephone communication service to a communication service provider for purposes of furnishing telephone communication service or (ii) the gross income attributable to services rendered using a prepaid telephone calling arrangement.

- (d) Any other similar telecommunication services involving any electronic or electromagnetic transmission of messages originating or terminating in the State of Nebraska and charged to a service address in the City of Lincoln, regardless of where the charges are actually paid.

2. Gross receipts shall not include any tolls services and charges as follows:

- (a) Interstate telecommunications between persons in the City and persons outside of the State of Nebraska;
- (b) Local carrier access charges, transmission facilities and switching services provided to Telecommunications Companies;
- (c) Accounts charged to the United State government or any of its departments, of the State of Nebraska, or any of its agencies, subdivisions, or departments

No part or portion of the tax provided for in this Article shall be levied upon or assessed against or taken from any such gross receipts so excepted from the provisions hereof. *(Established by Ord. 02-24, 11/4/02; 08-02, 2/4/08)*

§ 110.03 TELECOMMUNICATIONS OCCUPATION TAX: PAYMENTS; CREDIT; REPORTS.

- A. The payment of any occupation tax levied and imposed by the provisions of this Article shall be made in quarterly payments using the calendar year as a basis for determining the due date and shall be paid to the City Treasurer. Each quarterly payment shall be due fifteen (15) days immediately following the termination of each calendar quarter year; provided that such Telecommunication Company shall be entitled to a credit for any occupation tax or other similar tax based on gross receipts, satisfactory documented or verified as paid to any other jurisdiction upon any gross receipts taxed herein. All delinquent deferred payments shall draw interest at the rate of one percent (1%) per month; and, if delinquent for six months or more, a penalty of five percent (5%) shall be added in addition to the interest charges.
- B. Every Telecommunications Company coming within the provisions of this Article shall, on or before the fifteenth day of the month immediately following the termination of each calendar year, submit to the City Treasurer a full, complete and detailed statement of the income and gross receipts, omitting any exemptions provided for in this Article, and said statement shall be duly verified and sworn to by the officer or officers in charge of the Telecommunications Company. All such Telecommunications Companies shall at any reasonable times during business hours permit the City, through its officers, agents or representatives, to inspect the books and records of the Telecommunications Company for the purpose of verifying such report or reports.
- C. Upon payment of the occupation taxes levied and imposed by the provisions of this Article, the City Treasurer shall give a receipt, properly dated, and specifying the Telecommunications Company paying the same, and amount thereof, and the time for which the same takes effect. The City Treasurer shall keep a record of the receipts so issued.
- D. It is hereby made the duty of any person desired to exercise, carry on or engage in any occupation within the provisions of this chapter, to pay to the City Treasurer the amount specified for the occupation tax, as provided for in this Article. The amount of the occupation tax shall be due and payable to the City Treasurer immediately after such person shall begin business in any occupation within the provisions of this Article.
- E. The City Attorney may bring suit in the name of the City against any person, firm, partnership, corporation, limited liability company, or association in any court of competent jurisdiction for the amount of such tax levied by this chapter upon the failure of such person, firm, partnership, corporation, limited liability company, or association to pay the same as herein provided whenever the City Attorney is so directed by the City Treasurer.
- F. The money realized from the collection of the occupation taxes provided for in this Article shall be placed to the credit of the General Fund or such other fund or funds as designated by the City Council.

2. The imposition of the occupation tax as set forth herein shall commence June 1, 2008, and shall first be pay able to the City on or before July 31, 2008, and monthly thereafter as set forth herein. *(Established by Ord. 02-24, 11/4/02; 08-02, 2/4/08)*

§ 110.04 HOTEL; DEFINITIONS.

(a) Hotel, Defined. Hotel shall mean any facility in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, campgrounds, courts, lodging houses, inns, state-operated hotels, and nonprofit hotels, but hotels shall not be defined so as to include hospitals, sanitariums, nursing homes, chronic care centers, or dormitories or facilities operated by an educational institution and regularly used to house students.

(b) Occupancy, Defined. Occupancy shall mean the use or possession, or the right to the use or possession of any space in a hotel, if the space is one ordinarily used for sleeping accommodations and if the occupant's use, possession, or right to the use or possession is for less than a period of thirty days.

(c) Occupant, Defined. Occupant shall mean anyone who, for consideration, uses, possesses, or has a right to use or possess, any space in a hotel, if the space is one ordinarily used for sleeping accommodations.

(d) Consideration, Defined. Consideration shall mean the monetary charge for the use of space in a hotel; only if the space is one ordinarily used for sleeping accommodations and shall not include the charge for any food or beverage served or personal services rendered to the occupant of such space.

(e) Visitor Attraction, Defined. A Location open to the public, which location is of educational, historical, artistic, or recreational significance or provides entertainment, or in which are exhibits, displays or performance of educational, cultural, historic, artistic or entertainment value.

(f) Exception to the Occupancy Tax. Consideration paid for sleeping accommodations which are not subject to the hotel sales tax imposed by Neb Rev Stat 81-1253 shall not be subject to the occupation tax. *(Established by Ord. 08-06, 7/11/08)*

§ 110.05 HOTEL; TAX AMOUNT.

There is hereby imposed an occupation tax fee in the amount of four percent (4%) upon all revenues collected by the hotel from the total consideration charged for occupancy and use of any space furnished by any hotel in the City of Waverly, Nebraska. *(Established by Ord. 08-06, 7/11/08)*

§ 110.06 HOTEL; COLLECTIONS.

The tax imposed by this Article shall be collected by the hotel operator from the occupant of each room to which the tax applies. The tax may be shown as an add on to the charge for occupancy of the room and shall be collectable at the time the lodging is fur-

nished, regardless of when the charge for occupancy is paid. The operator shall remain responsible for payments of all taxes imposed, whether or not the taxes are actually collected from the occupant.

It shall be unlawful for any hotel operator subject to this Article to fail to maintain or fail to make available to the City, within one hundred twenty (120) hours after request for such records, written records accurately and completely evidencing the number of rooms occupied, the dates the rooms were occupied, the amount of occupation tax due and/or paid under this Article, and such other information as is required by the City Administrator or City Council. Such records shall be maintained for a period of three (3) years after the occupation tax is due.

Notwithstanding any contrary provisions of this Section, the tax imposed by this Article shall be due and payable on the first day of each calendar month next succeeding the month during which the room was occupied. All taxes not paid by the twenty-fifth (25th) day of the month in which they are due and payable shall be deemed delinquent. The operator shall be assessed a penalty of ten percent (10%) on all delinquent amounts as well as interest of one percent (1%) per month or fraction thereof from the first of the month in which such tax becomes due and payable, until the date of payment. *(Established by Ord. 08-06, 7/11/08)*

§ 110.07 HOTEL; USE OF OCCUPATION TAX PROCEEDS.

It is the intent of the Council Members of the City of Waverly that the City of Waverly shall use the revenue generated by the occupation tax imposed by this Article for any lawful expenditure including but not limited to community betterment purposes as defined in Neb Rev Stat 9-604, for economic development purposes as defined in Neb Rev Stat 13-315, and/or for grants to expand and improve facilities of any existing visitor attraction, acquiring or expanding exhibits for existing visitor attractions, or planning or developing such expansions, improvements or additions: grants shall be available for any visitor attraction in the City of Waverly owned by the public or any nonprofit organization, the primary purpose of which is to operate the visitor attraction, except that grants shall not be available for any visitor attraction where pari-mutuel wagering is conducted. *(Established by Ord. 08-06, 7/11/08)*

§ 110.08 HOTEL; PENALTY.

Any person, partnership, firm, L.L.C. or corporation violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a minimum fine of \$500.00. In addition, the City may, by action in District Court, enforce the provisions of this Article through equity and injunctive processes. Each distinct act or violation of the terms of this Article shall constitute a separate offense. *(Established by Ord. 08-06, 7/11/08)*

FRANCHISES

C.A.T.V.

§ 110.20 C.A.T.V.; SHORT TITLE.

This Article shall be known and may be cited as the Waverly Community Antenna Television Franchise Ordinance; or, the Waverly CATV Franchise Ordinance.

§ 110.21 C.A.T.V.; DEFINITIONS.

For the purposes of this Article and when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory. The captions supplied herein for each Section are for convenience only. Said captions have no force of law, are not a part of the Section, and are not to be used in constructing the language of the Section. The following terms, phrases, words, and derivations as used herein shall be given the meaning set forth below:

- A. City shall mean the City of Waverly, Nebraska.
- B. Council shall mean the City Council of Waverly, Nebraska, or its designated representative.
- C. Company shall mean the grantee of rights under this Article.
- D. Person shall mean any individual, firm, partnership, association, corporation, company, or organization of any kind.
- E. Franchise Area shall mean that area within the corporate limits of the City as now laid out or dedicated and all extensions thereof and additions thereto.
- F. Street shall mean the surface of and the space above and below any public street, right-of-way, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, communication or utility easement, now or hereafter existing as such within the franchise area.
- G. Federal Communications Commission or FCC shall mean the present Federal Agency of that name as constituted by the Communications Act of 1934, or any successor agency.
- H. Property of Company shall mean all property owned, installed, or used by the Company in the conduct of a Community Antenna Television System business in the City.
- I. CATV shall mean a cable television system as hereinafter defined.
- J. Cable Television System shall mean a system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, converters,

equipment, or facilities, designed, constructed, or wired for the purpose of producing, receiving, amplifying, and distributing by coaxial cable audio and/or visual radio, television, electronic, or electrical signals to and from persons, subscribers, and locations in the franchise area.

- K. Basic CATV Services shall mean the simultaneous delivery by the Company to television receivers, or any other suitable types of audio video communication receivers, of all subscribers in the City of all signals of over-the-air television broadcasts which at the time the current franchise is granted by the Governing Body and accepted by the Company are required by the FCC to be carried by the Cable Television System as defined hereinabove. Basic service shall also include five (5) additional channels including original cablecast programming at the option of the Company.
- L. Additional Service shall mean any communications service other than basic CATV service provided over its Cable Television System by the Company directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in communications services including, but not limited to, satellite distributed programming, burglar alarm, data, or any other electronic intelligence transmission, facsimile reproduction, meter reading, and home shopping.
- M. Pay Television Service shall mean the delivery over CATV of video signals in intelligible form to subscribers for a fee or charge, over and above the charge for basic CATV service, on a per program, per channel, or other subscription basis.
- N. Subscriber shall mean any person or entity receiving basic CATV service.
- O. Gross Annual Basic Subscriber Revenues shall mean any and all compensation or receipts and other consideration received directly by the Company from subscribers in payment for regularly furnished basic CATV service. Gross Annual Basic Subscriber Revenue shall not include any taxes on services furnished by the Company imposed directly on any subscriber or user by the City, State, or other governmental unit and collected by the Company for such governmental unit, nor shall it include revenue from "auxiliary" services which include, but are not limited to, advertising, leased channels, and pay television service.

§ 110.22 C.A.T.V.; FREEDOM OF INFORMATION.

The City Council finds and determines that in order to insure the free flow of news and other information to the public and/or the dissemination of information to the public in a free and unfettered atmosphere it is desirable to reserve unto the City Council of the City of Waverly, Nebraska, the authority to issue non-exclusive franchises authorizing CATV service within the corporate limits of said City. And, it shall be the policy of the City Council to amend this Article upon application of the Company, when the City Council shall find and determine that such is necessary to enable the Company to take advantage of any development in the field of CATV which will afford the Company an opportunity to serve the public more effectively, efficiently, or economically.

§ 110.23 C.A.T.V.; NON-EXCLUSIVE GRANT OF AUTHORITY.

- A. Whereas, the City has approve the legal character, financial, technical, and other qualifications of the Company and the adequacy and feasibility of the Company's construction arrangements as part of a full public process affording due process, there is hereby granted by the City to the Company the right and privilege to engage in the business of operating and providing a CATV in the City and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, and retain in or over, under, upon, across, and along any public street, public way, and public place, now laid out or dedicated and all extensions thereof and additions thereto in the franchise area, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the Cable Television System; and, in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other grantee franchised or permitted to do business in the City.
- B. The right to use and occupy said street, public ways, and public places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, public ways, and public places to any person at any time during the period of the franchise; Provided, however, that nothing contained herein shall be deemed to require the granting of additional franchises for CATV, if, in the opinion of the City Council, it is in the public interest to restrict such franchises to one (1) or more.

§ 110.24 C.A.T.V.; TERMS OF FRANCHISE.

This franchise shall take effect and be in full force from and after acceptance by the Company as provided in §110.27, and the same shall continue in full force and effect for a term of twenty (20) years from the date the same is initially granted by the Governing Body and accepted by the Company; Provided, however, that should FCC certification be necessary in connection with implementation or continuation of the system contemplated by this franchise, then the term shall begin upon the effective date by the FCC of the necessary certification.

§ 110.25 C.A.T.V.; RENEWAL PROCEDURE.

- A. The Company shall have the unlimited option to renew this franchise for an additional period not to exceed fifteen (15) years. Should the Company elect to exercise this option, it shall so notify the City, in writing of this, not less than three (3) nor more than eight (8) months prior to the expiration of this franchise.
- B. No renewal hereof shall be granted unless authorized by the City following a public hearing held after at least two (2) public meetings at which the rate payers and the Company may comment on the programming content and rates of the Company. At least thirty (30) days prior to the first (1st) public meeting held to examine programming content and rates, each ratepayer or subscriber shall be notified by a billing statement or other written notice when and where such public meeting shall be held. Said notice shall also state the reasons for the public meeting.

§ 110.26 C.A.T.V.; ABANDONMENT.

- A. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property of the Company has been installed in any street or public place without complying with the requirements of this Article, or the rights granted hereunder have been terminated, cancelled, or have expired, the Company shall promptly remove from the street, or public places, all such Company property, other than any which the City may permit to be abandoned in place. In the event of such removal, the Company shall promptly restore the street or other areas from which such property has been removed to a condition satisfactory to the City.
- B. Any property of the Company to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of the Company, in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

§ 110.27 C.A.T.V.; ACCEPTANCE.

This Article shall become effective when accepted by the Company and shall then be and become a valid and binding contract between the City and the Company; Provided, however, that the Company applying for a franchise to construct, install, operate, and/or maintain a CATV within the corporate limits of the City of Waverly, pursuant to this Article, must file with the City Clerk upon acceptance, a written notice of its acceptance of this Article and the franchise herein granted, agreeing that it will comply with all of the provisions and conditions hereof and that it will refrain from doing all of the things prohibited by this Article.

§ 110.28 C.A.T.V.; SURRENDER RIGHT.

The Company may surrender this franchise at any time upon the filing with the City Clerk of the City a written notice of its intention to do so; Provided, however, that such notice shall be filed no less than six (6) months prior to the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties, and liabilities of the Company in connection with this franchise shall terminate.

§ 110.29 C.A.T.V.; PROCEDURE UPON TERMINATION.

Upon expiration of the franchise or upon the happening of any event that terminates the obligations, duties, and liabilities of the Company in connection with this franchise, if the Company shall not have acquired an extension or renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets, public ways, and public places, for the purpose of removing therefrom any or all of the Company's property, at any time, after the City has had ample time and opportunity to purchase, condemn, or replace them. In so removing said property, the Company shall refill, at its own expense, any excavation that shall be made by it, and shall leave said streets, public ways, and public places, in as good condition as that prevailing prior to the Company's removal of its property.

§ 110.30 C.A.T.V.; REMOVAL OF FACILITIES UPON REQUEST.

Upon termination of service to any subscriber, the Company shall promptly remove all of its property from the premises of such subscriber upon his or her request, except service drops above or below ground.

§ 110.31 C.A.T.V.; POLICE POWER.

- A. The Company shall at all times during the term of this franchise be subject to all lawful exercise of police power of the City. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and any other existing applicable ordinance, such additional applicable ordinances as it shall find necessary in the exercise of its police power; provided, however, that such additional ordinances shall be reasonable, shall not conflict with or alter in any manner the rights granted herein, and shall not conflict with the laws of the State of Nebraska, the laws of the United States of America, or the rules, regulations, and policies of any regulatory board or agency, including specifically the FCC.
- B. This franchise is governed by and subject to all applicable rules, regulations, and policies of the FCC, specifically including Part 76, and the laws of the State of Nebraska. Should there be any modifications of the provisions of Part 76 of the Rules and Regulations of the FCC, specifically including §76.31, that must be incorporated into this franchise, the City and Company agree that such incorporation shall be accomplished within one (1) year after the effective date of the FCC's adoption of the modification or upon renewal of this franchise, whichever occurs first.
- C. This Section shall not be construed to require or compel a violation of any constitutional enactment of the United States of the Government of the State of Nebraska or any lawful rule or regulation of any agency of the United States Government or of the State of Nebraska pertaining to CATV.

§ 110.32 C.A.T.V.; COMPANY RULES.

The Company shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and to perform its obligations under this Article and to assure an uninterrupted service to each and all its customers; Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, shall be filed with the City Clerk, and shall be approved by the City Council prior to the adoption thereof by the Company; and Provided, that equal opportunity in employment shall be afforded by the Company to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion national origin, or sex. The Company shall establish, maintain, and carry out a positive, continuing program of specific practices designed to assure equal opportunity in every aspect of Company employment policy and practice. The Company shall immediately comply with all federal, state, and local equal opportunity employment acts and practices, and provided further, that the Company shall not, as to rates, charges, service, facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage. Nothing in this Article shall be deemed to prohibit the estab-

lishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classification would be entitled. And, it shall not be deemed to prohibit the waiver or modification of connection and service charges during promotional campaigns of the Company.

§ 110.33 C.A.T.V.; CONSTRUCTION AND MAINTENANCE.

- A. The system shall be constructed underground whenever possible. Where the system is constructed above ground, the system shall be attached first to the utility pole or other structures already in existence within the franchise area as far as possible; Provided, however, that upon a showing by the Company that existing poles or other structures are not available under reasonable terms and conditions, including excessive costs or unreasonable limitations upon the use of the Company's system, the Company may, subsequent to the approval of the City Council, at its own expense, make arrangements to acquire, erect, and maintain, its own poles as are necessary for the construction and maintenance of the system, such poles to be erected and located in accordance with the directions of the City Council and so as to cause minimum interference with the usual travel upon the City's streets. It shall be the responsibility of the Company to keep all such poles, at its own expense, in a safe and substantial condition.
- B. The City shall have the right to make additional use, for any public or municipal purpose, of any poles or conduits controlled or maintained exclusively by or for the Company in any street, provided such use by the City does not interfere with the use by the Company. The City shall indemnify and hold harmless the Company against and from any and all claims, demands, causes of action, actions, suits, proceedings, damages, costs, or liabilities of every kind and nature whatsoever arising out of the use of the Company's poles or conduits. In addition, the Company shall have the right to make additional use of any poles or conduits controlled or maintained exclusively by or for the City in any street, provided such use by the Company does not interfere with the use by the City. The Company shall indemnify and hold harmless the City against and from any and all claims, demands, causes of action, actions, suits, proceedings, damages, costs, or liabilities of every kind and nature whatsoever arising out of such use of the City's poles or conduits.
- C. All work done by the Company shall be done in a manner and at such times as will cause the least public inconveniences and such safety precautions will be taken and such notices or warnings will be given as are necessary to afford adequate protection to the public from any danger which may arise out of such work; and, the CATV shall be constructed and operated in compliance with all national, state, and local construction and electrical codes and shall be kept current with any new codes.
- D. In case of any disturbance of pavement, sidewalk, driveway, street, or other surface, the Company shall, at its own expense and in a manner approved by the City, remove, replace, and restore, all pavement, sidewalk, driveway, street, or other surface so disturbed in as good a condition as before the work involving such disturbance was done. Failure of the Company to replace and restore such pavement within seventy-two (72) hours after completion of the Company's work shall authorize the City

to cause proper restoration to be made and the expense thereof charged to the Company which shall be paid by the Company upon demand by the City.

- E. The Company shall, when necessary, and after being given not less than forty-eight (48) hours advance notice, on the request of any person holding an appropriate permit used by the City or any person planning or actually engaging in a construction or disturbances of the ground or other activities requiring a City permit, locate and mark its underground service; or in the case of aboveground or overhead service, temporarily raise or lower its system to permit the moving of any building or structure or when necessary to facilitate construction or other activities not requiring a City permit; Provided, however, that the actual expense of such marking, temporary removal, or temporary relocation, shall be paid by the person so requesting, and the Company shall have the authority to require such payment in advance. The Company shall not charge for these services in excess of its actual cost and shall, upon request, provide an accounting to the City of its actual costs.
- F. The Company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove property of the Company when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by public agencies.
- G. The Company shall have the authority to trim trees upon and overhanging streets and public ways and places of the franchise area so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company, except that at the option of the City, such trimming may be done by it or under its supervisions and direction at the expense of the Company.
- H. Should it become necessary to shut-off or interrupt service for the purpose of making repairs, adjustments, or installation, the Company shall do so at such times as will cause the least amount of inconvenience to its subscribers, and unless such interruption is unforeseen and immediately necessary it shall give reasonable notice thereof to its subscribers.
- I. If at any time during the period of franchise the City shall lawfully elect to alter or change the route or grade of any street, the Company, upon reasonable notice by the City, shall, at its own expense, remove, relay, and relocate, when determined necessary by the City Council and within a reasonable time, the Company's property.

§ 110.34 C.A.T.V.; RECORDS, REPORTS, AND MAPS.

- A. The City shall have access at all reasonable hours to all of the Company's plans, all of its contracts, all of its records including but not limited to its engineering, accounting, financial, statistical, customer, and service records relating to the system within the franchise area and to the operation of the Company, and to all other records or reports which the Company is required to keep by any local, state, or federal rule, regulation, or law.

- B. The Company shall prepare and maintain accurate records and maps which show all aspects of the system and their exact nature within the franchise area whether on, above, or below the ground. Such records and maps shall be kept accurately current and shall be filed with the City Clerk from time to time as may be necessary to keep the records and maps so filed accurately current.
- C. The Company shall file all its rules with the City Clerk as provided for in §110.27.
- D. The Company shall file with the City Clerk an annual report showing gross annual basic subscriber revenues and receipts in accordance with the provisions of §110.43(C) of this Code.

§ 110.35 C.A.T.V.; LOCAL BUSINESS OFFICE; UNRESOLVED COMPLAINTS.

The Company shall maintain a business office or agent who, or which, persons may telephone during regular business hours without incurring added message or toll charges so that the CATV maintenance service shall be promptly available. Should a subscriber have an unresolved complaint regarding the quality of the CATV, equipment malfunctions, or similar matters, the subscriber shall first direct such matters to the business office or agent of the Company. Should the Company fail to satisfactorily resolve any such matter within thirty (30) days, it may then be directed to the office of the City Clerk for investigation. The subscriber and the Company shall be afforded a reasonable opportunity to present written statements of their positions to the City Clerk and the City Clerk shall attempt to resolve the matter. If this cannot be achieved within thirty (30) days, he or she shall submit a recommendation to the City Council, which shall after due deliberation either (1) dismiss the matter or (2) specify the corrective steps to be taken by the Company. Appeal from the Council's action may be made to the appropriate judicial or administrative forum.

§ 110.36 C.A.T.V.; SAFETY REQUIREMENTS.

All aspects of the system, wherever situated or located shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair; and, the Company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

§ 110.37 C.A.T.V.; COMPANY LIABILITY, INDEMNIFICATION.

- A. The Company shall at all times protect, indemnify, and hold harmless the City from and against any and all claims, demands, causes of action, actions, suits, liability, loss, expenses, or damages whether arising in law or in equity or every kind and description including but not limited to investigation costs, court costs, and attorney's fees, and including specifically any liability for any claims arising under Workmen's Compensation laws, which may accrue to or be suffered or claimed by any person or persons arising out of, resulting from, or caused by the Company in the ownership construction, installation, replacement, maintenance, or operation of the CATV and/or by reasons of any license, copyright, property right, or patent of any article or system used in the construction or use of said system.

- B. The Company shall maintain in full force and effect, during the life of any franchise, written by a solvent insurance company or companies authorized and qualified to do business in the State of Nebraska, serviced through an authorized agent, and satisfactory to the City:
 - 1. Workmen's Compensation insurance in compliance with the laws of the State of Nebraska, and upon its employees engaged in any manner in the installation or servicing of its plant and equipment in the City.
 - 2. Minimum property damage liability insurance to the extent of fifty thousand dollars (\$50,000.00) as to any person and one hundred thousand dollars (\$100,000.00) as to any one accident, and personal injury liability insurance to the extent of one hundred thousand dollars (\$100,000.00) as to any one person and three hundred thousand dollars (\$300,000.00) as to any one accident; Provided, that all such insurance may contain reasonable deductible provisions not to exceed one thousand dollars (\$1,000.00) for any type of coverage, and Provided, further, that the City may require that any and all investigation of claims made by any person against the City arising out of any use or misuse of privileges granted to the Company hereunder shall be made by, or at the expense of the Company or its insurer.

§ 110.38 C.A.T.V.; SERVICE STANDARDS.

- A. The Company shall operate and maintain the system and shall render efficient service in accordance and in compliance with the standards set forth or which may in the future be set forth by local, state, or national governments or any of their agencies.
- B. The Company shall operate and maintain the system so as not to interfere with television or radio reception now in use by the City or any person within the franchise area.
- C. Service by the Company shall specifically include, but shall not be limited to the following; provided, however, that nothing contained herein shall be so construed so as to cause the Company to be in violation of any local, state, or federal law or of any rule or regulation promulgated by any governmental body:
 - 1. The Company shall carry all signals of every television station where the CATV tower or towers and antenna equipment are located within the FCC approved predicted Grade B contour line of that television station. Such television signals at no time shall be altered, interrupted, or blacked out in any way by the Company and all programs which the Company carries from any television station shall be carried in their entirety and without change.
 - 2. The Company shall operate and maintain at all times:
 - a. Equipment having a minimum channel capacity of not less than 120 MHz of bandwidth, that is the equivalent of twenty (20) television channels, available for immediate or potential use.

- b. Equipment that passes standard television signals without perceptive degradation and with no noticeable effect on color, fidelity, and intelligence: all programs received by the Company in color shall be distributed in color.
 - c. Equipment designated and rated for twenty-four (24) hour per day continuous operation.
 - d. Equipment with the technical capacity for non-voice return communication.
 - e. Equipment which is accurately calibrated for the testing of all service and operational standards contained in this Article.
- D. The Company shall install for the operation of the system in the City, a twelve (12) channel system capable of transporting and relaying all twelve (12) channels and shall provide at least ten (10) channels of video and audio service. One (1) channel shall be a public access channel.
- E. The Company shall improve the variety of service as the availability of signals makes practical.
- F. The Company shall provide, without charge to the City, unless prohibited by law or regulation, the use of adequate frequencies in the system for the purpose of police work, fire department work, civil defense work, public emergency work, or as a disaster warning system; Provided, however, that any and all necessary equipment installation, or maintenance expense for such use, other than the furnishing of the existing cable, shall not be borne by the Company. The City, through its duly authorized agent or agents, shall give written notice to the Company of the use the City desires to make of the system and of the person or persons authorized by the City to make such use; Provided, however, that arrangements may, at the option of the City, be made concerning the use of verbal instructions in the event of any emergency situation. Upon receipt of the written (or verbal) notice given by an authorized person, the Company shall cooperate in all respects with the City to accomplish the ends desired by the City for the public welfare. In addition, in the case of any emergency or disaster, the Company shall, upon request of the City, through its authorized agent or agents, make available its facilities to the City for emergency use during the emergency or disaster period.
- G. The Company shall not add, subtract, or move program services, from time-to-time, without first reviewing changes with the CATV Advisory Committee. The Committee must make a recommendation to the Governing Body within forty-five (45) days of receiving the service change request from the Company.

The CATV Advisory Committee shall hold at least one (1) public hearing annually during the same month each year, for the purpose of soliciting public input concerning cable television service and programming. A representative of the Company shall attend said hearing which may be held in conjunction with any regular meeting of the Committee. Notice of all such hearings shall be published in a newspaper published or of general circulation in the City for two (2) consecutive weeks preceding the hearing.

The last such publication must be not less than three (3) nor more than ten (10) days prior to the hearing, including the date of publication.

§ 110.39 C.A.T.V.; PROHIBITION OF CERTAIN BUSINESS ACTIVITIES BY THE COMPANY.

- A. The Company, any of its officers, agents, or employees, are specifically prohibited from directly or indirectly engaging in the business of selling, leasing, renting, servicing, repairing, or replacing home television receivers, home radio receivers, or television or radio receiver related parts and accessories to any person within the franchise area, whether for a fee or charge or not, excepting only the connection of televisions receivers to the Company's CATV. The Company shall prohibit its officers, agents, and employees from violating the terms of this Section at all times, whether in the performance of duties of the Company or otherwise.
- B. The Company, any of its officers, agents, or employees, are specifically prohibited from directly or indirectly recommending, in any manner, a specific sale or service establishment or person dealing with or in home television receivers, home radio receivers, or television or radio receiver related parts and accessories.

§ 110.40 C.A.T.V.; SERVICE TO SCHOOLS; PUBLIC BUILDINGS.

- A. The Company shall provide its system without installation or connection charges to each and every school and educational institution within the franchise area or located on property contiguous to the franchise area, whether public, private, or parochial. Said system shall be connected with a convenient point on the exterior of the school or educational institution and in no way shall this Section be read to oblige the company to furnish its system to points within the school or educational institution proper.
- B. The Company shall also provide its system without installation or connection charges and without charge thereafter for the regular subscriber service to three (3) sites selected by the City Council; Provided, however, that these sites shall be public buildings within the franchised area.

§ 110.41 C.A.T.V.; TRANSFER.

The Company shall not sell nor transfer its plant or system to another person nor transfer any rights under this franchise to another person, other than a parent company or a wholly-owned subsidiary of the Company, without prior approval by the City Council. Such approval shall not be unreasonably withheld. No sale or transfer thereof shall be effective until the vendee, assignee, or lessee files in the office of the City Clerk an instrument duly executed reciting the facts of such sale, assignment, or lease, accepting the terms of the franchise, and agreeing to perform all of the conditions thereof; Provided, however, that no such filing shall be required in connection with any mortgage or equivalent transfer in trust by the Company which has been approved by the City Council until such time as there is a foreclosure thereunder.

§ 110.42 C.A.T.V.; RATES.

Prior to beginning operation, the Company shall file with the City Clerk a schedule of tariffs which shall include all fees, charges, and rates to be charged to subscribers. At the time of the adoption of this Article the City chooses not to become involved in the rate making process, believing that supply and demand will be an effective rate control. However, the City reserves the right, at some future date, to become involved in the rate making process and to approve or disapprove proposed rates.

§ 110.43 C.A.T.V.; PAYMENT TO THE CITY.

- A. The Company hereby agrees to pay annually to the City, during the term of this franchise granted hereunder and commencing from the date of institution of service to subscribers, the sum of three percent (3%) of the total gross annual basic subscriber revenues as defined in §110.21(O).
- B. Such payment by the Company to the City shall be in lieu of any occupation tax, license tax, or similar levy and shall be paid annually. Anything contained herein shall in no way relieve the Company or its successors, lessees, or assigns from the obligation of paying property tax to the City or any other taxes lawfully levied by the State of Nebraska or any governmental subdivision of the State of Nebraska in the operation of the Company.
- C. So long as its franchise continues, the Company shall file with the City, on or before July 1, of each year, a certified statement prepared by a Certified Public Accountant showing the gross annual basic subscriber revenues as herein defined for the twelve (12) month period ending on June 30, of each year. It shall be the duty of the Company to pay to the City within fifteen (15) days after the time for filing such statement, any amount due for the operating year covered by such statement. The City shall have the right to inspect the Company's records showing the gross receipts from which its franchise payments are to be computed, and the right of audit and recomputation of any and all amounts paid under this Article. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for additional sums payable hereunder.

§ 110.44 C.A.T.V.; BOND.

- A. The City may require that the Company, within thirty (30) days after the effective date of the franchise and after the acceptance is filed by the Company, post with the City a performance bond in the amount equal to five percent (5%) of the estimated cost of construction of the system at the time of the franchise. Said bond shall be returned to the Company at the end of one (1) year provided the Company has in good faith during said time commenced the construction of the system to be operated pursuant to this franchise and has in good faith complied with the details of this Article and the rules and regulations herein required. In default of the Company performing the obligations herein set out, the bond shall be forfeited to the City.
- B. The City may require that the Company furnish bond to the City in the sum of three percent (3%) of the estimated gross annual basic subscriber revenues which shall re-

main in full force and effect throughout the term of this franchise to guarantee the payment of all sums which may become due to the City, and such bond shall guarantee to the City the performance by the Company of all of the provisions of this Article and all laws, rules, and regulations herein set forth or adopted by the City for compliance.

§ 110.45 C.A.T.V.; VIOLATIONS OF PROVISIONS OF FRANCHISE.

The Company shall maintain an operative system and render efficient service in accordance with generally accepted standards. Failure of the Company, its successors, or assigns to comply with the conditions herein set forth or in the event that the Company, its successors, or assigns is or shall become subject to the jurisdiction of the FCC or similar regulatory body and the Company, its successors, or assigns, shall fail to comply with the rules, regulations, orders, or conditions of any such regulatory body having jurisdiction of the Company, its successors, or assigns, and said rules, regulations, orders, or conditions are unappealed from, or are appealed from, and become final, then the City shall have the right to terminate and cancel the franchise after written notice to the Company and continuance of such violation, failure, or default for a period of more than ninety (90) days after receipt by the Company of such notice; Provided, however, that before the franchise may be terminated and canceled, the Company must be provided with an opportunity to be heard before the City Council.

§110.46 C.A.T.V.; UNLAWFUL ACTS.

- A. From and after the effective date of this Article, it shall be unlawful for any person to construct, install, or maintain within any public street in the franchise area, within any other public property of the franchise area, or within any privately-owned area within the franchise area which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, any equipment or facilities for distributing any television signals or radio signals through a CATV, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.
- B. It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the franchised CATV within the franchise area for the purpose of enabling himself or herself or others to receive any television signal, radio signal, radio signals, pictures, programs, or sound.

§110.47 C.A.T.V.; ESTABLISHMENT OF A CATV ADVISORY COMMITTEE.

The CATV Advisory Committee established by this Section, shall be composed of seven (7) persons, appointed by the Mayor, and who shall represent, insofar as is possible, the different professions or occupations in the City and shall be residents of the City. The term of each member shall be three (3) years from the date of appointment, unless reappointed, except that three (3) of the Committee members to be appointed in 1985 shall serve for the term of two (2) years from the date of that appointment. All members shall hold office until their successors are appointed. Said members shall serve without compensation. The

CATV Advisory Committee shall be funded by the Governing Body from time to time out of the General Fund. A majority of the Committee shall constitute a quorum for the purposes of doing business. The Committee shall elect a Chairperson and a Secretary from its members and create and fill such other of its offices as it may determine. The Committee shall hold at least two (2) regular meetings in each year.

It shall be the duty of the Secretary to keep full and correct minutes and records of all meetings and file the same with the Municipal Clerk where they shall be available for public inspection at any reasonable time. The Committee shall meet on the second (2nd) Tuesday of every other month with the first meeting to be held March, 1985. It shall be the duty of the Committee to advise the Governing Body concerning the CATV. All actions by the Committee shall be subject to the review and supervision of the Governing Body. The Committee shall hold at least one (1) public hearing annually in accordance with the requirements of §110.38(G) of this code, and shall be responsible for making such reports and performing such other duties as the Governing Body may, from time to time, designate. *(Amended by Ord. No. 85-1, 2/12/85)*

Electrical

§ 110.60 SHORT TITLE.

This Article shall be known and may be cited as the Waverly Electrical Fee in Lieu of Tax Ordinance.

§ 110.61 PURPOSE AND POWER.

The Governing Body does hereby deem it necessary, appropriate and the best interests of the City to authorize the entering into franchise agreements with providers of electrical service to serve the City upon such terms and conditions as are appropriate, and the Mayor and Clerk are authorized to execute such franchise agreements on behalf of the City upon a vote of the majority of the Council so authorizing. Such franchise agreements, to be in such form and content as agreed to from time to time shall incorporate, as though set forth in its entirety, this Article as it is may be amended from time to time.

§ 110.62 NONEXCLUSIVE GRANT OF AUTHORITY.

- A. The City hereby grants to any Company entering into an electrical franchise agreement in accordance with the terms and conditions of this Article, the right and privilege to erect, install, construct, repair, replace, reconstruct, maintain, and retain in or above, under, upon, across, and along any public street, public way, and public place, now laid out or dedicated and all extensions thereof and additions thereto in the franchise area, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to an electrical distribution system.
- B. The right to use and occupy such streets, public ways, and public places for the purposes herein set forth shall not be exclusive and the City reserves the right to grant a similar use of said streets, public ways and public places to any person at any time during the period of any franchise agreement entered into in accordance herewith.

§ 110.63 FEE IN LIEU OF TAX.

- A. Any Company providing services in accordance with an electrical franchise agreement entered into in accordance with this Article, hereby agrees to pay annually, to the City, during the term of any electrical franchise agreement, a fee of tax equal to the sum of a four and one half percent (4½%) of the total gross annual revenue collected by the franchisee for services rendered in accordance with the franchise agreement within the City limits of the Waverly, Lancaster County, Nebraska, within any calendar year during which this ordinance is effective.
- B. Such payment to the City shall be in lieu of any occupation tax, license tax, or similar levy and shall be paid annually.
- C. Any franchisee operating under a franchise agreement as authorized by this Article, shall file with the City, on or before February 20 of each year, a certified statement showing the gross annual electrical service charges provided within the City limits of the City during the preceding twelve (12) month period ending on December 31 of each year. The City shall have the right to inspect the franchisees records showing the gross receipts from which its payments in lieu of tax are to be computed, and the right of audit and recomputation of any and all amounts paid under this Article. No acceptance of this payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for additional sums payable hereunder. *(Amended by Ord. 02-07, 12/16/02)*

§ 110.64 NOTICE OF WAVERLY ELECTRICAL FEE IN LIEU OF TAX ORDINANCE.

- A. The City Clerk shall deliver to any potential franchisee a copy of this Article at or prior to the time of entering into a franchise agreement with the City.
- B. It is the intention of the Governing Body and it is hereby ordained, that the provisions of this Ordinance shall become and made part of the Code of the City of Waverly, Nebraska, and the Sections of this Ordinance may be renumbered to accomplish such intention.

CHAPTER 111: ALCOHOLIC BEVERAGES

Section

General Provisions

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§ 111.01 DEFINITIONS.

All words and phrases herein used are to have the definitions applied thereto, as defined in the Nebraska Liquor Control Act. (*Ref. 53-103 RS Neb.*) (*Amended by Ord. No. 05-17, 12/19/05*)

§ 111.02 LICENSE REQUIRED.

It shall be unlawful for any person to manufacture for sale, sell, keep for sale, or to barter any alcoholic liquors within the Municipality unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act. (*Ref. 53-102 RS Neb.*)

§ 111.03 LOCATION.

It shall be unlawful for any person or persons to own, maintain, manage, or hold open to the public any establishment for the purpose of selling at retail any alcoholic liquor within one hundred and fifty feet (150') of any church, school, hospital, or home for aged or indigent persons or veterans, their wives or children; Provided, this prohibition shall not apply to any location within such distance when the said establishment has been licensed by the Nebraska Liquor Control Commission at least two (2) years, and to hotels offering restaurant service, regularly organized clubs, or to restaurants where the selling of alcoholic liquors is not the principal business carried on, if the said hotel, club, or restaurant were licensed and in operation prior to May 24, 1935. (*Ref. 53-177 RS Neb.*) (*Amended by Ord. No. 05-17, 12/19/05*)

§ 111.04 DWELLINGS.

Except in the case of hotels and clubs no alcoholic liquor shall be sold at retail upon any premise which has any access which leads from such premise to any other portion of the same building used for dwelling or lodging purposed, and which is permitted to be used by the public. Nothing herein shall prevent any connection with such premise, and such other portion of the building which is used only by the licensee, his family, or personal guests. (*Ref. 53-178 RS Neb.*)

§ 111.05 LICENSE DISPLAYED.

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

§ 111.06 NEW APPLICATION; MUNICIPAL EXAMINATION.

Any person or persons desiring to obtain a new license to sell alcoholic liquors at retail or a craft brewery license shall file with the Liquor Control Commission. The Commission shall then notify the Municipal Clerk by registered or certified mail. The Governing Body shall then meet and determine the desirability of the application and report its recommendation for approval or denial of the application in writing to the Nebraska Liquor Control Commission within forty-five (45) days of receipt from the Nebraska Liquor Control Commission. The Governing Body shall fix a time and place at which a hearing on the application will be held, and at which time the Governing Body shall receive evidence, under oath, either orally, or by affidavit, from the applicant and any other person concerning the propriety of the issuance of such license. Notice of the time and place of such hearing shall be published in a legal newspaper in, or of general circulation in, the Municipality one (1) time not less than seven (7), nor more than fourteen (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 local Governing Body in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than forty-five (45) days after the receipt of notice from the Commission. After such hearing, the Governing Body shall cause to be recorded in the minute record of its proceedings a resolution recommending either issuance or refusal of such license. The Municipal Clerk shall thereupon mail to the Commission by first class mail, postage prepaid, a copy of the resolution, which shall state the cost of the published notice. *(Ref. 53-131 RS) (Amended by Ord. Nos. 83-24, 10/17/83; 86-3, 7/21/86; 05-17, 12/19/05)*

§ 111.07 LIQUOR LICENSE RENEWAL.

Retail or bottle club licenses issued by the Commission and outstanding may be automatically renewed in the absence of a request by the Governing Body to require the said licensee to issue an application for renewal. Any licensed retail or bottle club establishment located in an area which is annexed to the Municipality shall file a formal application for a license, and while such application is pending, the licensee shall be authorized to continue all license privileges pursuant to this Article until the original license expires, is canceled, or revoked. If such license expires within sixty (60) days following the annexation date of such area, the license may be renewed by order of the Commission for not more than one (1) year. The Municipal Clerk, upon notice from the Commission, between January tenth (10th) and January thirtieth (30th) of each year, shall cause to be published in a legal newspaper in, or of general circulation in the Municipality, one (1) time, a notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the Municipality; Provided, Class C license renewal notices shall be published between the dates of July tenth (10th) and July thirtieth (30th) of each year. The Municipal Clerk shall then file with the Commission proof of publication of said notice on or before February tenth (10th) of each year or August tenth (10th) of each year for Class C licenses. Upon the conclusion of any hearing required by this Section, the Governing Body may request a li-

censee to submit an application. (*Ref. 53-135, 53-135.01 RS Neb.*) (*Amended by Ord. Nos. 83-22, 10/17/83; 05-17, 12/19/05*)

§ 111.08 SPECIAL DESIGNATED LIQUOR LICENSES.

- A. The City Clerk shall be the agent of the Governing Body to receive special designated license applications and to determine whether such applications shall be approved or denied pursuant to the Nebraska Liquor Control Act and this Code, subject to appeal to the Governing Body. The City Clerk shall follow the criteria in Subsection C herein, the Nebraska Liquor Control Act, and regulations issued thereunder in making the determination.
- B. Applicants seeking a special designated license shall file an application for such with the City Clerk on forms prescribed by the Nebraska Liquor Control Commission, and shall file such applications with the City Clerk not less than thirty (30) working days prior to the event.
- C. In reviewing applications for special designated licenses, the City Clerk shall approve such applications only when:
 - 1. The Municipal Fire/Rescue Chief, Emergency Services Coordinator, and Lancaster County Sheriff has reviewed the application and recommends approval of same;
 - 2. The applicant identifies specific measures to prevent the possession or consumption of alcoholic beverages by minors and intoxicated persons;
 - 3. The applicant has provided adequate restroom facilities;
 - 4. The applicant has completely and accurately provided information requested by the City Clerk and has not made any material misrepresentations or omissions; and
 - 5. The applicant and proposed service of alcohol otherwise complies with all other requirements of this Code and the Nebraska Liquor Control Act;
 - 6. The City Clerk shall approve a special designated license application authorized under the Nebraska Liquor Control Act and this Code. If the City Clerk denies an application, the City Clerk shall inform the applicant stating the reasons for denial in writing.
- D. Any applicant where application has been denied by the City Clerk may appeal such denial by delivering written notice of appeal to the City Clerk within three (3) business days of receiving notice of such denial. The Governing Body shall conduct a public hearing on such appeal at its next regular meeting or at a special meeting, and may approve or deny the application. (*Amended by Ord. 05-17, 12/19/05; Ord 24-06, 08/13/2024.*)

§ 111.09 MUNICIPAL POWERS AND DUTIES.

The Governing Body is authorized to regulate by ordinance not inconsistent with the provisions of the Nebraska Liquor Control Act, the business of all retail and bottle club licensees carried on within the corporate limits. The Governing Body shall further have the power and duties in respect to licensed retailers of alcoholic beverages to cancel or revoke for cause retail or bottle club licensees to sell or dispense alcoholic liquors issued to persons for premises within its jurisdiction subject to the right of appeal to the Commission; to enter or to authorize any law enforcement officer to enter at any time upon any premise licensed by the State of Nebraska to determine whether any of the provisions of the Municipal laws, or the laws of the State of Nebraska, are being violated; to receive signed complaints from any citizens within its jurisdiction that any of the Municipal laws, or laws of the State of Nebraska, are being violated, and to act upon such complaints in the manner herein provided; to cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in Section 111.22, it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance or regulation duly enacted relating to alcoholic liquors; and to collect for the benefit of the State of Nebraska and the Municipality all license fees and occupation taxes as prescribed by law. (*Ref. 53-134 RS Neb.*) (*Amended by Ord. No. 83-22, 10/17/83*)

§ 111.10 OWNER OF PREMISES.

The owner of any premise used for the sale at retail of alcoholic beverages shall be deemed guilty of a violation of these laws to the same extent as the said licensee if the owner shall knowingly permit the licensee to use the said licensed premise in violation of any Municipal Code Section or Nebraska Statute. (*Ref. 53-1,101 RS Neb.*)

§ 111.11 EMPLOYER.

The employer of any officer, director, manager, or employees working in a retail liquor establishment shall be held to be liable and guilty of any act of omission or violation of any law or ordinance, if such act is committed or omission made with the authorization, knowledge or approval of the employer of licensee, and each such act or omission shall be deemed and held to be the act of the employer, and will be punishable in the same manner as if the said act or omission had been committed by him personally. (*Ref. 53-1,102 RS Neb.*)

§111.12 MINORS.

It shall be unlawful for any person or persons to sell, or make a gift of, any alcoholic liquors, or to procure any such alcoholic liquors for any minor, or other person who is mentally, physically, or otherwise incompetent, whether due to natural disabilities or the prior consumption of alcoholic beverages. (*Ref. 53-180 RS Neb.*)

§ 111.13 CREDIT SALES.

No person shall sell or furnish alcoholic liquor at retail to any person or persons for credit of any kind, barter, or services rendered; Provided, nothing herein contained shall be construed to prevent any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members, or guests of members, and charged to the accounts of the said members or guests in accordance with the by-laws of any such club;

and Provided further, nothing herein shall be construed to prevent any hotel or restaurant holding a retail alcoholic beverage license from permitting checks or statements for liquor to be signed by regular guests residing in the said hotel, and charged to the accounts of such guests. (Ref. 53-183 RS Neb.)

§ 111.14 SPIKING BEER.

It shall be unlawful for any person or persons who own, manage, or lease any premise in which the sale of alcoholic beverages is licensed, to serve or offer for sale any beer to which there has been added any alcohol, or permit any person or persons to add alcohol to any beer on the licensed premise of such licensee. (Ref. 53-103.03 RS Neb.)

§ 111.15 ORIGINAL PACKAGE.

It shall be unlawful for any person or persons who own, manage, or lease any premise in which the sale of alcoholic beverages is licensed, to have in their possession for sale at retail any alcoholic liquors contained in bottles, casks, or other containers except in the original package. (Ref. 53-184 RS Neb.)

§ 111.16 HOURS OF SALE.

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

HOURS OF SALE

Alcoholic Liquors (except beer and wine)

Secular Days

Off Sale6:00 a.m. to 1:00 a.m.

On Sale6:00 a.m. to 2:00 a.m.

Sundays

Off Sale 1:00 p.m. to 1:00 a.m.

On Sale 1:00 p.m. to 2:00 a.m.

Beer and Wine

Secular Days

Off Sale6:00 a.m. to 1:00 a.m.

On Sale6:00 a.m. to 2:00 a.m.

Sundays

Off Sale6:00 a.m. to 1:00 a.m.

On Sale6:00 a.m. to 2:00 a.m.

Provided, that such limitations shall not apply after twelve o'clock (12:00) Noon on Sunday to a licensee which is a non-profit corporation holding a license pursuant to Section 53-124(5)(C) and (H) Reissue Revised Statutes of Nebraska 1943.

No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than fifteen (15) minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises. For the purposes of this section "on sale"

shall be defined as alcoholic beverages sold by the drink for consumption on the premises of the licensed establishment; "off sale" shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

Nothing in this section shall be construed to prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section. (*Ref. 53-179 RS Neb.*) (*Amended by Ord. Nos. 10-100.116, 9/7/82; 83-25, 10/17/83; 95-6, 11/6/95; 97-10, 12/2/97; 11-05, 2/22/11*)

§ 111.17 SANITARY CONDITIONS.

It shall be unlawful to open for public use any retail liquor establishment that is not in a clean and sanitary condition. Toilet facilities for retail on-sale establishments shall be adequate and convenient for customers and patrons and said licensed premise shall be subject to any health inspections the Governing Body may make, or cause to be made. All applications for liquor licenses shall be viewed in part from the standpoint of the sanitary conditions, and a report concerning the said sanitary conditions shall be made at all hearings concerning the application for, or renewal of, a liquor license. (*Amended by Ord. 02-10, 3/18/02*)

§ 111.18 HIRING MINORS.

It shall be unlawful for any person to hire a minor regardless of sex under the age of nineteen (19) years to serve or dispense alcoholic liquors, including beer, to said licensee's customers.

§ 111.19 CONSUMPTION IN PUBLIC PLACES.

It shall be unlawful for any person to consume alcoholic beverages within the corporate limits upon the public ways and property, including inside vehicles while upon the public ways and property. It shall further be unlawful for any person to consume alcoholic beverages within any other public business that is not a licensed liquor establishment.

§ 111.20 ACQUISITION OF ALCOHOLIC BEVERAGES.

It shall be unlawful for any person to have possession of any alcoholic liquors which shall have been acquired otherwise than from a licensee duly licensed to sell same to such person under the provisions of the Nebraska Liquor Control Act; Providing, nothing herein shall prevent the possession of alcoholic liquor for the personal use of the possessor, his family and guests, nor prevent the making of wine, cider or other alcoholic liquor by a person from fruits, vegetables, or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker, his family and his guests; Provided further that nothing herein shall prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his profession, or any hospital or institution caring for the sick and diseased persons, from possessing any alcoholic liquor for the treatment of bona fide patients of such hospital or other institution; Provided further, that any drug store employing a licensed pharmacist may possess and use alcoholic liquors in the compounding of prescription of duly licensed physicians; and Provided further, that the possession and dispensation of wine by an authorized representative

of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church shall not be prohibited by this section.

§ 111.21 REMOVAL OF INTOXICATED PERSONS FROM PUBLIC PROPERTY.

Any law enforcement officer with the power to arrest for traffic violations may take a person who is intoxicated and in the judgment of the officer dangerous to himself, herself, or to others, or who is otherwise incapacitated, from public property. Such removal shall be in compliance with section 53-1,121 RS Neb.

§ 111.22 CITIZEN COMPLAINTS.

Any five (5) residents of the Municipality shall have the right to file a complaint with the Governing Body stating that any retail or bottle club licensee, subject to the jurisdiction of the Governing Body, has been or is violating any provisions of the Nebraska Liquor Control Act or the rules or regulations issued pursuant thereto. Such complaint shall be in writing in the form prescribed by the Governing Body and shall be signed and sworn by the parties complaining. The complaint shall state the particular provision, rule, or regulation believed to have been violated and the facts in detail upon which belief is based. If the Governing Body is satisfied that the complaint substantially charges a violation and that from the fact alleged there is reasonable cause for such belief, it shall set the matter for hearing within ten (10) days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge in the complaint; Provided, that the complaint must in all cases be disposed of by the Governing Body within thirty (30) days from the date the complaint was filed by resolution thereof, said resolution shall be deemed the final order for purposes of appeal to the Nebraska Liquor Control Commission as provided by law. (*Ref. 53-134.04 RS Neb.*) (*Amended by Ord. No. 83-26, 10/17/83; 05-17, 12/19/05*)

CHAPTER 112: TOBACCO

Section

112.01 Retail sales; license required

§ 112.01 RETAIL SALES; LICENSE REQUIRED.

Every person, partnership, limited liability company, or corporation desiring a license to sell tobacco at retail shall file with the Municipal Clerk a written application on forms provided by the municipality, stating the name of the person, partnership, limited liability company, or corporation for whom the license is desired and the exact location of the place of business and shall deposit with the application a license fee in the amount of \$10. If the applicant is an individual, the application shall include the applicant's social security number. (Neb. RS 28-1422 and 28-1423) (Ord. 2777, 2-16-99)

CHAPTER 113: SALES AND ADVERTISING

Section

Solicitors and Peddlers

- 113.01 Definitions
- 113.02 Permit required, procedure, fee, exhibition while soliciting
- 113.03 Calling at posted residences prohibited
- 113.04 Non-profit organizations or institutions exempted
- 113.05 Religious organizations or institutions exempted
- 113.06 Application
- 113.07 Investigation and issuance
- 113.08 Application of applicant
- 113.09 Transfer
- 113.10 Duty of law enforcement to enforce
- 113.11 Peddling; hours restricted
- 113.12 Penalty for violations

SOLICITORS AND PEDDLERS

§ 113.01 DEFINITIONS.

For the purposes of this Article, the following definitions shall prevail:

- A. Person. Whenever used in this Article, the word "person" shall include all natural persons, artificial persons, including, but not limited to, firms, partnerships, associations, corporations, companies, political and corporate bodies, societies, communities, the public generally, individuals, joint stock companies, and shall include all aggregate organizations of any character whatsoever.
- B. Individual. Whenever used in the Article, the work "individual" shall mean natural persons.
- C. Non-profit Organizations or Institutions. Whenever used in this Article, the words "non-profit organizations or institutions" shall include those organizations or institutions which are charitable in nature and whose internal rules provide that any income accruing to any such organization may not be distributed to or otherwise inure to the benefit of its members, directors, or officers.

§ 113.02 PERMIT REQUIRED, PROCEDURE, FEE, EXHIBITION WHILE SOLICITING.

It shall be unlawful for any person to appear in person to solicit funds or sell goods by calling on residents of the City in their homes, unless an appointment has been made with the resident in advance, without first obtaining a valid permit from the City Clerk.

In order to cover the administrative costs of this Section, the City Clerk shall charge a fee of twenty-five dollars (\$25.00) to process the application, and a permit fee of ten dol-

lars (\$10.00) per day per individual for the issuance of a permit to solicit funds or sell goods at the homes of residents of the City.

Any person required to obtain such permit under the provisions of this Article shall, at all times while soliciting, prominently display such permit on his or her outer clothing and shall exhibit the same to any law Enforcement Officer, any City Official, or at the home of any resident of the City upon request. *(Amended by Ord. 05-04, 4/18/05)*

§ 113.03 CALLING AT POSTED RESIDENCES PROHIBITED.

It shall be unlawful for any person to appear in person to solicit funds or sell goods by calling on residents of the City in homes which are posted with a sign which contains the words "NO SOLICITING – NO PEDDLERS" or otherwise plainly requests that individuals not call at that home to solicit funds or sell goods.

§ 113.04 NON-PROFIT ORGANIZATIONS OR INSTITUTIONS EXEMPTED.

Members of non-profit organizations or institutions shall be exempt from the provisions of this Article when their activities are directed and authorized by the non-profit organization or institution.

§ 113.05 RELIGIOUS ORGANIZATIONS OR INSTITUTIONS EXEMPTED.

Members of religious organizations or institutions shall be exempt from the provisions of this Article when their activities involve the distribution of religious materials.

§ 113.06 APPLICATION.

Applications for permits under this chapter shall be filed with the City Clerk on a form to be furnished by the City Clerk which shall give the following information:

- (a) Name, age, and description of the applicant;
- (b) Address;
- (c) Brief description of the nature of the business and the goods to be sold or services to be provided;
- (d) If employed, the name and address of the employer, together with documents verifying such employment;
- (e) The length of time (not to exceed one year) for which the right to do business as a peddler is desired;
- (f) If a vehicle is to be used, description of the same, together with the license number;
- (g) A photograph of the applicant, taken within sixty days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches showing the head and shoulders of the applicant in a clear and distinguishing manner;

- (h) The fingerprints of the applicant;
- (i) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor, the nature of the offense, and the punishment or penalty assessed therefore;
- (j) At the time of filing the application, a nonrefundable permit fee of twenty-five dollars shall be paid to the City Clerk.

§ 113.07 INVESTIGATION AND ISSUANCE.

(a) Upon receipt of an application as described in Section 113.06, the original shall be referred to the Lancaster County Sheriff's Office, who shall cause an investigation of the statements contained within the application to be made to determine if the same be true and correct.

(b) If, as a result of such investigation, the Lancaster County Sheriff's Office finds that the statements within the application are materially untrue or incorrect, or if it is found that the applicant has been convicted within the past ten years of a felony or a crime involving moral turpitude, the Lancaster County Sheriff's Office shall disapprove such application in writing and provide the reasons for the same, and return said application to the City Clerk, who shall notify the applicant that the application is disapproved and that no permit will be issued.

(c) If, as a result of such investigation, the statements contained in the application are found to be true and correct, and the applicant has not been convicted within the past ten years of any felony or any crime involving moral turpitude, the Lancaster County Sheriff's Office shall approve the application in writing, and shall return the said application to the City Clerk for issuance of the permit.

The Permit shall contain the signature and seal of the issuing officer and shall show the name and address of the permittee and the kind of goods to be sold thereunder, or services to be furnished or performed, the date of issuance, and the length of time the same shall be operative. The Clerk shall keep a permanent record of all permits issued.

§ 113.08 APPLICATION OF APPLICANT.

No permit shall be issued to any person:

(a) who has been convicted of a felony or a crime involving moral turpitude within the ten years immediately preceding the date of the filing of such application with the City Clerk;

(b) who is under the age of sixteen years unless the applicant first obtains an employment certificate as required by state law; or

§ 113.09 TRANSFER.

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

§ 113.10 DUTY OF LAW ENFORCEMENT TO ENFORCE.

It shall be the duty of the Lancaster County Sheriff's Office to enforce the provisions of this chapter against any person found to be violating the same. The Sheriff's Office shall report to the City Clerk all convictions for violations of this chapter, and the City Clerk shall maintain a record for each permit issued and record reports of violations therein.

§ 113.11 PEDDLING; HOURS RESTRICTED.

It shall be unlawful to make in-person calls as a peddler to prospective customers before 8:00 a.m. or after 7:00 p.m. on Monday through Saturday, unless requested to do so by the prospective customer. In-person calls as a peddler to prospective customers shall be prohibited on Sundays.

§ 113.12 PENALTY FOR VIOLATIONS.

Any person who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for a period not to exceed six months or by a fine not to exceed \$500.00, recoverable with costs, or both. Each day that a violation of this chapter continues shall constitute a separate and distinct offense and shall be punishable as such. The penalty provided in this section shall be cumulative with and in addition to the revocation of a permit granted under the provisions of this chapter. *(Established by Ord. 05-04, 4/18/05)*

CHAPTER 114: LOTTERY

Section

§ 114.15 MUNICIPAL LOTTERY.

- 1. AUTHORIZATION.** Approval by a majority of the registered voters of the City of Waverly, having been received in accordance with Neb. Rev. Stat. 9-625 (Reissue 1991), the City Council is authorized to establish and conduct a lottery, as defined in Neb. Rev. Stat. 9-607 (Reissue 1991). The lottery shall be conducted by a lottery operator pursuant to contract and subject to the provisions of the Nebraska County and City Lottery Act (the NCCLA). Gross proceeds of the lottery shall be used solely for the awarding of prizes, taxes, authorized expenses and for community betterment purposes, as defined in the NCCLA.

2. LOTTERY OPERATOR

A. The lottery shall be operated by a Lottery Operator. "Lottery Operator" shall mean any individual, sole proprietorship, partnership, or corporation which operates the lottery on behalf of the City pursuant to a written contract.

B. Lottery Operator Selection.

1. The selection of the Lottery Operator shall be at the sole discretion of the Governing Body.

2. The Lottery Operator shall (a) be a resident of Nebraska, or if a partnership or corporation, shall be organized under the laws of this state as a partnership or incorporated under the Nebraska Business Corporation Act, and (b) be licensed to conduct a lottery by the Nebraska Department of Revenue pursuant to the NCCLA.

3. The rights and obligations of the Lottery Operator shall be set forth in a contract between the Governing Body and the Lottery Operator which shall include terms and conditions as required by the Waverly Municipal Code and the NCCLA.

C. Lottery Facilities

1. The Lottery Operator selected by the Governing Body shall not operate the lottery at a sales outlet location other than the location of the Lottery Operator without prior approval of the sales outlet location by the Governing Body. The Governing Body shall approve or disapprove each sales outlet location and individual, sole proprietorship, partnership, or corporation which desires to conduct the lottery at its sales outlet location solely on the basis of the qualification standards prescribed in subsection 2. below.

2. Any individual, sole proprietorship, partnership, or corporation which seeks to have its location approved as an authorized sales outlet location shall: (a) be subject to the same qualification standards as the Lottery Operator, including the provisions of the Waverly Municipal Code; (b) not have been convicted of, forfeited bond upon a charge of, or pleaded guilty to forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to a governmental agency at any level, filing false reports with any such agency, or any similar offense or offenses or any crime, whether felony or misdemeanor, involving gambling activity or moral turpitude; (c) not have had a gaming license revoked or canceled under the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska County and City Lottery Act; and (d) be fit, willing, and able to properly provide the service proposed in conformance with all provisions and requirements of the Nebraska County and City Lottery Act and the rules and regulations adopted and promulgated pursuant to the act.

3. If the person seeking to have its location approved as an authorized sales outlet location is a partnership or corporation, the qualification standards shall apply to every partner of such partnership, every officer of such corporation, and stockholder owning more than ten percent (10%) of the stock of such corporation.

4. The Governing Body shall notify the Department of Revenue of all approved lottery locations within thirty (30) days of approval. (*Ref. 9-642.01 RS Neb.*)

D. Security. The Lottery Operator shall be required to install and maintain security devices and measures to ensure the integrity, honesty, and fairness of the lottery operation. Any such security system is subject to the approval and inspection of the Governing Body and its representatives.

E. Alcohol. The Lottery Operator may sell alcoholic liquor, provided that the Lottery Operator complies with all applicable federal, state and local laws, to include but not be limited to the Nebraska Liquor Control Act, Neb. Rev. Stat. 53-101 et seq. (Reissue 1988). Authorized sales outlets shall be authorized to sell alcoholic liquor subject the same provisions.

3. MONITORING AND CONTROL

A. The ultimate responsibility for the establishment and operation of the lottery rests with the Governing Body. The Mayor, subject to confirmation by the Governing Body, shall appoint a Lottery Auditor to supervise the day to day operation of the lottery.

B. Lottery Auditor

1. Cost of the position of Lottery Auditor shall be borne as set forth in the Lottery Operator Agreement; Provided, however, to the extent permitted by the NCCLA, such costs shall be paid from the proceeds of the lottery. (*Amended by Ordinance 21-09, 9/28/21.*)

2. The Lottery Auditor shall (a) keep and maintain complete and accurate records of all receipts and disbursement of lottery funds, including an accurate accounting of gross proceeds less the amount awarded in prizes and fees to the Lottery Operator in a segregated account in accordance with the NCCLA and rules and regulations promulgated in accordance there with; (b) periodically audit, examine, or cause to have examined by an independent agent any books, papers, records, or memoranda relating to the conduct of the lottery including the books and records of the Lottery Operator; (c) provide for application and renewal of the license to conduct a lottery pursuant to the NCCLA; (d) act as a liaison between the City of Waverly and the Department of Revenue; (e) act as a liaison between the City of Waverly and the Lottery Operator; (f) perform such other and further acts related to the operation and supervision of the lottery as a Mayor shall reasonably direct from time to time; and (g) provide for the termination, filing, and payment of the state lottery tax, in accordance with Neb. Rev. Stat. 9-610 (Reissue 1991).

4. PARTICIPATION RESTRICTIONS

(A) No person under nineteen (19) years of age shall play or participate in any way in the lottery established and conducted by the Governing Body.

(B) No owner or officer of a lottery operator with whom the Governing Body contracts to conduct its lottery shall play the lottery conducted by the Governing Body.

(C) No employee or agent of the City of Waverly, lottery operator, or any authorized sales outlet location shall play the lottery conducted by the Governing Body for which he or she performs work during the time that he or she is actually working at the lottery or while on duty with the lottery.

(D) Nothing shall prohibit the following persons from playing the lottery conducted by the Governing Body provided such person is 19 years of age or older:

(1) Any member of the Governing Body, a municipal official, or the immediate family of such member or official; or

(2) an owner or officer of an authorized sales outlet location for the municipality.

(E) For purposes of this section, immediate family of a member of the Governing Body or a municipal official shall mean spouses, children, grandchildren, siblings, or parents, including those individuals with the same relationship to the spouse, residing in the same household under the control and support of the head of such household.

CHAPTER 115: SEXUALLY ORIENTED BUSINESSES

Section

- 115.01 Purpose and intent
- 115.02 Findings
- 115.03 Definitions
- 115.04 Classification of sexually oriented businesses
- 115.05 Films or videos
- 115.06 Additional regulations concerning nudity and semi-nudity
- 115.07 Location of sexually oriented business
- 115.08 Additional regulations concerning alcohol
- 115.09 Children Prohibited in a sexually oriented business
- 115.10 Hours of operation
- 115.11 Display of sexually oriented materials to minors
- 115.12 Enforcement and penalties

§ 115.01 PURPOSE AND INTENT

It is the purpose of this article to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious effects produced by such sexually oriented businesses within the City, especially in conjunction with the sale and consumption of alcohol by and in such sexually oriented businesses. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene materials.

§ 115.02 FINDINGS

Based on evidence concerning the adverse secondary effects of sexually oriented businesses on the surrounding community presented in hearings and in reports made available to the City Council, and on findings incorporated in the cases of *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, (1986); *Iacobucci v. City of Newport, Ky*, 479 U.S. 92 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *California v. LaRue*, 409 U.S. 109 (1972); *S.O.B., Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *South Florida Free Beaches, Inc. v. City of Miami*, 734 F.2d 608 (11th Cir. 1984); *Village of Winslow v. Sheets*, 261 Neb. 203 (2001); *Major Liquors, Inc. v. City of Omaha*, 188 Neb. 628 (1972); and *Midtown Palace, Inc. v. City of Omaha*, 193 Neb. 785 (1975), as well as studies conducted in other cities including, but not limited to, Rochester, New York; San Diego, California; Denver, Colorado; Kansas City, Missouri; New York City, New York; Newport News, Virginia; St. Paul, Minnesota; Springfield, Missouri; Indianapolis, Indiana; Los Angeles, California; and Austin, Texas; and summaries of studies of from thirty-two other cities; and statistics compiled by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and the Nebraska Department of Health and Human Services, the City Council hereby finds that:

A. Sexually oriented businesses have negative secondary effects on the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the downgrading of property values, the downgrading of adjacent neighborhoods making adjacent neighborhoods significantly less attractive and less safe for raising children, denigrating both residential life and commercial activity for other types of businesses, and increasing the likelihood that long-established standards of public decency will be violated through drug use, prostitution, tax evasion, and fraud. Sexually oriented businesses downgrade the quality of life and fitness of property for other uses in areas both immediate adjacent to and within the proximity of such sexually oriented businesses.

B. The negative secondary effects of sexually oriented businesses are amplified when the service or consumption of alcohol is permitted and engaged in on the premises of such sexually oriented businesses.

C. The findings noted above raise substantial governmental concerns for the health, safety, and welfare of the citizens of the City, and it is appropriate for the purpose of promoting and protecting said health, safety, and welfare of the citizens of the City, particularly the children of the community and those conducting general business within the City, that reasonable regulations be enacted so as to address the substantial governmental concerns to minimize and control the negative secondary effects of sexually oriented businesses, and thereby promote and protect the health, safety and welfare of the citizens of the City and to preserve the quality of life and the quality and character of surrounding neighborhoods for residential and commercial purposes and uses.

D. The enactment of reasonable regulations governing sexually oriented businesses within the City, which involve operational criteria and the regulation of alcohol and illegal substance use and consumption on the premises of such sexually oriented businesses, are appropriate to address the substantial governmental concerns noted above and to protect the health, safety and welfare of the citizens of the City, in conjunction with the zoning requirements applicable to sexually oriented businesses and businesses permitting the sale or consumption of alcohol currently contained in the Waverly Zoning Regulations.

E. It is not the intent of the City to extend these reasonable regulations and prohibitions to any expression of opinion or the performance of a bona fide play, ballet, or drama protected by the First Amendment to the U.S. Constitution or by Article I, section 5 of the Constitution of the State of Nebraska.

§ 115.03 DEFINITIONS

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

“Adult arcade” shall mean any place to which the public is permitted or invited wherein coin operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” and/or “specified anatomical areas.”

“Adult bookstore,” “adult video store” or “adult novelty store” shall mean a commercial establishment which has a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for sale or rental, for any form of consideration, any one or more of the following:

A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, laser or compact discs, or other visual representations which are characterized by their emphasis upon the exhibition or display of “specified sexual activities” or “specified anatomical areas.”

B. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others.

C. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental or material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe “specified sexual activities” or “specified anatomical areas,” or if the busi-

ness advertises the sale or rental of any such material in a way that can be seen or heard from the outside of the location.

“Adult cabaret” shall mean a nightclub, bar, restaurant, or similar commercial establishment which regularly features any of the following:

- A. Persons who appear in a state of nudity.
- B. Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”
- C. Films, motion pictures, video cassettes or video reproductions, slides, laser or compact discs, or other visual representations which are characterized by their emphasis upon the exhibition or display of “specified sexual activities” or “specified anatomical areas.”

“Adult motel” shall mean a hotel, motel, or similar commercial establishment which does any of the following:

- A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, compact discs or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions.
- B. Offers a sleeping room for rent for a period of time that is less than ten hours.
- C. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

“Adult motion picture theater” shall mean a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the principal subject of depiction or description being “specified sexual activities” and/or “specified anatomical areas.”

“Adult theater” shall mean a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

“Employee,” “employ” and “employment” shall pertain to or describe any person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. “Employee” does not include a person exclusively on the premises for repair or maintenance of the premises, or for the delivery of goods to the premises.

“Escort” shall mean a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

“Escort agency” shall mean a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

“Establishment” shall mean any of the following:

- A. The opening or commencement of any sexually oriented business as a new business.
- B. The conversion of an existing business to a sexually oriented business or from one type of sexually oriented business to another type or types of sexually oriented business.
- C. The addition of any sexually oriented business to any other existing sexually oriented business.
- D. The relocation of any sexually oriented business.

“Nude model studio” shall mean a commercial establishment which regularly features a person who appears in a state of nudity and is provided to be observed, sketched, drawn, painted, sculpted, or photographed by other persons who pay money or any form of consideration. “Nude model studio” shall not include a proprietary school licensed by the State; or a college, junior college or university supported entirely or in part by public taxation; or a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.

“Nude,” “nudity” or “state of nudity” shall mean the showing or depicting of the human male or female genitals or pubic area with less than a fully opaque covering, the showing or depicting of the female breast with less than a fully opaque covering on any part of the areola and nipple, or the showing or depicting of covered male genitals in a discernibly turgid state.

“Operate” or “cause to be operated” shall mean to cause to function or to put or keep in a state of doing business. Operator means any person on the premises of a sexually oriented business who is authorized to exercise operational control of the business, or who causes to function or who puts or keeps in operation, the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether or not that person is an owner, part owner, or licensee of the business.

“Person” shall mean an individual, proprietorship, partnership, limited liability company or partnership, corporation, association or other legal entity.

“Residential” shall mean a single-family, two-family, or multiple-family use as defined in the ordinances of the City of Waverly.

“Semi-nude,” “semi-nudity,” and “state of semi-nudity” shall mean the showing or depicting of the human body with no more than fully opaque clothing covering the genitals and pubic region of male or female persons and any part of the areola and nipple of the female breast.

“Sexual encounter center” shall mean a business or commercial enterprise that offers for any form of consideration:

A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex.

B. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

“Sexually oriented business” shall mean an adult arcade, adult bookstore or adult novelty store or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, semi-nude model studio or sexual encounter center.

“Specified anatomical areas” shall mean the human, post-pubertal male or female genitals, pubic area, or buttocks with less than a full opaque covering, and the male genitals in a discernibly turgid state even if completely and opaquely covered.

“Specified sexual activities”:

A. The fondling, kissing, or other erotic touching of human genitals, pubic area, buttocks or female breasts whether clothed or unclothed; or

B. Acts whether actual or simulated, of human sexual intercourse, oral copulation, masturbation, or sodomy; or

C. Excretory functions as part of or in connection with any of the activities set forth in (A) and (B) above.

§ 115.04 CLASSIFICATION OF SEXUALLY ORIENTED BUSINESSES

Sexually oriented businesses are classified as follows:

A. Adult arcade;

B. Adult bookstore, adult video store or adult novelty store;

C. Adult cabaret;

D. Adult motel;

E. Adult motion picture theater;

F. Adult theater;

- G. Escort agency;
- H. Nude model studio;
- I. Sexual encounter center.

§ 115.05 FILMS OR VIDEOS

A. A person who operates or causes to be operated a sexually oriented business, classified as an adult arcade, which exhibits on the premises in a viewing room of 150 square feet or less of floor space a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. It is the duty of the owner and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

2. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any reason from at least one of the manager's stations and all must be staffed when viewing access is made available so that all areas other than restrooms are supervised at all times viewing access is permitted. The supervision required in this subsection must be by direct line of sight from the manager's station.

3. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in Subsection (A)(2) remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to this article.

4. No viewing room may be occupied by more than one person at any time.

5. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot-candle as measured at the floor level.

6. It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

B. A person having a duty under subsection (A) above commits a misdemeanor if he or she knowingly fails to fulfill that duty.

§ 115.06 ADDITIONAL REGULATIONS CONCERNING NUILITY AND SEMI-NUILITY

A. It shall be unlawful for any person to knowingly or intentionally, or for any person to knowingly or intentionally authorize, permit, or suffer any person to, appear live in a state of nudity, or engage in or simulate specified sexual activities, in any public place or place open to the public, including a sexually oriented business; provided, however, that this subsection (A) shall not apply to:

(i) Any theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibit or performance;

(ii) Any dressing/changing room or restroom facility open to the public;

(iii) Any person under the age of 12;

(iv) Mothers who are breast feeding; or

(v) Any sexually oriented business that was operating and in existence within the municipal corporate limits on January 1, 2016.

B. There shall be no physical contact or other specified sexual activities between employees or performers and patrons for gratuity, pay, or other remuneration, direct or indirect, or in conjunction with or as part of any performance or entertainment in any sexually oriented business where alcohol is served or otherwise consumed on the premises. It shall further be unlawful for any owner, lessee, proprietor, or manager of any sexually oriented business to knowingly allow any employee or performer on the premises of such sexually oriented business where alcohol is served or otherwise consumed to engage in any act or acts prohibited under this subsection (B); provided, however, this subsection (B) shall not apply to:

(i) Any theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibit or performance;

(ii) Any dressing/changing room or restroom facility open to the public;

(iii) Any person under the age of 12;

(iv) Mothers who are breast feeding; or

(v) Any sexually oriented business that was operating and in existence within the municipal corporate limits on January 1, 2016.

§ 115.07 LOCATION OF SEXUALLY ORIENTED BUSINESS

All sexually oriented businesses shall be sited, located, and operated in accordance with those requirements for “Restricted Businesses” and other applicable requirements set forth in the Waverly Zoning Regulations.

§ 115.08 ADDITIONAL REGULATIONS CONCERNING ALCOHOL

In the event the licensee, manager, or agent of a sexually oriented business shall authorize, permit, or suffer any live person, including employees, to appear in the licensed premises in a state of nudity, or has any reason to believe that any live person shall appear in the licensed premises in a state of nudity, then the City Council may cause the sexually oriented business’s license to sell or permit the consumption of alcohol, including a bottle club license, to be cancelled, revoked, suspended, or recommended for non-renewal after providing notice and a hearing as provided by Nebraska law, where the license holder is found to have violated this Section, any provision of the Nebraska Liquor Control, any provision of this chapter, any rule or regulation of the state liquor control commission, or any other applicable statutory provision of the state or ordinance of the City now existing or hereafter passed. This section shall not apply to any sexually oriented business that: (a) was operating and in existence within the municipal corporate limits on January 1, 2016; and (b) obtained a valid retail license or bottle club license from the Nebraska Liquor Control Commission to sell alcoholic beverages within the municipal corporate limits on or before May 31, 2019.

§ 115.09 CHILDREN PROHIBITED IN A SEXUALLY ORIENTED BUSINESS

No person under the age of 19 years shall be allowed on the premises of a sexually oriented business, and it is the duty of the sexually oriented business to enforce this minor age restriction through supervision and verification by identification.

§ 115.10 HOURS OF OPERATION

No sexually oriented business may remain open at any time between the hours of 1:00 a.m. and 8:00 a.m. on weekdays and Saturdays and 1:00 a.m. and noon on Sundays.

§ 115.11 DISPLAY OF SEXUALLY ORIENTED MATERIALS TO MINORS

A. No licensee or employee of a sexually oriented business shall permit a person under the age of 19 years of age to be present on its business premises, which age limitation will be enforced by age verification by said business.

B. No sexually oriented business shall display posters, signs, depictions or other visual representations outside walls or on any inside or outside window which depict any of the following:

1. Human sexual intercourse, masturbation, or sodomy;
2. Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts;

3. Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areolae of the nipple; or

4. Human male genitals in a discernibly turgid state, whether covered or uncovered.

C. The windows and doors of a sexually oriented business will be tinted to the extent that there is no view of the interior from the exterior of the business.

D. "Display" means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:

1. It is available to the general public for handling and inspection; or

2. The cover or outside packaging on the item is visible to members of the general public.

§ 115.12 ENFORCEMENT AND PENALTIES

Any person who violates any of the prohibitions or provisions of any article or sections of this article shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular article or section for which the person stands convicted of violating, the penalty for such violation shall be a fine in any sum not exceeding \$500.00 or imprisonment for a term not to exceed three months or both said fine and imprisonment at the discretion of the sentencing court. A separate violation shall be deemed to have been committed each 24-hour period that a violation continues after conviction.

CHAPTER 116: RAILROADS

Sections

- 116.01 Safe crossing
- 116.02 Speed
- 116.03 Lighting
- 116.04 Obstructing traffic

§ 116.01 SAFE CROSSING.

It shall be the duty of every railroad company doing business in or traveling through the Municipality to keep in a suitable and safe condition the crossings and right-of-way in the Municipality. If any such crossing shall at any time fall into disrepair and become unsafe, or inconvenient for public travel, the Governing Body may, by resolution, call upon the said company to make whatever repairs that they may deem necessary to correct the dangerous condition. Notice of the said resolution shall be served upon the local agent of the said company. In the event that the railroad shall fail, or neglect, to repair and correct the said condition as aforesaid within forty-eight (48) hours, neglect for each twenty-four (24) hours thereafter shall be deemed, and is hereby made a separate and distinct offense against the provisions herein. (*Ref. 17-143 RS Neb.*)

§ 116.02 SPEED.

It shall be unlawful for any railroad company, its employees, agents, or servants to operate a railroad engine, locomotive, or other vehicle on its tracks within or through the Municipality at a speed in excess of twenty-five (25) miles per hour. (*Ref. 17-551, 17-552 RS Neb.*)

§ 116.03 LIGHTING.

It shall be the duty of all railroad companies owning, operating, and maintaining a railroad through the Municipality to sufficiently light all crossings and to install as many signal systems as the Governing Body shall deem necessary at the expense of the said company. (*Ref. 17-561 RS Neb.*)

§ 116.04 OBSTRUCTING TRAFFIC.

It shall be unlawful, except in a situation beyond the control of the railroad operator, for any railroad company, its employees, agents, or servants, operating a railroad which passes through the Municipality, to allow a train, railroad car, engine, or railroad company, to stand idle and not moving on the railroad track, or a moving train, to block traffic on any public street or to block a railroad crossing, at any one time for a period of time in excess of ten (10) minutes. It shall also be unlawful, except in a situation beyond the control of the railroad operator, for any railroad company, its employees, agents, or servants, operating a railroad which passes through the Municipality, to allow a train, railroad car, engine, or railroad company, to stand idle and not moving on the railroad track, or a moving train, which causes an electrical or mechanical signal or a crossing gate to operate and legally prohibit traffic from crossing such railroad tracks at any time or to block a railroad crossing, for a period of time in excess of ten (10) minutes. (*Rev. 17-552 RS Neb.*) (*Amended by Ord. No. 93-7, 12/6/93 and 99-26, 12/6/99*)

TITLE XIII: GENERAL OFFENSES

Chapter

130. PROPERTY OFFENSES

131. MISCELLANEOUS MISDEMEANORS

132. RESERVED

133. RESERVED

134. OFFENSES AGAINST PUBLIC MORALS

CHAPTER 130: PROPERTY OFFENSES

Section

- 130.01 Criminal mischief
- 130.02 Criminal trespass
- 130.03 Radio interference
- 130.04 Injury to trees
- 130.05 Posting
- 130.06 Removing material from public ways
- 130.07 Shoplifting
- 130.08 Throwing snowballs, rocks, and the like

§ 130.01 CRIMINAL MISCHIEF.

(1) A person commits criminal mischief if he or she:

- (a) Damages property of another intentionally or recklessly; or
- (b) Intentionally tampers with property of another so as to endanger person or property; or
- (c) Intentionally or maliciously causes another to suffer pecuniary loss by deception or threat.

(2) Criminal mischief is a Class IV felony if the actor intentionally or maliciously causes pecuniary loss of five thousand dollars or more, or a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public service.

(3) Criminal mischief is a Class I misdemeanor if the actor intentionally or maliciously causes pecuniary loss of one thousand five hundred dollars or more but less than five thousand dollars.

(4) Criminal mischief is a Class II misdemeanor if the actor intentionally or maliciously causes pecuniary loss of five hundred dollars or more but less than one thousand five hundred dollars.

(5) Criminal mischief is a Class III misdemeanor if the actor intentionally, maliciously, or recklessly causes pecuniary loss in an amount of less than five hundred dollars, or if his or her action results in no pecuniary loss. (Neb. RS 28-519) Penalty, see § 10.99

§ 130.02 CRIMINAL TRESPASS.

(A) It shall be unlawful for any person, knowing that he or she is not licensed or privileged to do so, to enter or secretly remain in any building or occupied structure, or any separately secured or occupied portion thereof. (Neb. RS 28-520)

(B) It shall be unlawful for any person, knowing that he or she is not licensed or privileged to do so, to enter or remain in any place as to which notice against trespass is given by:

- (1) Actual communication to the actor;
- (2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
- (3) Fencing or other enclosure manifestly designed to exclude intruders. (Neb. RS 28-521) Penalty, see § 10.99

§ 130.03 RADIO INTERFERENCE.

Any person operating, or causing to be operated, any motor, sign, or other electrical apparatus that is connected with the light and power system shall equip the apparatus with proper filtering attachments to eliminate interference, provided that the provisions herein shall not apply to the use of necessary medical equipment or apparatus where electrical interference cannot be reasonably and safely eliminated. Any person who so operates or causes to be operated any such electrical apparatus that interferes habitually with radio and television reception shall be deemed to be guilty of a misdemeanor. Penalty, see § 10.99

§ 130.04 INJURY TO TREES.

(A) It shall be unlawful for any person purposely or carelessly and without lawful authority to cut down, carry away, injure, break down, or destroy any fruit, ornamental, shade, or other tree or trees standing or growing on any land belonging to another person or persons or on any public land in the corporate limits.

(B) Any public service company desiring to trim or cut down any tree, except on property owned and controlled by it, shall make an application to the City Council to do so, and the written permit of the City Council in accordance with its decision to allow such an action shall constitute the only lawful authority on the part of the company to do so. Penalty, see § 10.99

§ 130.05 POSTING.

It shall be unlawful for any person, firm, or corporation to use the streets, sidewalks, or public grounds of the municipality for signs, signposts, or the posting of handbills or advertisements without written permission of the City Council. Penalty, see § 10.99

§ 130.06 REMOVING MATERIAL FROM PUBLIC WAYS.

It is hereby declared unlawful for any person to remove, disturb, or take away from any street, alley, or public grounds any dirt, earth, stones, or other materials forming a part of the street, alley, or public grounds without first having obtained written permission to do so from the City Council. Penalty, see § 10.99

§ 130.07 SHOPLIFTING.

(1) A person commits the crime of theft by shoplifting when he or she, with the intent of appropriating goods or merchandise to his or her own use without paying for the goods or merchandise or to deprive the owner of possession of such goods or merchandise or its retail value, in whole or in part, does any of the following:

- (a) Conceals or takes possession of the goods or merchandise of any store or retail establishment;
- (b) Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;
- (c) Transfers the goods or merchandise of any store or retail establishment from one container to another;
- (d) Interchanges the label or price tag from one item of a good or of merchandise with a label or price tag for another item of a good or of merchandise;
- (e) Causes the cash register or other sales recording device to reflect less than the retail price of the goods or merchandise; or
- (f) Alters, bypasses, disables, shields, or removes any security or alarm device attached to or housing any goods or merchandise of any store, including the use or possession of a security device countermeasure as defined in Neb. RS 28-511.03, prior to purchase of the goods or merchandise.

(2) In any prosecution for theft by shoplifting, photographs of the shoplifted property may be accepted as prima facie evidence as to the identity of the property. Such photograph shall be accompanied by a written statement containing the following:

- (a) A description of the property;
- (b) The name of the owner or owners of the property;
- (c) The time, date, and location where the shoplifting occurred;
- (d) The time and date the photograph was taken;
- (e) The name of the photographer; and
- (f) Verification by the arresting officer.

The purpose of this subsection is to allow the owner or owners of shoplifted property the use of such property during pending criminal prosecutions.

Prior to allowing the use of the shoplifted property as provided in this section, legal counsel for the alleged shoplifter shall have a reasonable opportunity to inspect and appraise the property and may file a motion for retention of the property, which motion shall be granted if there is any reasonable basis for believing that the photographs and accompanying affidavit may be misleading. (Neb. RS 28-514) Penalty, see § 10.99

§ 130.08 THROWING SNOWBALLS, ROCKS, AND THE LIKE.

It shall be unlawful for any person to propel or throw any snowball, rock, tomato, or other missile at any real or personal property of any description belonging to another. Penalty, see § 10.99

CHAPTER 131: MISCELLANEOUS MISDEMEANORS

Section

- 131.01 Definitions
- 131.02 Loitering and trespassing
- 131.03 Loitering in public places
- 131.04 Discharge of firearms
- 131.05 Slingshots, air guns, bb guns
- 131.06 Fireworks
- 131.07 Disturbing the peace
- 131.08 Disorderly conduct
- 131.09 Malicious mischief
- 131.10 Public indecency and indecent exposure
- 131.11 Window peeping
- 131.12 Littering
- 131.13 Obstruction of public ways

- 131.14 Weeds, litter, stagnant water
- 131.15 Abandoned automobiles
- 131.16 Curfew
- 131.17 Park hours
- 131.18 Use of engine or compression brakes
- 131.19 Weapons; carrying concealed weapons
- 131.20 Reserved
- 131.21 Urinating or defecating in public; prohibited
- 131.22 Violation; penalty

§ 131.01 DEFINITIONS.

For the purpose of this Article, the following definitions shall prevail:

PERSON. The term "person" is hereby defined to include all natural persons, artificial persons, including, but not limited to, firms, partnerships, associations, corporations, limited liability companies, political and corporate bodies, societies, communities, the public generally, individuals, joint stock companies, and shall include all aggregate organizations of any character whatsoever.

PUBLIC PROPERTY. The term "public property" is hereby defined to be any public right of way, street, alley, highway, park, or other State, County, or Municipality owned property.

PRIVATE PROPERTY. The term "private property" is hereby defined to be any privately owned property, which is not included within the definition of public property.

ABANDONED MOTOR VEHICLE. The term abandoned "motor vehicle" is hereby defined to be a vehicle left unattended:

1. Without current number plates affixed thereto for more than six (6) hours on any public property;
2. For more than twenty-four (24) hours on any public property except a portion thereof on which parking is legally permitted;
3. For more than forty-eight (48) hours after the parking of such vehicle shall become illegal;
4. For more than seven (7) days on private property if left initially without permission of the owner or after permission of the owner shall be terminated.

ENGINE OR COMPRESSION BRAKES. The term "engine or compression brakes" is hereby defined as any means used by which the engine on any motor vehicle is employed as a braking device by containing the engine's compression, thereby resulting in a rapid reduction in the engine's revolutions per minute. *(Amended by Ord. No. 98-18, 12/21/98, 01-07, 6/4/01)*

§ 131.02 LOITERING AND TRESPASSING.

It shall be unlawful for any person to loiter on or about or trespass private property without the consent of the owner, tenant, or the agent of said owner or tenant thereof. Any

person who violates this Section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. *(Amended by Ord.01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.03 LOITERING IN PUBLIC PLACES.

It shall be unlawful for any person to loiter in or about or in any way obstruct or encumber any public property within the City, by lounging, or otherwise remaining, in or about the same, after being requested to move on by any Law Enforcement Official. Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. Any person violating sections 131.02 or 131.03 of this Code shall be deemed guilty of a Class II Misdemeanor as defined by §131.22 of this Code. If and only if such violation is a first (1st) offense, the same may be disposed of pursuant to a Waiver of Appearance and Plea of Guilty, then, and in that event, the fine shall be twenty-five dollars (\$25). *(Amended by Ord.01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.04 DISCHARGE OF FIREARMS.

It shall be unlawful for any person, except an officer of the law in the discharge of his official duty, to fire or discharge any gun, pistol, or other fowling piece within the Municipality; Provided, nothing herein shall be construed to apply to officially sanctioned public celebrations if the persons so discharging firearms have prior written authorization from the Governing Body. Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. *(Ref. 17-556 RS Neb.) (Amended by Ord.01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.05 SLINGSHOTS, AIR GUNS, BB GUNS.

It shall be unlawful for any person to discharge a slingshot, air gun, BB gun, or the like loaded with rock or other dangerous missiles at any time or under any circumstances within the Municipality. Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. *(Ref. 17-556 RS Neb.) (Amended by Ord.01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.06 FIREWORKS.

It shall be unlawful for any person to ignite or cause to be exploded fireworks or firecrackers of any description whatsoever, except as permitted by sections 91.70 to 91.78 of this Code. Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. *(Amended by Ord. 01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.07 DISTURBING THE PEACE.

It shall be unlawful for any person or persons to assemble or gather within the Municipality with the intent to do an unlawful or disorderly act or acts, by force or violence against the Municipality, or residents therein, or who shall disturb the public peace, quiet, security, repose, or sense of morality. Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. *(Ref. 28-818 RS Neb.) (Amended by Ord.01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.08 DISORDERLY CONDUCT.

It shall be unlawful to knowingly start a fight, fight, commit assault or battery, make unnecessary noise, or otherwise conduct oneself in such a way as to breach the peace. Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. *(Ref. 17-129, 17-556 RS Neb.) (Amended by Ord.01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.09 MALICIOUS MISCHIEF.

It shall be deemed a misdemeanor for any person to willfully destroy, mutilate, deface, injure, or remove any tomb, monument, gravestone, structure, or thing of value which is located upon any government property, cemetery, or property of historic value. Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code.

Any such offender shall also be liable, in an action for trespass in the name of the beneficial holder of said property, for all damages, which arise from the commission of such unlawful act. *(Amended by Ord.01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.10 PUBLIC INDECENCY AND INDECENT EXPOSURE.

It shall be unlawful for any person, in a public place or on private premises, and under circumstances in which he or she knows or reasonably should know that his or her conduct may readily be observed from either a public place or other private premises,

(a) to perform an act of sexual penetration; (b) to fondle or caress the genitals of another person of the same or opposite sex; or (c) to intentionally or recklessly expose his or her genitals in such a manner or under such circumstances as to affront or alarm another person. Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. *(Amended by Ord.01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.11 WINDOW PEEPING.

It shall be unlawful for any person to go upon the private premise of another to look or peep into any window, door, or other opening in a building occupied by any other person. Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. *(Amended by Ord.01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.12 LITTERING.

It shall be unlawful for any person to throw, cast, lay, or drop on any public way or property any paper, scrap material, or other waste whatsoever, except in containers expressly for that purpose. Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. *(Amended by Ord.01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.13 OBSTRUCTION OF PUBLIC WAYS.

It shall be unlawful for any person to erect, maintain, or suffer to remain on any street or public sidewalk a stand, wagon, display, ground cover or other obstruction inconvenient to, or inconsistent with, the public use of the same. Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. *(Amended by Ord. 01-07, 6/4/01, 02-03, 2/4/02, 07-05, 5/7/07)*

§ 131.14 WEEDS, LITTER, STAGNANT WATER.

- A. The owner or occupant of any lot or piece of ground within the Municipality shall drain or fill the lot or piece of ground so as to prevent stagnant water or any other nuisance accumulating thereon.
- B. The owner or occupant of any lot or piece of ground within the Municipality shall keep the lot or piece of ground and the adjoining street and alleys free of any growth of twelve inches (12") or more in height of weeds, grasses, or worthless vegetation, and free of any growth of eight inches (8") or more in height if, within the same calendar year, the Municipality has previously acted to remove weeds, grasses, or worthless vegetation exceeding twelve inches (12") in height on the same lot or piece of ground and south recovery of the costs and expenses of such work from the owner or occupant.
- C. The throwing, depositing, or accumulation of litter on any lot or piece of ground within the Municipality is prohibited; Provided that grass, leaves, and worthless vegetation may be used as ground mulch or in a compost pile.
- D. It is hereby declared to be a nuisance to permit, or maintain any growth of eight inches (8") or more in height of weeds, grasses or worthless vegetation on any lot or piece of ground located within the corporate limits during any calendar year if, within the same calendar year, the city has previously acted to remove weeds, grasses, or worthless vegetation exceeding twelve inches (12") in height on the same lot or piece of ground and had to seek recovery of the costs and expenses of such work from the owner or to litter or cause litter to be deposited or remain thereon except in property or to remain thereon except in property receptacles.
- E. Any owner or occupant of a lot or piece of ground shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code.
- F. Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. In the event that the owner of the lot or parcel of land abutting said sidewalk space within the Municipality is a non-resident of the Municipality or cannot be found therein the notice may be given to any person having the care, custody, or control of such lot or parcel of land. In the event that no one within the Municipality to whom notice can be given, it shall be the duty of the Building Inspector or his or her agent to post a copy of the notice on the premise. Within five (5) 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 Municipality or fails to comply with the order to abate and remove the nuisance, the Municipality may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the Municipality may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

G. For the purposes of this section:

- (a) Litter shall include, but not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) Wood, plaster, cement, brick, or stone building rubble; (iii) Grass, leaves, and worthless vegetation; (iv) Offal and dead animals; and (v) Any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and
- (b) Weeds shall include, but not be limited to, bindweed (*convolvulus arvensis*), puncture vine (*tribulus terrestris*), leafy spurge (*euphorbia esula*), Canada thistle (*cirsium arvense*), perennial peppergrass (*lepidium draba*), Russian knapweed (*centaurea picris*), Johnson grass (*sorghum halepense*), nodding or musk thistle, quack grass (*agropyron repens*), perennial sow thistle (*sonchus arvensis*), horse nettle (*solanum carolinense*), bull thistle (*cirsium lanceolatum*), buckhorn (*ramnus sp.*) (toun), hemp plant (*cannabis sativa*), and ragweed (*ambrosiaceae*). (*Ref. 17-563.01, 18-1719 RS Neb.*) (*Amended by Ord. No.92-3, 5/4/92, 01-07, 6/4/01, 02- 03, 2/4/02, 07-05, 5/7/07; 10-06, 5/17/10*)

§ 131.15 ABANDONED AUTOMOBILES.

It shall be unlawful to abandon any automobile on the Municipal streets, highways, alleys, parks, or other property.

- A. If an abandoned vehicle at the time of abandonment has no number plates of the current license year affixed or valid registration and is of a wholesale value, taking in consideration the condition of the vehicle, of one hundred dollars (\$100.00) or less, title shall immediately vest in the City of Waverly.
- B. Except for vehicles governed by subsection (A) of this Section, the Law Enforcement Official shall make an inquiry as follows concerning the last registered owner of each abandoned vehicle in its custody:
 - 1. An abandoned vehicle with number plates affixed, to the jurisdiction which issued such number plates; or,
 - 2. An abandoned vehicle with no number plates affixed, to the Nebraska Department of Motor Vehicles.

- C. The Law Enforcement Official shall give notice to the last registered owner, if any, that the vehicle in question has been recovered as an abandoned vehicle and that, if unclaimed, it will be sold at public auction after five (5) days from the date such notice was mailed. If a lien or mortgage exists, such notice shall also be sent to the lien holder or mortgage. Any person claiming such vehicle shall be required to pay the cost of removal and storage of such vehicle. Notice required by this subsection shall be either by personal service or by certified mail. If the owner, lien holder, or mortgage of such abandoned vehicle is known and does not claim the automobile within five (5) days from the date such notice was mailed, or if word is received by the Municipality from the agency described in subsection (B) of this Section that the owner is unknown, title shall immediately vest in the City of Waverly and the vehicle may be sold.
- D. Any proceeds from the sale of an abandoned vehicle less any expenses incurred by the City shall be held by the Municipality without interest, for the benefit of the owner of such vehicle for a period of two (2) years. If not claimed within such two (2) year period, such proceeds shall then be paid into the General Fund of the Municipality.
- E. The last registered owner of an abandoned vehicle shall be liable to the City of Waverly for the cost of removal and storage of such vehicle.
- F. Neither the owner, lessee, nor occupant of the premises from which any abandoned vehicle shall be removed nor the State of Nebraska nor the City of Waverly shall be liable for any loss or damage to such vehicle which occurs during its removal or while in the possession of the City, or as a result of any subsequent disposition.
- G. Any person who abandons a motor vehicle as hereinbefore defined shall be deemed to be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. If such violation is disposed of pursuant to a Waiver of Appearance and Plea of Guilty, the fine shall be twenty-five dollars (\$25). (*Ref. 60-1901 through 60-1911 RS Neb.*)(*Amended by Ord. 01-07, 6/4/01, 02-03, 2/4/02, 07-05, 5/7/07*)

§ 131.16 CURFEW.

It shall be unlawful for any minor under the age of seventeen (17) years to travel on or be on any public street, alley, or other public place, between the hours of twelve (12:00) o'clock midnight of any day and five (5:00) o'clock a.m. of the following day except under the following circumstances:

- A. The minor is accompanied by a parent, a legal guardian, a person who stands in loco parentis to the minor, or a person to whom legal custody has been given by court order.
- B. The minor is accompanied by an adult authorized by the parent to take the parent's place in accompanying the minor for a designated period of time and specific purpose within a specified area;

- C. The minor is exercising first amendment rights protected by the Constitution of the United States, such as free exercise of religion, freedom of speech, and the right of assembly;
- D. In case of a bona fide emergency;
- E. The minor is traveling to or returning home from, and within thirty minutes of the commencement or termination of employment.

Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. *(Amended by Ordinance No. 90-10, 12/17/90, 01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.17 PARK HOURS.

It shall be unlawful for any person to loiter, wander, stroll, loaf, or play in or upon any of the City parks between the hours of twelve (12:00) o'clock midnight on any day and five (5:00) o'clock a.m. of the following day. Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. *(Amended by Ord.01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.18 USE OF ENGINE OR COMPRESSION BRAKES.

Except in emergency situations, it shall be unlawful for any person to use engine or compression brakes within the Municipality. Any person who violates this section shall be guilty of a Class I Misdemeanor as defined by §131.22 of this Code. *(Ord. No. 98-18, 12/21/98, 01-07, 6/4/01, 07-05, 5/7/07)*

§ 131.19 RESERVED.

§ 131.21 URINATING OR DEFECATING IN PUBLIC; PROHIBITED. It shall be unlawful for any person to urinate or defecate on a public street, alley, or any other property, public or private, open to or visible to the public. This section shall not apply to urinating or defecating in any restroom facility in a manner for which that facility was designed. *(Ord. 13-04, 5/21/13)*

§ 131.22 VIOLATION; PENALTY. Unless expressly provided otherwise, for purposes of this Chapter misdemeanors are divided into two (2) classes which are distinguished from one another by the following penalties which are authorized upon conviction.

- Class I Misdemeanor Maximum: Five hundred dollar (\$500) fine
Minimum: One hundred dollar (\$100) fine
- Class II Misdemeanor Maximum: One hundred dollar (\$100) fine
Minimum: Twenty-five dollar (\$25) fine

(Amended by Ord.01-07, 6/4/01, 07-05, 5-7-07)

CHAPTER 132: RESERVED

CHAPTER 133: RESERVED

CHAPTER 134: OFFENSES AGAINST PUBLIC MORALS

Section

- 134.01 Prostitution
- 134.02 Public indecency
- 134.03 Gambling
- 134.04 Reserved
- 134.05 Reserved
- 134.06 Sexual predator; findings and intent
- 134.07 Sexual predator; definitions
- 134.08 Sexual predator; residence prohibition; penalties; exceptions
- 134.09 Property owners prohibited from renting real property to certain sexual predators; penalties
- 134.10 Violation

§ 134.01 PROSTITUTION.

It shall be unlawful for any person to perform, offer, or agree to perform any act of sexual contact or penetration, as defined in Neb. RS 28-318, with any person not his or her spouse in exchange for money or other things of value. (Neb. RS 28-801) Penalty, see § 10.99

§ 134.02 PUBLIC INDECENCY.

It shall be unlawful for any person, 18 years of age or over, to perform or procure or assist any other person to perform in a public place and where the conduct may reasonably be expected to be viewed by members of the public:

- (A) An act of sexual penetration as defined by Neb. RS 28-318(6);
- (B) An exposure of the genitals of the body with intent to affront or alarm any person;
or
- (C) A lewd fondling or caressing of the body of another person of the same or opposite sex. (Neb. RS 28-806) Penalty, see § 10.99

§ 134.03 GAMBLING.

(A) For purposes of this section, the definitions found in Neb. RS 28-1101 shall be used.

- (B) It shall be unlawful for any person to:
 - (1) Engage in bookmaking;

(2) Receive money in connection with any unlawful gambling scheme; or

(3) Knowingly participate in any unlawful gambling as a player by placing a bet.
(Neb. RS 28-1102 through 28-1104)

(C) It shall be unlawful for any person to manufacture, sell, transport, place, possess, or conduct or negotiate any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing that it shall be used in the advancement of unlawful gambling activity.
(Neb. RS 28-1107)

§ 134.04 RESERVED.

§ 134.05 RESERVED.

§ 134.06 SEXUAL PREDATOR; FINDINGS AND INTENT.

(A) Sexual Predators present an extreme threat to the public safety. Sexual Predators are extremely likely to use physical violence or to repeat their offenses. And most Sexual Predators commit many offenses, have many more victims that are never reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual predator victimization to society at large, while incalculable, extremely exorbitant.

(B) It is the intent of this ordinance to serve the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by creating certain areas around locations where children regularly congregate in concentrated numbers where certain sexual predators are prohibited from establishing temporary or permanent residence. (Ords. 2935, 6-6-06; 3017, 12-20-11)

§ 134.07 SEXUAL PREDATOR; DEFINITIONS.

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

(A) **SEXUAL PREDATOR** shall be any person defined in the Sexual Predator Residency Restriction Act (Neb. Rev. Stat. §§29-4015 to 29- 4017, inclusive) or any amendments thereto.

(B) **PERMANENT RESIDENCE** shall mean a place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.

(C) **TEMPORARY RESIDENCE** shall mean a place where the person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or non-consecutive days in any month and which is not the person's permanent residence. (Ords. 2935, 6-6-06; 3017, 12-20-11)

§ 134.08 SEXUAL PREDATOR; RESIDENCE PROHIBITION; PENALTIES; EXCEPTIONS.

(A) *Prohibited Location of Residence.* It is unlawful for any Sexual Predator to establish a permanent residence or temporary residence within 500 feet of any school or licensed day care center.

(B) *Measurement of Distance.* 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 permanent residence or temporary residence to the nearest outer property line of a school or licensed day care center.

(C) *Penalties.* A person who violates this section shall be punished by a fine not exceeding \$500.00.

(D) *Exceptions.* A person residing within 500 feet of any school or licensed day care center does not commit a violation of this section if any of the following apply:

(1) The person resides within a prison, correctional facility or treatment facility operated by the state or a political subdivision;

(2) The person established a residence before July 1, 2006, and has not moved from that residence; or

(3) The person has established a residence after July 1, 2006, and the school or child care facility triggering the restriction was established after the initial date of the sexual predator's residence at that location. (Ords. 2935, 6-6-06; 3017, 12-20-11)

§ 134.09 PROPERTY OWNERS PROHIBITED FROM RENTING REAL PROPERTY TO CERTAIN SEXUAL PREDATORS; PENALTIES.

(A) It is unlawful to let or rent any place, structure, or part thereof or any trailer or other conveyance with the knowledge that it will be used as a permanent residence or a temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to this ordinance if such place, structure, or part thereof or trailer or other conveyance is located within 500 feet of any school, day care center, or park.

(B) A property owner's failure to comply with the provisions of this section shall constitute a violation of this section and shall subject the property owner to a fine of \$500.00. The City may seek any other relief as otherwise provided by law. (Ords. 2935, 6-6-06; 3017, 12-20-11)

§ 134.10 VIOLATION.

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this ordinance shall be deemed to have committed a new violation every twenty- four (24) hours of such failure to comply. (Ords. 2935, 6-6-06; 3017, 12-20-11)

TITLE XV: LAND USAGE

Chapter

150. BUILDING REGULATIONS

151. ZONING AND SUBDIVISION REGULATIONS

CHAPTER 150: BUILDING REGULATIONS

Section

Regulatory Codes

- 150.01 Building code; adopted by reference
- 150.02 Residential code; adopted by reference
- 150.03 International energy conservation code; adopted by reference
- 150.04 Plumbing code; adopted by reference
- 150.05 Mechanical Code; adopted by reference
- 150.06 Gas piping code; adopted by reference
- 150.07 Existing building code; adopted by reference
- 150.08 Property maintenance code; adopted by reference

Building Permits and Regulations

- 150.20 Building permits required
- 150.21 Insurance required
- 150.22 Fees
- 150.23 Personal alterations and additions
- 150.24 Duplicate to County Assessor

Moving of Buildings

- 150.50 Regulations
- 150.51 Deposit

- 150.70 Violations; penalty

REGULATORY CODES

§ 150.01 BUILDING CODE; ADOPTED BY REFERENCE.

(1) To provide minimum regulations governing the conditions and maintenance of all property, buildings, and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures; the 2018 International Building Code Fourth edition, including Appendices G

and J, as published by the International Code Council, Inc., be and is hereby adopted as the Building Code for the Municipality; for the control of building and structures as herein provided; and each and all of the regulations, provisions, penalties, conditions and terms of said Building Code are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in the following:

Section 101.1 *Insert:* City of Waverly

Section 105.2 *Delete:* Work exempt from permit

1. One-Story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area is not greater than 120 square feet.
2. Fences not over 7 feet high.

Section 1612.3 *Insert:* City of Waverly, April 26, 2019

Section 1807.3 *Insert:* Embedded posts and poles. Designs employing posts or poles as columns embedded in earth or concrete are not permitted in areas zoned R-1 through R-4. Concrete footings extending to below the frost line are required for all structures except those with an area of less than 400 square feet.

Section 1809.5 *Insert:* Frost Protection. All buildings subject to conditioned air (heating and cooling) shall have a continuous concrete perimeter all extending to below the frost line and shall have vertical insulation R- value of at least R-5.

Exception: Free-standing buildings meeting all of the following conditions shall not be required to be protected:

1. Assigned to Risk Category I, in accordance with Section 1604.5;
2. Area of 400 square feet (37 m²) or less; and
3. Eave height of 10 feet (3048 mm) or less

(2) The City reserves the right to adopt additions, insertions, deletions and changes to the 2012 International Building Code, and that one (1) copy of the Building Code is on file at the office of the City Clerk and is available for inspection at any reasonable time. The provisions of said Building Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (*Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.*) (*Amended by Ord. No. 84-9, 11/19/84, 02-09, 2/18/02; 06-06, 3/6/06; 09-07, 05/04/09; 15-15, 9/8/15*) (*Amended by Ord. No.17-04, 2/28/2017*) (*Amended by Ord. No. 21-03, 6/22/2021*).

§ 150.02 RESIDENTIAL CODE; ADOPTED BY REFERENCE.

(1) To provide for the regulation and controlling of the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of one- and two-family dwellings and townhouses; and providing for the issuance of permits and collection of fees. Each and all of the regulations, provisions, conditions and terms of the International Residential Code 2018 edition, including Appendices A, B, C, D, G, H, and N, published by the International Code Council on file in the office of the Municipality are hereby referred to, adopted and made a part hereof as if fully set out within this ordinance with the following revisions to these sections:

Section R101.1 *Insert:* City of Waverly

Section R105.2 *Insert:* Work exempt from permit

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 80 square feet.
2. Sidewalks and driveways on private property.

Section R105.2 *Delete:* Work exempt from permit

1. Fences not over 7 feet high.
2. Decks not exceeding 200 square feet in area, that are not more than 30 inches above grade at any point, are not attached to a dwelling and do not serve the exit door required by Section R311.4.

Table R301.2(1) *Insert:*

TABLE R301.2(1)

CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

GROUND SNOW LOAD	WIND SPEED (mph)	SEISMIC DESIGN CATEGORY	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP	ICE BARRIER UNDERLAYMENT REQUIRED	FLOOD HAZARDS
			Weathering	Frost Line Depth	Termite			
30 psf	90 mph	B	Severe	36 inch	Moderate to Heavy	-2	Yes	a)1982, b)2011, c)2011 & 2013

AIR FREEZING INDEX	MEAN ANNUAL TEMPERATURE
1600	50.9

Section R303.3 *Insert:* Bathrooms. Bathrooms, water closet compartments, and other similar rooms shall be provided with a mechanical ventilation system.

Section R313 *Delete:* Automatic Fire Sprinkler Systems (Whole Section & Subsection)

Section P2903.7 *Insert:* Size of water-service mains, branch mains and risers. The size of the water service pipe shall be not less than 1 inch (19.1 mm) diameter.

Section P2903.9.1 *Insert:* Service Valve. Each dwelling unit shall be provided with an accessible main shutoff valve near the entrance of the water service and prior to the water meter. An additional shutoff valve shall be provided immediately following the water meter. Additionally, the water service shall be valved by means of an approved ground key stopcock between the curb and property line at or near the property line.

Section P2906.4 *Insert:* Water Service Pipe. Water service pipe shall conform to NSF 61 and shall conform to the respective standards posted in Table

P2906.4. Water service pipe shall be soft temper copper service tubing, Type K, meeting ASTGM B-88, or polyethylene (PE) plastic pipe. Polyethylene (PE) plastic pipe shall meet the standards of ASTM D-2239, and shall have a minimum working pressure of 200 PSI. Fittings for polyethylene (PE) plastic pipe shall be brass, and all joints and fittings shall be double clamped.

Section P2906.5 *Insert:* Water Distribution Pipe. Water distribution pipe shall conform to NSF 61 and shall conform to the respective standard posted in Table P2905.5. Water distribution pipe shall be copper tube, copper pipe or cross-linked polyethylene (PEX) plastic tubing. Cross-linked polyethylene (PEX) plastic tubing shall meet the standards of ASTM 877. Fittings shall be cast and machined from a solid bronze alloy. Sleeves for the press fittings shall be stainless steel.

(2) The City reserves the right to adopt additions, insertions, deletions and changes to the 2018 International Residential Code, and one (1) copy of the Building Code is on file at the office of the City Clerk and is available for inspection at any reasonable time. The provisions of said Building Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (*Ref. 17-1001, 18-132, 19-901, 19-922 RS Neb.*) (*Amended by Ord. 02/09, 2/18/02; 05-01, 3/7/05; 06-23, 11/6/06; 09-07, 05/04/09; 11-17, 08/2/11; 15-15, 9/8/15*) (*Amended by Ord. No. 21-03, 6/22/2021*).

§ 150.03 INTERNATIONAL ENERGY CONSERVATION CODE; ADOPTED BY REFERENCE.

(1) For regulating and governing energy efficient building envelopes and installation of energy efficient mechanical, lighting, and power systems as herein provided; providing for the issuance of permits and collection of fees therefore, and each and all of the regulations, provisions, penalties, conditions and terms of said Energy Conservation Code 2018 Edition, published by the International Code Council, on file in the Office of the City of Waverly and hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance with the additions, insertions, deletions and changes, if any, prescribed in Section 2 of this ordinance with the following revisions to these sections:

(2) The City reserves the right to adopt additions, insertions, deletions and changes to the 2018 International Energy Conservation Code, and one (1) copy of the Building Code is on file at the office of the Municipality and is available for inspection at any reasonable time. The provisions of said Code shall be controlled throughout the Municipality and throughout its zoning jurisdiction and made a part hereof as it is fully set out within the ordinance with the following revisions to these sections:

Section 101.1 *Insert:* City of Waverly

Section 108.4 *Insert:* a Class II Misdemeanor

Section R402.4.1.2 Deleted; Testing

Section R403.3.3 *Amended:* Duct Testing (Mandatory): Section R403.3.3 of the International Energy Conservation Code is amended to read as follows:

R403.03 Duct Testing Mandatory: Ducts shall be pressure tested to determine air leakage by one of the following methods:

1. Rough-in test: Total leakage shall be measured with a pressure differential of 0.1 inch w.g. (25Pa) across the system, including the manufacturer's air handler enclosure if installed at the time of test. Registers shall be taped or otherwise sealed during the test.
2. Postconstruction test: Total leakage shall be measured with a pressure differential of 0.1 in w.g. (25Pa) across the entire system, including the manufacturer's air handler enclosure. Registers shall be taped or otherwise sealed during the test.

Exceptions:

1. A duct air leakage test shall not be required where the ducts and air handlers are located entirely within the building thermal envelope.
2. A duct air leakage test shall not be required for ducts servicing heat or energy recovery ventilators that are not integrated with ducts serving heating or cooling systems.
3. A duct air-leaking test shall not be required for ducts that are sprayed with closed cell foam.

A written report of the results of the test shall be signed by the party conducting the test and provided to the code official.

20.14 Section R403.3.5 Amended; Building Cavities (Mandatory):

Section R403.3.5 of the International Energy Conservation Codes amended to read as follows:

R403.3.5 Building Cavities (Mandatory) Building framing cavities shall not be used as ducts or plenums.

Exceptions: Interior building cavities may be used as ducts or plenums for return air when completely panned and sealed.

20.14.050 Section R403.6 Deleted; Mechanical Ventilation (Mandatory)

20.14.060 Table R402.1.2 Amended; Insulation and Fenestration Requirements by Component.

Table R402.1.2 of the International Energy Conservation Code is amended to read as follows:

<u>Climate Zone</u>	<u>Fenestration U-Factor</u>	<u>Skylight U-Factor</u>	<u>Glazed Fenestration SHGC</u>	<u>Ceiling R-Factor</u>	<u>Wood Frame Wall R-Value</u>	<u>Mass Wall R-Value</u>	<u>Floor R-Value</u>	<u>Basement Wall R-Value</u>	<u>Slab R-Value & Depth</u>	<u>Space Wall R-Value</u>
1	NR	0.75	0.25	30	13	¾	13	0	0	0
2	0.40	0.65	.25	38	13	4/6	13	0	0	0
3	0.32	0.55	0.25	38	20 or 13-5h	8/13	19	5/13f	0	5/13
4 except Marine	0.32	.55	0.25	38	20 or 13+5h	8/13	19	10/13	10, 2ft	10/13
5 and 4 Marine	0.30	0.55	NR	49	20 or 13+5h	13/17	30s	13	10,2ft	15/19
6	.30	0.55	NR	49	20+5h	15/20	30	15/19	10,4ft	15/19
7 and 8	.30	0.55	NR	49	20+5h or 13+5	19/21	38g	15/19	10,4ft	15/19

NR=Not Required.

For S1: 1 foot=304.8 mm

- a. R-values are minimums. U-factors and SHGC are maximums. Where insulation is installed in a cavity that is less than the label or design thickness of the insulation, the installed R-value of the insulation shall be not less the R-value specified in the table.
- b. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestrations. Exception: In Climate Zones 1 through 3, skylights shall be permitted to be excluded from glazed fenestration SHGC requirements provided that the SHGC for such skylights does not exceed 0.30.
- c. 10/13 means R-10 continuous insulation on the interior or exterior of the home or R-13 cavity insulation on the interior of the basement wall. "15/19" mean R-15 continuous insulation on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. Alternatively, compliance with "15/19" shall be R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulation on the interior or exterior of the home, "13" means furred 2x4 walls with R-13 cavity insulation throughout on the interior of the basement wall.
- d. R-5 insulation shall be provided under the full slab area of a heated slab in addition to the required slab edge insulation R-value for slabs, as indication in the table. The slab edge insulation for heated slabs shall not be required to extend below the slab.
- e. There are no SHGC requirements in Marine Zone.
- f. Basement wall insulation is not required in warm-humid locations as define by Figure R301-1 and Table R301.1
- g. Alternatively, insulation sufficient to fill the framing cavity and providing not less than and R-value of r-19.
- h. The first value is cavity insulation; the second value is continuous insulation. Therefore, as an example, "13+5" means R-13 cavity insulation plus R-5 continuous insulation.
- i. Mass walls shall be in accordance with Section R402.25The second R-value applies where more than half of the insulation is on the interior of the mass wall.

(Established by Ord. 05-09, 7/18/05; Amended by Ord. 09-07, 05/04/09; Amended by Ord. 11-24, 11/15/11; Amended by Ord. 17-04, 2/28/2017; Amended by Ord 21-01, 03/09/2021).

§ 150.04 PLUMBING CODE; ADOPTED BY REFERENCE.

(1) For regulating and governing the design, construction, quality of materials, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of the plumbing systems as herein provided each and all of the regulations, provisions, penalties, conditions and terms of the International Plumbing Code, 2018 Edition, including Appendices E and F, published by the International Code Council on file in the office of the Municipality is hereby referred to, adopted, and made a part of as if fully set out in this ordinance.

(2) The City reserves the right to adopt additions, insertions, deletions and changes to the 2018 International Plumbing Code, and one (1) copy of the Code is on file at the office of the City Clerk and is available for inspection at any reasonable time. The provisions of said Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. *(Amended by Ord. 09-07, 05/04/2009; 15-15, 9/8/2015) (Amended by Ord. 21-03, 6/22/2021).*

§ 150.05 MECHANICAL CODE; ADOPTED BY REFERENCE.

(1) For regulating and governing the design, construction, quality of materials, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of the mechanical systems as herein provided each and all of the regulations, provisions, penalties, conditions and terms of the International Mechanical Code, 2018 Edition, including Appendix A, published by the International Code Council on file in the office of the Municipality is hereby referred to, adopted, and made a part of as if fully set out in this ordinance.

(2) The City reserves the right to adopt additions, insertions, deletions and changes to the 2018 International Mechanical Code, and one (1) copy of the Code is on file at the office of the City Clerk and is available for inspection at any reasonable time. The provisions of said Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. *(Amended by Ord. 09-07, 05/04/2009; 15-15, 9/8/2015) (Amended by Ord. 21-03, 6/22/2021).*

§ 150.06 GAS PIPING CODE; ADOPTED BY REFERENCE.

(1) For regulating and governing the design, construction, quality of materials, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of the fuel gas piping in or in connection with a building or structure within the property lines of premises, other than service pipe as herein provided each and all of the regulations, provisions, penalties, conditions and terms of the International Fuel Gas Code, 2018 Edition, including all Appendices, published by the International Code Council on file in the office of the Municipality is hereby referred to, adopted, and made a part of as if fully set out in this ordinance.

(2) The City reserves the right to adopt additions, insertions, deletions and changes to the 2018 International Fuel Gas Code, and one (1) copy of the Code is on file at the office of the City Clerk and is available for inspection at any reasonable time. The

provisions of said Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. *(Amended by Ord. 09-07, 05/04/2009; 15-15, 9/8/2015) (Amended by Ord. 21-03, 6/22/2021).*

§ 150.07 EXISTING BUILDING CODE; ADOPTED BY REFERENCE.

(1) For regulating and governing the repair, alteration, change of occupancy, addition to and relocation of existing buildings, including historic buildings, as herein provided each and all of the regulations, provisions, penalties, conditions and terms of the International Existing Building Code, 2018 Edition, published by the International Code Council on file in the office of the Municipality is here by referred to, adopted, and made a part of as if fully set out in this ordinance.

(2) The City reserves the right to adopt additions, insertions, deletions and changes to the 2018 International Existing Building Code, and one (1) copy of the Code is on file at the office of the City Clerk and is available for inspection at any reasonable time. The provisions of said Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. *(Amended by Ord. 09-07, 05/04/2009; 15-15, 9/8/2015) (Amended by Ord. 21-03, 6/22/2021).*

§ 150.08 PROPERTY MAINTENANCE CODE; ADOPTED BY REFERENCE.

(1) For regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for the supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary, and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures, as herein provided each and all of the regulations, provisions, penalties, conditions and terms of the International Property Maintenance Code, 2018 Edition, published by the International Code Council on file in the office of the Municipality is hereby referred to, adopted, and made a part of as if fully set out in this ordinance.

(2) The City reserves the right to adopt additions, insertions, deletions and changes to the 2018 International Property Maintenance Code, and one (1) copy of the Code is on file at the office of the City Clerk and is available for inspection at any reasonable time. The provisions of said Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. *(Amended by Ord. 09-07, 05/04/2009; 15-15, 9/8/2015) (Amended by Ord. 21-03, 6/22/2021).*

BUILDING PERMITS AND REGULATIONS

§ 150.20 BUILDING PERMITS REQUIRED.

No person or firm may commence or proceed to erect, construct, enlarge, demolish, or relocate any building, dwelling, or part thereof, or cause the same to be done without first obtaining a permit from the City or State of Nebraska. The application shall be in writing on forms provided by the City Clerk and shall cover only one building per application. Each application shall set forth the legal description of the land upon which

the construction or relocation is to take place, the nature of the use or occupancy, the principle dimensions, the estimated cost, the name(s) of the owner, architect/engineer, the contractor and such other information as may be requested to complete the review of the application. All new electrical services, additions to or modification of existing electrical systems will require a permit from the State of Nebraska Electrical Division. Routine maintenance which means the repair or replacement of existing electrical apparatus and equipment of the same size and type for which no changes in wiring are made are exempt from these permit requirements.

The application, plans and specifications as filed shall be checked and examined by the Building Inspector who shall either approve or disapprove the application within thirty (30) days of receipt of the application. If the application is found to be within conformity with the requirements of this Chapter and all other ordinances applicable, upon payment of the required fee the Building Inspector shall issue the applicant a permit and shall sign the application and mark the plans Approved. If the application is not in conformity with the required regulations, the Building Inspector shall state in writing on the application and/or the plans the reason for the disapproval.

Whenever there is a discrepancy between the permit application procedures contained herein and those contained in any building code adopted by reference, the provisions contained herein shall govern. (*Amended by Ord. 09-07, 5/4/09; 11-11, 5/2/11*)

§ 150.21 INSURANCE REQUIRED.

No permit shall be issued by the Building Inspector until the person or firm requesting said permit shall have on deposit with the City Clerk adequate proof of liability insurance coverage. Minimum liability insurance coverage requirements shall be set by resolution of the City Council and shall remain in effect until superseded by a later resolution of that Body.

The Clerk may assign an insurance number to the contractor to facilitate processing of applications and permits.

§ 150.22 FEES.

The City Council shall by resolution adopt a fee schedule for permits and inspections under this Article and said schedule shall remain in effect until superseded by a later resolution of that Body. (*Fees determined under Resolution 08-13*) (*Amended by Ordinance 21-11, 9/28/21.*)

Whenever any work for which a permit is required has been commenced without first obtaining said permit, an investigative fee in addition to the permit fee shall be collected. The minimum investigative fee shall be equal to the amount of the permit fee required.

Exception: No double fee penalty set forth in this chapter shall be imposed if:

- (a) The work is on an emergency nature where a delay in performing the work may cause a risk to life or health or will significantly increase the risk of

- property damage, provided a permit is applied for within 48 hours of completion of the work, in which case no penalty shall be imposed; or
- (b) An applicant applies for a permit after the work has begun, but before the work is observed and record by a city inspector, in which case, a one and one-half fee shall be imposed.

Fee refunds: The Building Inspector may authorize refunding of any fee paid which was erroneously paid or collected. The Building Inspector shall not authorize refunding of any fee paid except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

The Building Inspector may authorize refunding of not more than 80 percent of the building permit fee when work authorized by said permit has not been commenced. The plan review fee is not refundable. (*Amended by Ord. 09-07, 5/4/09*)

§ 150.23 PERSONAL ALTERATIONS AND ADDITIONS.

Any homeowner may remodel, including carpentry, plumbing, and mechanical work only in a single-family residence which he occupies as his own home. All equipment installed by an owner shall be for personal use without compensation or pay from or to any other person for such labor or installation. Such installation by an owner shall comply with the requirements of this code, and the owner, in exercising this privilege, shall not set himself up as a contractor. The owner shall be required to file plans, apply for, and secure a permit, pay fees, and call for all inspections in the manner provided in this Code. However, he shall be exempt from the insurance requirements of this Article. (*Amended by Ord. 09-07, 5/4/09*) (*Amended by Ord.17-04, 2/28/2017*).

§ 150.24 DUPLICATE TO COUNTY ASSESSOR.

Whenever a building permit is issued for the erection, alteration, or repair of any building within the Municipality's jurisdiction, and the improvement is one thousand dollars (\$1,000.00) or more, a duplicate of such permit shall be issued to the County Assessor.

MOVING OF BUILDINGS

§ 150.50 REGULATIONS.

It shall be unlawful for any person, firm, or corporation to move any building or structure within the Municipality without a written permit to do so. Application may be made to the Building Inspector, and shall include the present and future location of the building to be moved, the proposed route, the equipment to be used, and such other information as the Governing Body may require. The application shall be accompanied by a certificate issued by the County Treasurer to the effect that all the provisions regulating the moving of buildings have been complied with on the part of the owner of the real estate upon which the said building is presently located. The Building Inspector shall refer the said application to the Chief Law Enforcement Officer for approval of the proposed route over which the said building is to be moved. Upon approval of the Governing Body, the

Building Inspector shall then issue the said permit; provided, that a good and sufficient corporate surety bond in the amount of five thousand dollars (\$5,000.00) and conditioned upon moving said building without doing damage to any private or Municipal property is filed with the Building Inspector prior to the granting of any permit. No moving permit shall be required to move a building that is ten feet (10') wide, or less, and twenty feet (20') long, or less, and when in a position to move, fifteen feet (15') high, or less. In the event it will be necessary for any licensed building mover to interfere with the telephone or telegraph poles and wires, or a gas line, the company or companies owning, using, or operating the said poles, wires, or line shall upon proper notice of at least twenty-four (24) hours, be present and assist by disconnecting the said poles, wires, or line relative to the building moving operation. All expense of the said disconnection, removal, or related work shall be paid in advance by the licensee unless such disconnection or work is furnished on different terms as provided in the said company's franchise. Whenever the moving of any building necessitates interference with a water main, sewer main, pipes, or wire belonging to the Municipality, notice in writing of the time and route of the said building moving operation shall be given to the various Municipal officials in charge of the Municipal utility departments who shall proceed in behalf of the Municipality and at the expense of the mover to make such disconnections and do such work as is necessary. (*Amended by Ord. 17-04, 2/28/2017*).

§ 150.51 DEPOSIT.

At such time as the building moving has been completed, the Building Inspector shall inspect the premises and report to the Municipal Clerk in writing as to the extent of damages, if any, resulting from the said relocation and whether any Municipal laws have been violated during the said operation. Upon a satisfactory report from the Building Inspector, the Municipal Clerk shall return the corporate surety bond deposited by the applicant. In the event the basement, foundation, or portion thereof is not properly filled, covered, or in a clean and sanitary condition, the Governing Body may apply the money deposited for the purpose of defraying the expense of correcting the said conditions. If the expense of correcting the hazardous condition is greater than the five thousand dollar (\$5,000.00) corporate surety bond, the Governing Body may recover such excess expense by civil suit or otherwise as prescribed by law.

§ 150.70 VIOLATIONS; PENALTY.

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter shall be deemed guilty of a Class II Misdemeanor as defined by § 131.22 of this Code. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply. (*Amended by Ord. 07-05, 5/7/07*)

CHAPTER 151: ZONING AND SUBDIVISION REGULATIONS

Section

151.01 Zoning regulations; adopted

Subdivisions

151.02 Subdivision regulations; adopted

151.03 Comprehensive plan; adopted

151.04 Violation; penalty

§ 151.01 ZONING REGULATIONS; ADOPTED.

For the purpose of setting minimum standards to promote the public health, safety, morals, convenience, order, prosperity, and general welfare of the community, and to lessen congestion in the streets; to secure safety and fire, panic, and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements of the Zoning Regulations for the City of Waverly, Nebraska (also known as the "Waverly Zoning Ordinance"), published in book form, have been adopted by Ordinance Number 11-100 of the 4th day of October, 1982, as amended by Ordinance No. 86-7, adopted on the 4th day of August, 1986, Ordinance No. 88-5 adopted on the 5th day of July, 1988, Ordinance No. 88-8 adopted on the 3rd day of October, 1988, Ordinance No. 89-1 adopted on the 20th day of February, 1989, Ordinance No. 90-2 adopted on the 19th day of March, 1990, Ordinance No. 90-5 adopted on the twenty-first day of May, 1990, Ordinance No. 91-3 adopted on the 17th day of June, Ordinance No. 92-2, adopted on the 6th day of April 1992, and Ordinance No. 99-20, adopted on the 16th day of August, 1999, and as amended by Ordinance No. 13-11, adopted on the 17th day of September 2013. Three (3) copies of the adopted Zoning Regulations shall be kept on file with the Municipal Clerk and available for inspection by any member of the public during office hours. (*Amended by Ord. Nos. 86-7, 8/4/86; 88-5, 7/5/88; 88-8, 10/3/88; 89-1, 2/20/89; 90-2, 3/19/90; 90-5, 5/21/90; 91-3, 6/17/91; 92-2, 4/6/92; 99-20, 8/16/99; 13-11, 9/17/13*)

Subdivisions

§ 151.02 SUBDIVISION REGULATIONS; ADOPTED.

To provide for harmonious development of the Municipality and its environs; for the integration of new subdivision streets with other existing or planned streets or with other features of the Comprehensive Plan; for adequate open spaces for traffic, recreation, light and air; for distribution of population and traffic in a manner which will tend to create conditions favorable to health, safety, convenience, or prosperity; to insure conformance of subdivision plans with the capital improvement program of the Municipality; and, to secure equitable handling of all subdivision plats by providing uniform procedures and standards for observance by subdividers and the Planning Commission and Governing Body, the Subdivision Regulations for the City of Waverly, Nebraska, published in book form, have been adopted by Ordinance Number 11-200, on the 15th day of September, 1980,

as amended by Ordinance No. 88-9 adopted on the 3rd day of October 1988, as amended by Ordinance No. 89-2 adopted on the 20th day of February, 1989, and as amended by Ordinance No. 99-21 adopted on the 16th day of August, 1999, and amended by Ordinance No. 13-12 adopted on the 17th day of September, 2013. One (1) copy of the adopted Subdivision Regulations shall be kept on file with the Municipal Clerk and available for inspection by any member of the public during office hours. *(Amended by Ord. Nos. 88-9, 10/3/88; 89-2, 2/20/89; 99-21, 8/16/99; 13-12, 9/17/13)*

§ 151.03 COMPREHENSIVE PLAN; ADOPTED.

In order to accommodate anticipated long-range future growth, the Comprehensive Development Plan for the City of Waverly, Nebraska, has been adopted by Resolution. One (1) copy of the adopted Plan shall be kept on file with the Municipal Clerk and available for inspection by any member of the public during office hours.

§ 151.04 VIOLATION; PENALTY.

Any person, whether as owner, proprietor, or as the agent, attorney, or representative of any owner or proprietor of land, who shall plat or subdivide any tract of land within the corporate limits of the Municipality, or adjoining and contiguous to the same, except as herein authorized, or who shall sell, transfer, deed or convey, contract, or agree to sell, transfer, or offer for sale any lot or piece of ground in any addition, or subdivision of three (3) or more parts within said corporate limits, or adjoining and contiguous thereto, without having first obtained the acceptance, and approval of the plat or map thereof by the Governing Body, and any person who shall violate, or who shall fail, neglect, or refuse to comply with any of the provisions hereinbefore, as now existing, or as hereafter amended, shall be guilty of a Class II Misdemeanor as defined by § 131.22 of this Code. *(Amended by Ord. 07-05, 5/7/07)*

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