

TITLE III: ADMINISTRATION

Chapter

30. GENERAL PROVISIONS

31. ELECTED OFFICIALS; ORDINANCES

32. APPOINTED CITY OFFICIALS

33. DEPARTMENTS, BOARDS AND COMMISSIONS

34. ELECTIONS

35. FINANCE AND REVENUE

CHAPTER 30: GENERAL PROVISIONS

Section

Meetings

- 30.01 Definitions
- 30.02 Public
- 30.03 When; where; quorum
- 30.04 Special meetings
- 30.05 Attendance other than in person
- 30.06 Closed sessions
- 30.07 Emergency meetings
- 30.08 Minutes
- 30.09 Votes
- 30.10 Notice to news media
- 30.11 Public participation
- 30.12 Order of business
- 30.13 Change in office

Bonds and Oaths

- 30.25 Bonds; form
- 30.26 Oath of office; municipal officials

Compensation

- 30.40 Municipal officials
- 30.41 Conflict of interest involving contracts

MEETINGS

§ 30.01 DEFINITIONS.

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

MEETING. All regular, special or called meetings, formal or informal, of a public body for the

purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action.

(1977 Code, § 1-501)

PUBLIC BODY.

(1) (a) The City Council;

(b) All independent boards, commissions, bureaus, committees, councils, subunits or any other bodies created by the Constitution of Nebraska, statute, ordinance or otherwise pursuant to law; and

(c) Advisory committees of the bodies listed above.

(2) ***PUBLIC BODY*** does not include subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless the subcommittees are holding hearings, making policy or taking formal action on behalf of their parent body.

(1977 Code, § 1-502)

(Neb. RS 84-1409) (Ord. 83-908M, passed 12-19-1983)

§ 30.02 PUBLIC.

(A) The formation of public policy is public business and may not be conducted in secret. Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes and the Open Meetings Act.

(Neb. RS 84-1408)

(B) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by the public body and recorded in its minutes. The notice shall be transmitted to all members of the public body and to the public. The notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, is readily available for public inspection at the office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than 24 hours before the scheduled commencement of the meeting or 48 hours before the scheduled commencement of a meeting of the City Council scheduled outside the corporate limits of the city. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(Neb. RS 84-1411)

(1977 Code, § 1-503)

§ 30.03 WHEN; WHERE; QUORUM.

(A) The meetings of the City Council shall be held in the Municipal Library on the second Thursday

of each month at 7:00 p.m. The meetings of the Council and sessions of the committees of the Council shall be public.

(B) A majority of the members shall constitute a quorum, but a majority vote of all of the members elected shall be required to pass any measure or elect to any office unless a greater vote is required by law. A fewer number of members than a quorum may adjourn from time to time and compel the attendance of absent members.

(C) At the hour appointed for the meeting, the City Clerk-Treasurer shall proceed to call the roll of members and announce whether a quorum is present. If a quorum is present, the Council shall be called to order by the President of the Council, if present, or if absent, by the Vice-President of the Council. (Neb. RS 17-105) (1977 Code, §1-510) (Ord. 81-878M, passed 9-28-1981; Ord. 96-1004M, passed 3-18-1996; Ord. 96-1010M, passed 8-19-1996; Ord. 2008-2087M, passed 3-18-2008)

§ 30.04 SPECIAL MEETINGS.

Special meetings may be called by the City Manager or by two Council members upon at least six hours' written notice. The call and object, as well as the disposition thereof, shall be entered upon the journal by the City Clerk-Treasurer. On filing the call for a special meeting, the Clerk-Treasurer shall notify the Council members of the special meeting, stating the time and its purpose. (1977 Code §§ 1-102, 1-510) (Ord. 81-878M, passed 9-28-1981; Ord. 96-1004M, passed 3-18-1996; Ord. 96-1010M, passed 8-19-1996; Ord. 2008-2087M, passed 3-18-2008)

§ 30.05 ATTENDANCE OTHER THAN IN PERSON.

A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment. (Neb. RS 84-1411)

§ 30.06 CLOSED SESSIONS.

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

- (a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;
- (b) Discussion regarding deployment of security personnel or devices;
- (c) Investigative proceedings regarding allegations of criminal misconduct; or

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

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

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

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

(D) Nothing in this section shall be construed to require that any meeting be closed to the public. (Neb. RS 84-1410) (1977 Code, § 1-504) (Ord. 83-908M, passed 12-19-1983)

§ 30.07 EMERGENCY MEETINGS.

When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in that meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of § 30.10 shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(Neb. RS 84-1411) (1977 Code, § 1-505) (Ord. 83-908M, passed 12-19-1983)

§ 30.08 MINUTES.

(A) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(B) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(C) Minutes shall be written and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that the city may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency. (Neb. RS 84-1413) (1977 Code, § 1-506)

§ 30.09 VOTES.

(A) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted, or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a city 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.

(B) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes. (Neb. RS 84-1413) (1977 Code, § 1-507)

§ 30.10 NOTICE TO NEWS MEDIA.

The City Clerk-Treasurer, in the case of the City Council, and the secretary or other designee of each other public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting. (Neb. RS 84-1411) (1977 Code, § 1-508)

§ 30.11 PUBLIC PARTICIPATION.

(A) Subject to this subchapter and the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to § 30.06, may be videotaped, televised, photographed, broadcast or recorded by any person in attendance by means of a tape recorder, camera, video equipment or any other means of pictorial or sonic reproduction or in writing.

(B) It shall not be a violation of division (A) above for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(C) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed

on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself or herself.

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

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

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

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

(H) Public bodies shall make available at the meeting, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

(Neb. RS 84-1412) (1977 Code, § 1-509) (Ord. 83-908M, passed 12-19-1983; Ord. 87-930M, passed 10-19-1987; Ord. 2002-1093M, passed 3-18-2002)

§ 30.12 ORDER OF BUSINESS.

Promptly at the hour set by law on the day of each regular meeting, the members of the City Council, the City Manager, the City Clerk-Treasurer and such other city officials that may be required shall take their regular stations in the meeting place, and the business of the city shall be taken up for consideration and disposition in the manner prescribed by the official agenda on file at the office of the City Clerk-Treasurer.

(1977 Code, § 1-511)

§ 30.13 CHANGE IN OFFICE.

(A) The City Council shall meet at the time and place of the first regular meeting in December in each election year, and the outgoing officers and the outgoing members of the Council shall present their reports. Upon the outgoing Council having completed its business, the outgoing members of the Council shall surrender their offices to the incoming members, and the outgoing officers shall thereupon each surrender to their successors in office all property, records, papers and moneys belonging to the same.

(B) At the first regular meeting in December following the general election in every even-numbered year, the City Council shall elect one of its members as President, who shall be ex officio Mayor, and

another as Vice President, who shall serve in the absence of the President. In the absence of the President and the Vice President, the Council may elect a temporary chairperson. The President shall preside over the Council and have a voice and vote in its proceedings but no veto. The President shall be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the Governor for military purposes. In addition, the President shall exercise such other powers and perform such duties, not inconsistent with sections Neb. RS 19-601 to 19-648, as are conferred upon the Mayor of the city.
(1977 Code, § 1-512)

BONDS AND OATHS

§ 30.25 BONDS; FORM.

(A) The city may enact ordinances or bylaws to require from all officers and servants, elected or appointed, bonds and security or evidence of equivalent insurance for the faithful performance of their duties. The city may pay the premium for such bonds or insurance coverage.
(Neb. RS 17-604)

(B) (1) All official bonds of officers of the city shall be in form joint and several and made payable to the city in such penalty as the City Council may fix.

(2) In place of the individual bonds required to be furnished by municipal officers, a schedule, position, blanket bond or undertaking, or evidence of equivalent insurance may be given by municipal officers, or a single corporate surety fidelity, schedule, position or blanket bond or undertaking, or evidence of insurance coverage covering all the officers, including officers required by law to furnish an individual bond or undertaking, may be furnished. The municipality may pay the premium for the bond or insurance coverage. The bond or insurance coverage shall be, at a minimum, an aggregate of the amounts fixed by law or by the City Council, and with such terms and conditions as may be required.
(Neb. RS 11-104)

(3) 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.

(C) (1) Official bonds, with the oath endorsed thereon, shall be filed in the City Clerk-Treasurer's office within the following time:

(a) Of all officers elected at any general election, following receipt of their election certificate and not later than ten days before the first Thursday after the first Tuesday in January next succeeding the election;

(b) Of all appointed officers, within 30 days after their appointment; and

(c) Of officers elected at any special election and city officers, within 30 days after the

canvass of the votes of the election at which they were chosen.

(2) The filing of the bond with the oath endorsed thereon does not authorize a person to take any official action prior to the beginning of his or her term of office pursuant to Article XVII, section 5, of the Constitution of Nebraska.

(Neb. RS 11-105)

(D) All official bonds of city officers shall be executed by the principal named in such bonds and by at least two sufficient sureties who shall be freeholders of the county in which such bonds are given, or any official bond of a city officer may be executed by the officer as principal and by a guaranty, surety, fidelity or bonding company as surety, or by two or more such companies. Only such companies as are legally authorized to transact business in this state shall be eligible to suretyship on the bond of a city officer.

(Neb. RS 11-109)

(E) The City Clerk-Treasurer shall carefully record and preserve the bonds in his or her office and shall give certified copies thereof, when required, under the seal of his or her office, and shall be entitled to receive for the same the usual fee allowed by law for certified copies of records in other cases.

(Neb. RS 11-110)

(F) The approval of each official bond shall be endorsed upon such bond by the officer approving the same, and no bond shall be filed and recorded until so approved.

(Neb. RS 11-111)

(G) All official bonds shall obligate the principal and sureties for the faithful discharge of all duties required by law of such principal and shall inure to the benefit of any persons injured by a breach of the conditions of such bonds.

(Neb. RS 11-112)

(H) No official bond shall be rendered void by reason of any informality of irregularity in its execution or approval.

(Neb. RS 11-113)

(I) No city official shall be taken as security on the bond of any administrator, executor or other officer from whom by law bond is or may be required.

(Neb. RS 11-114)

(J) If any person elected or appointed to any office neglects to have his or her official bond executed and approved as provided by law and filed for record within the time limited by this section, the City Clerk-Treasurer shall immediately issue an order to such person to show cause why he or she has failed to properly file such bond and why his or her office should not be declared vacant. If such person properly files the official bond within ten days of the issuance of the show cause order for appointed officials or before the date for taking office for elected officials, such filing shall be deemed to be in compliance with this section. If such person does not file the bond within ten days of the issuance of such order for appointed officials or before the date for taking office for elected officials and sufficient cause is not shown within that time, his or her office shall thereupon ipso facto become vacant and such vacancy shall thereupon immediately be filled by election or appointment as the law may direct in other

cases of vacancy in the same office.
(Neb. RS 11-115)

(K) Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as herein provided.
(Neb. RS 11-116)

(L) When the incumbent of an office is reelected or reappointed, he or she shall qualify by taking the oath and giving the bond as above directed, but when such officer has had public funds or property in his or her control, his or her bond shall not be approved until he or she has produced and fully accounted for such funds and property. When it is ascertained that the incumbent of an office holds over by reason of the nonelection or nonappointment of a successor or of the neglect or refusal of the successor to qualify, he or she shall qualify anew within ten days from the time at which his or her successor, if elected, should have qualified.
(Neb. RS 11-117)

(M) No person shall be surety for the same officer for more than two successive terms of the same office, but this provision shall not apply to incorporated surety companies.
(Neb. RS 11-118)

(N) If the sureties on the official bond of any appointed officer of the city, in the opinion of the City Council, become insufficient, the Council may, by resolution, fix a reasonable time within which the officer may give a new bond or additional sureties as directed. If the officer fails, refuses or neglects to give a new bond or additional sureties to the satisfaction and approval of the Council, the office shall, by such failure, refusal or neglect, become vacant and it shall be the duty of the Council to appoint a competent and qualified person to fill the office.
(1977 Code, § 1-301)

§ 30.26 OATH OF OFFICE; MUNICIPAL OFFICIALS.

(A) All officials of the city, whether elected or appointed, except when a different oath is specifically provided herein, shall before entering upon their respective duties take and subscribe the following oath, which shall be endorsed upon their respective bonds:

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“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 such officer is not required to give bond, the oath shall be filed with the City Clerk-Treasurer.

(Neb. RS 11-101) (1977 Code, § 1-302)

COMPENSATION**§ 30.40 MUNICIPAL OFFICIALS.**

(A) The officers and employees of the city shall receive such compensation as the City Council shall fix by ordinance.

(Neb. RS 17-108)

(B) The city may enact ordinances or bylaws to regulate and prescribe the compensation of officers not provided for in state law.

(Neb. RS 17-604)

(C) No officer shall receive any pay or perquisites from the city other than his or her salary. The City Council shall not pay or appropriate any money or other valuable thing to any person not an officer for the performance of any act, service or duty, the doing or performance of which shall come within the proper scope of the duties of any officer of the city.

(Neb. RS 17-611)

(D) The emoluments of any elective officer shall not be increased or diminished during the term for which he or she shall have been elected, except when there has been a combination and merger of offices as provided in § 32.03, except that when there are officers elected to the Council, or any other board or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such council, board or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who shall have resigned or vacated any office shall be eligible to the same during the time for which he or she was elected if during the same time the emoluments thereof were increased.

(Neb. RS 17-612)
(1977 Code, § 1-901)

§ 30.41 CONFLICT OF INTEREST INVOLVING CONTRACTS.

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

BUSINESS ASSOCIATION.

(a) A business:

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

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

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

OFFICER.

(a) Includes:

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

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

(B) (1) Except as provided in Neb. RS 49-1499.04 or 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party. The existence of such an interest in any contract shall render the contract voidable by decree of a court of competent

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

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

- (a) Has a business association with the business involved in the contract; or
- (b) Will receive a direct pecuniary fee or commission as a result of the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

(K) The governing body may exempt from divisions (A) through (I) above, contracts involving \$100 or less in which an officer of such body may have an interest.
(Neb. RS 49-14,103.06)
(1977 Code, § 1-902) (Ord. 83-910M, passed 12-19-1983; Ord. 2002-1091M, passed 3-18-2002)

Statutory reference:

Other provisions on conflicts of interest, see Neb. RS 49-1499.03 through 49-14,103

Penalty for violation of restrictions on contracts, see Neb. RS 49-14,103.04

Power district directors and employees permitted to hold other elective office, see Neb. RS 70-624.04

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

Restrictions on holding dual elective offices, see Neb. RS 32-604

CHAPTER 31: ELECTED OFFICIALS; ORDINANCES

Section

General Provisions

- 31.01 Vacancies
- 31.02 Vacancy due to unexcused absences

City Council

- 31.15 General powers; members
- 31.16 Assumption of duties; subsequent meetings
- 31.17 President; Vice-President
- 31.18 Standing committees

Ordinances, Resolutions and Motions

- 31.30 Grant of power
- 31.31 Introduction of ordinances
- 31.32 Procedure for resolutions and motions
- 31.33 Ordinances; style, title
- 31.34 Reading and passage of ordinances, resolutions, orders, bylaws
- 31.35 Publication or posting
- 31.36 Certificate of publication or posting
- 31.37 Effective date; emergency ordinances
- 31.38 Amendments and revisions

GENERAL PROVISIONS

§ 31.01 VACANCIES.

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

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

(Neb. RS 32-568(4))

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

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

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

(E) If vacancies exist in the offices of a majority of the members of the City Council, the Secretary of State shall conduct a special city election to fill such vacancies.

(Neb. RS 32-569)

(1977 Code, §1-103) (Ord. 2002-1094M, passed 3-18-2002)

Statutory reference:

Additional and similar provisions, see Neb. RS 32-560 through 32-572

Ineligibility of person subjected to recall, see Neb. RS 32-1308

§ 31.03 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 City Council shall take a vote on whether to excuse a member's absence from a meeting upon either:

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

(C) If a Council member has been absent from six consecutive regular meetings and none of the absences have been excused by a majority vote of the remaining members, the City Clerk-Treasurer shall include this as an item on the agenda for the next regular meeting. At that meeting, the Council shall set a date for a hearing and direct the City Clerk-Treasurer 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 one or more of the member's absences by a majority vote at the conclusion of the hearing, there shall be a vacancy on the Council.

CITY COUNCIL**§ 31.15 GENERAL POWERS; MEMBERS.**

(A) The governing body of the city is the City Council, which shall exercise all the powers with have been or may be conferred upon the city by the Constitution and laws of Nebraska, except as otherwise provided in Neb. RS 19-601 to 19-662.

(Neb. RS 19-611)

(B) The City Council shall consist of five members.

(Neb. RS 32-538)

(C) Members of the City Council shall be residents and registered voters of the city and shall hold no other employment with the city. Any Council member who ceases to possess any of the qualifications required by this section or who has been convicted of a felony or of any public offense involving the violation of the oath of office of such member while in office shall forthwith forfeit such office.

(Neb. RS 19-613)

§ 31.16 ASSUMPTION OF DUTIES; SUBSEQUENT MEETINGS.

(A) At the first regular meeting in December following the statewide election, the Council shall meet in the usual place for holding meetings and the newly elected Council members shall assume the duties of their office. Thereafter the Council shall meet at such time and place as it may prescribe by ordinance.

(Neb. RS 17-104)

(B) Members of the Council shall serve for terms of four years or until their successors are elected and qualified.

(Neb. RS 32-533)

(1977 Code, §1-102)

§ 31.17 PRESIDENT; VICE-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 President.

(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 Vice-President of the Council.

(C) (1) The President shall preside over the Council and have a voice and vote in its proceedings but no veto.

(2) The President shall be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the Governor for military purposes.

(3) In addition, the President shall exercise such other powers and perform such duties, not inconsistent with Neb. RS 19-601 to 19-648.

(Neb. RS 17-148) (1977 Code, §1-101)

§ 31.18 STANDING COMMITTEES.

(A) At the organizational meeting of the City Council, the City Council President shall appoint members of such standing committees as the Council may create by ordinance or resolution.

(B) The membership of such standing committees may be changed at any time by the City Council President.

(C) The members of the standing committees shall serve a term of office of one year, unless reappointed.

ORDINANCES, RESOLUTIONS AND MOTIONS**§ 31.30 GRANT OF POWER.**

In addition to its special powers, the city shall have the power to make all ordinances, bylaws, rules, regulations and resolutions, not inconsistent with the laws of the state, as may be expedient for maintaining the peace, good government and welfare of the city and its trade, commerce and manufactories, and to enforce all ordinances by inflicting fines or penalties for the breach thereof, not exceeding \$500 for any one offense, recoverable with costs.

(Neb. RS 17-505) (1977 Code, § 1-601)

Statutory reference:

Adoption of standard codes, see Neb. RS 18-132 and 19-922

Prosecution in county court, see Neb. RS 25-2703

§ 31.31 INTRODUCTION OF ORDINANCES.

Unless the City Council provides otherwise, ordinances shall be introduced by members of the City Council in one of the following ways:

(A) With the recognition of the President, 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 City Clerk-Treasurer for future consideration; or

(B) With the recognition of the President, a member may present the proposed ordinance to the Clerk-Treasurer, 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.

§ 31.32 PROCEDURE FOR RESOLUTIONS AND MOTIONS.

(A) Unless the City Council provides otherwise, resolutions and motions shall be introduced in one of the methods prescribed in § 31.31 for the introduction of ordinances.

(B) The issue raised by the resolution or motion shall be disposed of in accordance with the usage of parliamentary law adopted for the guidance of the City Council.

(C) A majority vote shall be required to pass any resolution or motion. The vote on any resolution or motion shall be by roll call vote.

(1977 Code, § 1-602)

§ 31.33 ORDINANCES; STYLE, TITLE.

(A) *Style.* The style of all city ordinances shall be: “Be it ordained by the Council of the City of Valentine, Nebraska:”

(Neb. RS 17-613) (1977 Code, § 1-603)

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

(Neb. RS 17-614) (1977 Code, § 1-604)

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

(A) 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. Ordinances of a general or permanent nature shall be read by title on three different days unless three-fourths of the City Council vote to suspend this requirement, except that 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. Three-fourths of the City Council may require a reading of any such ordinance in full before enactment under either procedure set out in this section.

(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 city 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)

(1977 Code, § 1-605)

§ 31.35 PUBLICATION OR POSTING.

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

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

(B) In book or pamphlet form.

(Neb. RS 17-613) (1977 Code, § 1-606)

Statutory reference:

Additional provisions, see Neb. RS 18-131

§ 31.36 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 city from the City Clerk-Treasurer 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) (1977 Code, § 1-607)

Statutory reference:

Passage; rules and regulations, see Neb. RS 17-615

§ 31.37 EFFECTIVE DATE; EMERGENCY ORDINANCES.

(A) Except as provided in § 31.35 and division (B) below, an ordinance for the government of the city which has been adopted by the City Council without submission to the voters of the city 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 Council and the posting thereof in at least three of the most public places in the city. The emergency ordinance shall recite the emergency, be passed by a three-fourths vote of the City Council, and be entered of record on the City Clerk-Treasurer's minutes.

(Neb. RS 17-613)

(1977 Code, § 1-608)

§ 31.38 AMENDMENTS AND REVISIONS.

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

(Neb. RS 17-614) (1977 Code, § 1-609)

Statutory reference:

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

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

CHAPTER 32: APPOINTED CITY OFFICIALS

Section

- 32.01 General authority
- 32.02 Qualification for office
- 32.03 Merger of offices
- 32.04 City Manager
- 32.05 Clerk-Treasurer position created
- 32.06 Municipal Clerk
- 32.07 Municipal Treasurer
- 32.08 Municipal Attorney
- 32.09 Water Superintendent; Sewer Superintendent
- 32.10 Police Chief
- 32.11 Special Engineer
- 32.12 Zoning Inspector
- 32.13 Overseer of Streets

§ 32.01 GENERAL AUTHORITY.

The City Council shall choose a City Manager, a City Attorney, a City Clerk-Treasurer and where required, a Civil Service Commission, but no member of the Council shall be chosen as Manager, or as a member of the Civil Service Commission. Neither the Council nor any of its committees or members shall dictate the appointment of any person to office or employment by the City Manager, or in any manner seek to prevent him or her from exercising his or her own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager, either publicly or privately. The Council, or a committee thereof, may investigate the affairs of any department or the official acts and conduct of any city officer. It shall have the power to administer oaths, compel the attendance of witnesses and the production of books and papers, and may punish for contempt any person failing to obey its subpoena or refusing to testify. No person shall be excused from testifying, but his or her testimony shall not be used against him or her in any criminal proceeding other than for perjury. (1977 Code, § 1-201) (Ord. 2002-2002M, passed 12-10-2002)

Statutory reference:

Similar provisions, see Neb. RS 19-618

§ 32.02 QUALIFICATION FOR OFFICE.

Each appointive officer who is required to give bond shall qualify by filing the required bond and oath as provided in §§ 30.25 and 30.26. Each appointive officer who is not required to give bond shall qualify by filing the required oath as provided in § 30.26.

§ 32.03 MERGER OF OFFICES.

(A) The City Manager may at its discretion by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except Mayor and Council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time.

(B) 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.

(C) The salary or compensation of the officer or employee holding the merged and 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.

(D) For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers.
(Neb. RS 17-108.02)

§ 32.04 CITY MANAGER.

(A) The chief executive officer of the city shall be the City Manager, who shall be responsible for the proper administration of all affairs of the city. He or she shall be chosen by the City Council for an indefinite period, solely on the basis of administrative qualifications, and need not be a resident of the city or state when appointed. He or she shall hold office at the pleasure of the Council, and shall receive such salary as the Council shall fix by ordinance. During the absence or disability of the City Manager, the Council shall designate some properly qualified person to perform the duties of the office.
(Neb. RS 19-645)

(B) The powers and duties of the City Manager shall be as follows:

(1) Shall see that the laws and ordinances are enforced;

(2) Shall appoint and remove all heads of departments and all subordinate officers and employees in the departments in both the classified and unclassified service, which appointments shall be upon merit and fitness alone, and in the classified service all appointments and removals shall be subject to the provisions of the Civil Service Act;

(3) Shall exercise control over all departments and divisions thereof that may be created by the

Council;

(4) Shall attend all meetings of the Council with the right to take part in the discussion, but not to vote;

(5) Shall recommend to the Council for adoption such measures as he or she may deem necessary or expedient;

(6) Shall prepare the annual budget and keep the Council fully advised as to the financial condition and needs of the city;

(7) Shall be and assume the duties of the Overseer of Streets, Water Superintendent and Sewer Superintendent ex officio of the city; and

(8) Shall perform such other duties as may be required of him or her by ordinance or resolution of the Council.

(B) The City Manager may investigate at any time the affairs of any department or the conduct of any officer or employee. He, she, or any person appointed by him or her that purpose, shall have the same power to compel attendance of witnesses and the production of books and papers and other evidence, and to punish for contempt, which has herein been conferred upon the Council. Before taking office, the City Manager shall file with the City Clerk-Treasurer a surety company bond, conditioned upon the honest and faithful performance of his or her duties, in such sum as shall be fixed by the Council. The premium of his or her bond shall be paid by the city.

(Neb. RS 19-645 through 19-648) (1977 Code, § 1-206)

§ 32.05 CLERK-TREASURER POSITION CREATED.

The appointive offices of Municipal Clerk and Municipal Treasurer have been combined and merged by the City Manager in accordance with the authority granted by Neb. RS 17-108.02 and shall remain combined and merged until changed by the City Manager.

§ 32.06 MUNICIPAL CLERK.

(A) The City Clerk-Treasurer shall have the custody of all laws and ordinances and shall keep a correct journal of the proceedings of the City Council. After the period of time specified by the State Records Administrator pursuant to the Records Management Act, the Clerk-Treasurer may transfer the journal of the proceedings of the City Council to the State Archives of the Nebraska State Historical Society for permanent preservation. The Clerk-Treasurer shall also perform such other duties as may be required by the ordinances of the city.

(Neb. RS 17-605)

(B) (1) It shall be the duty of the Clerk-Treasurer to prepare and publish the official proceedings of the City Council within 30 days after any meeting of the Council. The publication shall be in a newspaper

of general circulation in the city, shall set forth a statement of the proceedings of the meeting, 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 such job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position. The charge for the publication shall not exceed the rates provided for in Neb. RS 23-122.

(Neb. RS 19-1102)

(2) Publication under division (B)(1) above shall be made in one legal newspaper of general circulation in the city. If no legal newspaper is published in the city, then the publication shall be made in one legal newspaper published or of general circulation within the county in which the city is located. The cost of publication shall be paid out of the general funds of the city.

(Neb. RS 19-1103)

(C) The Clerk-Treasurer shall dispose of or destroy city public records when the records have been determined to be of no further legal, administrative, fiscal or historical value by the State Records Administrator pursuant to Neb. RS 84-1201 through 84-1220, provided the provisions of this division (C) shall not apply to the minutes of the Clerk-Treasurer and the permanent ordinance and resolution books, or any other record classified as permanent by the State Records Administrator.

(Neb. RS 18-1701)

(D) (1) The Clerk-Treasurer shall permit any person to examine and copy the public records in the Clerk-Treasurer's custody, and may charge a fee for providing copies of a public record, as provided in Neb. RS 84-712 through 84-712.09.

(2) The Clerk-Treasurer may charge a reasonable fee for certified copies of any record in his or her office as set by resolution of the City Council.

(E) The Clerk-Treasurer shall permit no records, public papers or other documents of the city kept and preserved in his or her office to be taken therefrom, except by such officers of the city as may be entitled to the use of the same, but only upon their leaving a receipt therefor, and except pursuant to Neb. RS 84-712(2). 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 and draw, sign and attest all warrants ordered for the payment of money on the particular fund from which the same is payable. At the end of each month, he or she shall then make a report of the amounts appropriated to the various funds and the amount of the warrants drawn thereon.

(F) The Clerk-Treasurer shall deliver all warrants, ordinances and resolutions under his or her

charge to the City Council President for his or her signature. He or she shall also deliver to officers, employees and committees all resolutions and communications which are directed at such officers, employees or committees. With the seal of the city, he or she shall duly attest the City Council President Manager's signature to all ordinances, deeds and papers required to be attested to when ordered to do so by the City Council.

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

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

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

(1977 Code, § 1-202)

§ 32.07 MUNICIPAL TREASURER.

(A) (1) The City Clerk-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 such receipts with his or her monthly reports. The Clerk-Treasurer shall, at the end of every month, and as often as may be required, render an account to the City Council, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury. He or she shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with any and all vouchers held by him or her, shall be filed with his or her account in the City Clerk's office. If the Clerk-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 City Council, the City Council may use this failure as cause to remove the Clerk-Treasurer from office.

(1977 Code, § 1-204)

(2) The Clerk-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. The Clerk-Treasurer shall accompany the annual statement submitted pursuant to Neb. RS 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. RS 17-606)

(B) (1) The Clerk-Treasurer shall prepare and publish annually within 60 days after the close of the city fiscal year a statement of the receipts and expenditures of funds of the city for the preceding fiscal year. The statement shall also include the information required by Neb. RS 16-318(3) or Neb. RS 17-606(2). Not more than the legal rate provided for in Neb. RS 33-141 shall be charged and paid for such publication.

(Neb. RS 19-1101)

(2) Publication shall be made in one legal newspaper of general circulation in the city. If no legal newspaper is published in the city, then such publication shall be made in one legal newspaper published or of general circulation within the county in which the city is located.

(Neb. RS 19-1103) (1977 Code, § 1-205)

(C) (1) All warrants upon the Clerk-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 Clerk-Treasurer shall keep a warrant register, which register shall show in columns arranged for that purpose the number, the date and the amount of each warrant presented and registered, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person in whose name the warrant is registered, the date of payment, the amount of interest and the total amount paid thereon, with the date when notice to the person in whose name such warrant is registered is mailed.

(Neb. RS 77-2202)

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

(Neb. RS 77-2209)

(4) The Clerk-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 Clerk-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)

(5) The cash book, register and retained receipts of the Clerk-Treasurer shall at all times be open to the inspection of any person in whose name any warrants are registered and unpaid.

(Neb. RS 77-2212)

(D) The Clerk-Treasurer shall permit any person to examine and copy the public records in the Clerk-Treasurer's custody, and may charge a fee for providing copies of a public record, as provided in Neb. RS 84-712 through 84-712.09.

(E) The Clerk-Treasurer shall keep all money belonging to the city separate and distinct from his or her own money. 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 Clerk-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.

(1977 Code, § 1-203) (Ord. 2002-1092M, passed 3-18-2002)

§ 32.08 MUNICIPAL ATTORNEY.

(A) The City Attorney shall be the legal advisor of the City Council. He or she shall commence, prosecute and defend all suits and actions necessary to be commenced, prosecuted or defended on behalf of the city, or that may be ordered by the Council. When requested, he or she shall attend meetings of the Council and give them his or her opinion upon any matters submitted to him or her, either orally or in writing, as may be required. He or she shall draft or review for legal correctness ordinances, contracts, franchises and other instruments as may be required, and he or she shall perform such other duties as may be imposed upon him or her by general law or ordinance. The Council shall have the right to pay the City Attorney compensation for legal services performed by him or her for it on such terms as the Council and Attorney may agree, and to employ additional legal assistance and to pay for such legal assistance out of the funds of the city.

(Neb. RS 17-610) (1977 Code, § 1-207)

(B) The City Attorney shall also examine, when requested to do so by the City Council, the ordinance records and advise and assist the City Clerk-Treasurer 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 it will be a valid and subsisting local law in so far as its passage and approval are concerned.

(C) The Municipal Attorney shall be permitted to maintain a private law practice, subject to the restriction that he or she may not accept private employment or court appointment in any case involving city officials or employees in their official capabilities as parties or witnesses.

(1977 Code, § 1-207.01) (Ord. 2003-2007M, passed 2-20-2003)

§ 32.09 WATER SUPERINTENDENT; SEWER SUPERINTENDENT.

(A) The Municipal Water Superintendent shall have general supervision and control over the municipal water system, and shall be primarily responsible for its economic operation and prudent management. Included in the water system shall be the water plant, the pump house, all machinery and appliances used in connection with producing and distributing water to inhabitants of the municipality. All actions, decisions and procedures of the Water Superintendent shall be subject to the general directives and control of the City Manager. The Municipal Water Superintendent shall have the general control and supervisory authority over all employees of the water system which the City Manager may from time to time hire to operate and maintain the system. Unless some other official is specifically designated, he or she shall collect all money received by the municipality on account of the system of

waterworks, and shall faithfully account for, and pay over to the Municipal Clerk-Treasurer all such money collected in the name of the municipality and receive a receipt from the Municipal Clerk-Treasurer for the depository evidence of his or her faithful discharge of this duty. This receipt shall then be filed with the Municipal Clerk-Treasurer, and the second copy shall be kept by the Superintendent. He or she shall make a detailed report to the City Manager at least once every six months, of the condition of the water system, of all mains, pipes, hydrants, reservoirs and machinery and such improvements, repairs and extensions thereof as he or she may think proper. The report shall show the amount of receipts and expenditures on account thereof for the preceding six months. The Water Superintendent who may be removed at any time by the City Manager, shall provide a bond conditioned upon the faithful discharge of his or her duties which shall amount to not less than the amount set by resolution of the City Council and on file in the office of the Municipal Clerk-Treasurer. The Water Superintendent shall perform such additional duties as may be prescribed by the City Manager.
(1977 Code, § 1-213)

(B) The Sewer Superintendent shall have the immediate control, and supervision over all the employees, and property that make up the municipal sewer system, subject to the general control, and directives of the City Manager. He or she shall at least every six months, make a detailed report to the City Manager on the condition of the sewer system, and shall direct the City Manager's attention to such improvements, repairs, extensions, additions and additional employees as he or she may believe are needed along with an estimate of the cost thereof. He or she shall have such other duties as the City Manager may delegate to him or her. He or she shall issue permits for all connections to the municipal sewer system, and inspect and supervise all repairs made to the system.
(1977 Code, § 1-215)

Statutory reference:

Water Commissioner required, bond amount, see Neb. RS 17-541

Water Commissioner's duties and salary; ineligibility of mayor and Council members, see Neb. RS 17-543

§ 32.10 POLICE CHIEF.

The Police Chief shall direct the police work of the city and shall be responsible for the maintenance of law and order. Unless the City Council provides otherwise, he or she shall act as Health Inspector and Building Inspector.
(1977 Code, § 1-209)

§ 32.11 SPECIAL ENGINEER.

The City Council may employ a Special Engineer to make or assist the Municipal Engineer in making any particular estimate, survey or other work. The Special Engineer shall make a record of the minutes of his or her surveys and all other work done for the municipality. He or she shall, when directed by the City Council, accurately make all plats, sections, profiles and maps as may be necessary in the judgment of the City Council. He or she shall, upon request of the City Council, make estimates of the costs of labor and material which may be done or furnished by contract with the municipality and make all surveys, estimates and calculations necessary for the establishment of grades, bridges, building of culverts, sewers, electric light system, waterworks, power plant, public heating system, 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. All records of the Special Engineer shall be public records which shall belong to the municipality and shall be turned over to his or her successor.

(1977 Code, § 1-212) (Ord. 83-909M, passed 12-19-1983)

§ 32.12 ZONING INSPECTOR.

The City Manager may appoint a Zoning Inspector. In the absence of a specific appointment by the City Manager, the City Manager is hereby designated as Zoning Inspector.

(1977 Code, § 1-220)

§ 32.13 OVERSEER OF STREETS.

(A) The Overseer of Streets shall, subject to the order of the City Manager and Council, have general charge, direction and control of all works on the streets, sidewalks, culverts and bridges of the city, and shall perform such other duties as the Council may require.

(Neb. RS 17-119)

(B) It shall be his or her responsibility to see that gutters and drains in the city function properly and that they are kept in good repair.

(C) He or she shall, at the request of the City Council make a detailed report to the Council on the condition of the streets, sidewalks, culverts, alleys and bridges of the city and shall direct their attention to such improvements, repairs and extension thereof as he or she may think proper.

(D) The Overseer of Streets shall issue such permits and perform such other duties as may be prescribed by ordinance.

Statutory reference:

Incentive payments to street superintendents, see Neb. RS 39-2512

CHAPTER 33: DEPARTMENTS, BOARDS AND COMMISSIONS

Section

Boards and Commissions

- 33.001 Library Board
- 33.002 Planning Commission
- 33.003 Board of Adjustment
- 33.004 Board of Health
- 33.005 Tree Board
- 33.006 Economic Development Board
- 33.007 Airport Advisory Board
- 33.008 Community Development Agency

Utility Departments

- 33.020 Water Department; operation and funding
- 33.021 Sewer Department; operation and funding
- 33.022 Solid Waste Department; operation and funding
- 33.023 Electrical system; operation and funding

Fire Department

- 33.035 Operation and funding
- 33.036 Fire Chief
- 33.037 Membership
- 33.038 Records
- 33.039 Fires
- 33.040 Distant fires
- 33.041 Inspections
- 33.042 Notice of violation
- 33.043 Power of arrest
- 33.044 Fire investigation

Police Department

- 33.055 Duties
- 33.056 Reserve officer bond
- 33.057 Arrest and enforcement jurisdiction
- 33.058 Officers; discipline or removal from duty

BOARDS AND COMMISSIONS**§ 33.001 LIBRARY BOARD.**

(A) The Library Board shall consist of five appointed members, four of whom shall be residents of the city and one who shall be an at large resident of Cherry County. All members shall serve terms of four years. The four Library Board members shall be appointed by a majority vote of the members of the City Council and the Cherry County Board member shall be appointed by a majority vote of the Cherry County Commissioners. Neither the City Manager, any member of the City Council, nor any Cherry County Commissioner shall be a member of the Library Board. The terms of members serving on the effective date of a change in the number of members shall not be shortened, and any successors to those members shall be appointed as the terms of those members expire. In cases of vacancies by resignation, removal or otherwise, the City Council or Cherry County Commissioner shall fill the vacancy for the unexpired term. No member shall receive any pay or compensation for any services rendered as a member of the Library Board.

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

(Neb. RS 51-204)

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

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

(1977 Code, § 2-101) (Ord. 97-1025M, passed 9-15-1997)

Statutory reference:

Ability to withheld records on library patrons from the public, see Neb. RS 84-712.05

Authority to issue bonds for municipal library, see Neb. RS 17-967 to 17-969

Authority to require bond of appointed officer, see Neb. RS 17-604

General provisions on libraries, see Neb. RS 51-201 to 51-219

Library tax levy included in municipal levy, see Neb. RS 77-3442

§ 33.002 PLANNING COMMISSION.

(A) The Planning Commission shall consist of seven regular members who shall represent, insofar as is possible, the different professions or occupations in the municipality and shall be appointed by the City Council, by and with the approval of a majority vote of the members elected to the City Council. Two of the regular members may be residents of the area over which the municipality is authorized to exercise extraterritorial zoning and subdivision regulation. When there are a sufficient number of residents in the area over which the city exercises extraterritorial zoning and subdivision regulation, one regular member of the Commission shall be a resident from such area. If it is determined by the City Council that a sufficient number of residents reside in the area subject to extraterritorial zoning and subdivision regulation, and no such resident is a regular member of the Commission, the first available vacancy on the Commission shall be filled by the appointment of such an individual. For purposes of this section, a sufficient number of residents shall mean 500 residents. A number of commissioners equal to a majority of the number of regular members appointed to the Commission shall constitute a quorum for the transaction of any business. The term of each regular member shall be three years, except that one-third or fewer of the regular members of the first commission to be so appointed shall serve for terms of one year, one-third or fewer for terms of two years, and the remaining members for terms of three years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before the City Council, be removed by the City Council, with the consent of a majority vote of the members elected to the City Council, for inefficiency, neglect of duty or malfeasance in office, or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired portion of the term by the City Council.

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

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

(C) The City Council shall appoint one alternate member to the Commission. The alternate member shall serve without compensation and shall hold no other municipal office. The term of the alternate member shall be three years, and he or she shall hold office until his or her successor is appointed and approved. The alternate member may be removed from office in the same manner as a regular member. If the alternate member position becomes vacant other than through the expiration of the term, the vacancy shall be filled for the unexpired portion of the term by the City Council with the approval of a majority vote of the elected members of the City Council. The alternate member may attend any meeting and may serve as a voting and participating member of the Commission at any time when less than the full number of regular Commission members is present and capable of voting.

(1977 Code, § 2-102) (Ord. 88-947M, passed 9-19-1988)

Statutory reference:

General provisions on planning and zoning, see Neb. RS 19-901 through 19-933

§ 33.003 BOARD OF ADJUSTMENT.

(A) If the City Council adopts zoning or other regulations pursuant to Neb. RS 19-901 et seq., the Council shall provide for the appointment of a Board of Adjustment. Any actions taken by the Board of Adjustment shall not exceed the powers granted by division (E) below.

(Neb. RS 19-907)

(B) (1) The Board of Adjustment shall consist of five regular members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by such member shall also result in his or her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment. The first vacancy occurring on the Board of Adjustment 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 such area if the Board does not already include such a person. Thereafter, at all times, at least one member of the Board of Adjustment shall reside outside of the corporate boundaries of the city but within its extraterritorial zoning jurisdiction.

(2) The Board of Adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to Neb. RS 19-901 to 19-914. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as the Board may determine. Such 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. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

(Neb. RS 19-908)

(C) A number of members equal to a majority of the number of regular members appointed to the Board of Adjustment shall constitute a quorum for the transaction of any business. All members of an appointed Board of Adjustment shall serve without compensation and shall hold no other city office except for the member of the Planning Commission appointed to serve on the Board of Adjustment. No member of the Board of Adjustment shall serve in the capacity of both Chairperson and Secretary of the Board. The Secretary shall keep the full and correct minutes and records of all meetings and file them with the City Clerk-Treasurer where they shall be available for public inspection during office hours.

(D) Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board of Adjustment 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 of Adjustment, after the notice of appeal shall have been filed with him or her, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment 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 of Adjustment 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) (1) 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:

(a) To hear and decide appeals when it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made by the City Council or Planning Commission regarding a conditional use or special exception under Neb. RS 19-929(3);

(b) To hear and decide, in accordance with the provisions of any zoning regulation,

requests for interpretation of any map; and

(c) 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. RS 19-901 and 19-903 to 19-904.01 and division (B) above and this division (E) 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.

(2) (a) 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.

(b) 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.

(3) In exercising the powers granted in this division (E), the Board may, in conformity with Neb. RS 19-901 to 19-915, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination 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 effect any variation in such regulation.

(Neb. RS 19-910)

(F) Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board or bureau of the city, may present to the District Court a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of such illegality. Such petition must be presented to the court within 15 days after the filing of the decision in the office of the Board. Upon the filing of such petition a summons shall be issued and be served upon the Board of Adjustment, together with a copy of the petition. Return of

service shall be made within four days after the issuance of the summons. Within ten days after the return day of such summons, the Board of Adjustment shall file an answer to the petition which shall admit or deny the substantial averments of the petition and shall state the contentions of the Board with reference to the matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing answer, the Court shall proceed to hear and determine the cause without delay and shall render judgment thereon according to the forms of law. If, upon the hearing, it appears to the Court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the Court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made. The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. The appeal to the District Court shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the state regulating appeals in actions at law.

(Neb. RS 19-912)

(1977 Code, § 2-103)

§ 33.004 BOARD OF HEALTH.

(A) A Board of Health is created consisting of five members: the City Manager, who shall be the Chairperson, and four other members appointed by the City Council. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed shall be the Board's medical advisor. If the City Manager has appointed a Chief of Police, the Chief of Police shall serve on the Board as Secretary and quarantine officer.

(B) The members of the Board of Health shall serve without compensation and, except for the City Manager and Chief of Police, shall serve a one year term of office, unless reappointed. The Board shall reorganize at the first meeting each year after the annual appointments are made. No member of the Board shall hold more than one position on the Board.

(C) The Secretary shall keep full and correct minutes and records of all meetings and file the same with the Municipal Clerk-Treasurer where they shall be available for public inspection during office hours. The Board of Health shall be funded by the City Council from time to time out of the General Fund. The Board shall meet at such times as the City Council may designate. Special meetings may be held upon the call of the Chairperson or any three members of the Board.

(D) A majority of the Board of Health shall constitute a quorum and shall enact rules and regulations, which shall have the full force and effect of law, to safeguard the health of the people of the city, may enforce them, and may provide fines and punishments for the violation thereof. The Board shall have the power to and shall make all needful rules and regulations relating to matters of sanitation of the city. It may regulate, suppress and prevent the occurrence of nuisances or to matters of sanitation of the city. The Board shall also have control of hospitals, dispensaries, places for the treatment of sick, and matters relating to the same under restrictions and provisions as may be provided by ordinance of the city.

(1977 Code, § 2-104) (Ord. 2008-2090M, passed 6-12-2008)

§ 33.005 TREE BOARD.

(A) *Creation and establishment.* There is hereby created and established a City Tree Board which shall consist of five members, citizens and residents of the city, who shall be appointed by the City Council.

(1977 Code, § 2-202)

(B) *Term of office.* The term of the five persons to be appointed by the City Council shall be three years except that the term of two of the members appointed to the first Board shall be for only one year and the term of two members of the first Board shall be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.

(1977 Code, § 2-203)

(C) *Compensation.* Members of the Board shall serve without compensation.

(1977 Code, § 2-204)

(D) *Duties and responsibilities.*

(1) It shall be the responsibility of the Board to study, investigate, counsel and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the City Council and upon the acceptance and approval shall constitute the official comprehensive city tree plan for the city. The Board, when requested by the City Council, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its work.

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

(1977 Code, § 2-205)

(Ord. 91-974M, passed 12-16-1991)

§ 33.006 ECONOMIC DEVELOPMENT BOARD.

(A) *Creation and establishment.* There is hereby created and established an Economic Development Board for the purpose of administering the economic development program adopted by the city pursuant to the Local Economic Development Act. The Board shall consist of five members, all of whom shall be residents of Cherry County, and at least four members of whom shall be residents of the city. Said members shall be appointed by a majority of the City Council. No member of the City Council shall serve as a member of the Economic Development Board.

(B) *Terms of office.* The term of the five persons to be appointed by the City Council, shall be three years except that the term of two of the members appointed to the first Board shall be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed by the majority of the City Council for the unexpired term.

(C) *Compensation.* Members of the Board shall serve without compensation.

(D) *Duties and responsibilities.*

(1) It shall be the responsibility of the Board to implement, and administer the economic development program and to generate and execute ideas to promote economic development for the city within the confines of the program adopted. All actions of the Board shall be subject to the review and supervision of the City Council.

(2) The Board shall administer the Revolving Loan Fund created pursuant to the economic development program and shall be responsible for servicing any loans.

(3) The Board shall hire any staff deemed necessary within the budget constraints outlined and approved by the City Council. The Board shall supervise the activities of all staff if any and give directions to them as needed from time to time. Staff hired by the Board are subject to the *City of Valentine Policy Manual*.

(4) The Board shall choose its own officers, make its own rules and regulations and keep the full and correct minutes and records of all of its meeting and shall file the same with the Municipal Clerk-Treasurer where they shall be available for public inspection at any reasonable time. A majority of the members shall be a quorum for the transaction of business.

(5) The Board shall report on its activities and programs to the City Council on a quarterly basis.

(6) The Board shall submit an annual financial report to the city showing all receipts and disbursements as well as a proposed budget for the next fiscal year.

(7) The Board shall designate one of its members or employees to:

(a) Audit employment figures for participating businesses and retention and determine grant credits toward any loans made;

Valentine - Administration

(b) Serve as an ex officio member of the Citizens Advisory Review Committee;

(c) Provide information and advise the Citizens Advisory Review Committee on the economic development program; and

(d) Hold Citizens Advisory Review Committee meetings on a semi-annual basis with reports given to the City Council.

(E) *Funding.* The Board shall be funded by the City Council with funds collected through the city economic development program. The expenditures of the Board, 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.

(Ord. 2012-2136M, passed 6-14-2012)

§ 33.007 AIRPORT ADVISORY BOARD.

(A) There is hereby established an advisory board to be known as the Airport Advisory Board.

(B) The City Council shall appoint a five-member Airport Advisory Board.

(C) The members of the Board shall each serve, without compensation, a three-year term of office with the exception of the first year during which one-third shall serve for one year, and one-third shall serve for two years, and one-third shall serve for three years. Thereafter all appointments shall be for a three-year term. Board members may be reappointed.

(D) At the time of the Board's first meeting in February of each year, the Board shall organize by selecting from their number a Chairperson, Vice Chairperson and Secretary. It shall be the duty of the Chairperson to conduct the meetings. It shall be the duty of the Vice Chairperson to act in the absence of the Chairperson. It shall be the duty of the Secretary to keep the full and correct minutes and records of all meetings, and to file the same with the City Clerk-Treasurer.

(E) A majority of the Board members shall constitute a quorum for the transaction of business.

(F) The Board shall be responsible for making such recommendations to the governing body as it shall, in its discretion, determine. In addition, it shall make such reports and perform such other duties as the City Council may, from time to time, designate.

(G) The Airport Advisory Board shall not hold hearings, make policy or take formal action on behalf of the governing body, but shall act in an advisory capacity only.

(Res. 1011121, passed 10-11-2012)

§ 33.008 COMMUNITY DEVELOPMENT AGENCY.

(A) The City Council hereby find and determine that it is necessary and desirable for purposes of providing for the redevelopment and general welfare of the city that a community development agency be created pursuant to Neb. RS 18-2101.01.

(B) There shall be and there is hereby created in and for the city, an agency to be known as the Community Development Agency, which shall consist of the City Council, which agency shall exercise all of the power and authority granted to a community redevelopment authority in Neb. RS 18-2101 to 18-2144 and Neb. RS 18-2147 to § 18-2153, as amended, and as hereafter amended.

(C) The agency hereby created shall function in the same manner as the City Council and shall exercise such powers as are set forth in the above described statutes and in the manner a shall be deemed appropriate from time to time by the City Council as the governing body of the city, and as determined by resolution or ordinance duly adopted by said governing body from time to time.
(Ord. 2007-2082M, passed 10-15-2007)

UTILITY DEPARTMENTS

§ 33.020 WATER DEPARTMENT; OPERATION AND FUNDING.

(A) The municipality owns and operates the Water Department through the Water Superintendent or its authorized agent.

(B) (1) The City Council, for the purpose of defraying the cost of the care, management and maintenance of the Water Department may each year levy a tax not exceeding the maximum limit prescribed by state law, on the taxable value of all taxable property within the corporate limits that is subject to taxation.

(2) The revenue from the tax shall be known as the water fund and shall remain in the custody of the Municipal Clerk-Treasurer.

(C) (1) The Water Superintendent shall have the direct management and control of the Water Department and shall faithfully carry out the duties of the office.

(2) The City Council shall have the authority to adopt rules and regulations for the sanitary and efficient management of the Water Department subject to the supervision and review of the City Manager.

(3) The City Council shall set the rates to be charged for services rendered and shall file a copy of the rates in the office of the Municipal Clerk-Treasurer for public inspection at any reasonable time. (1977 Code, § 3-101)

Statutory reference:

Authority to assess rates, see Neb. RS 17-538

Bonds, interest and taxing authority, see Neb. RS 17-534

Public utility extension and improvements, see Neb. RS 19-1305

Waterworks acquisition and construction authorized, see Neb. RS 17-531

§ 33.021 SEWER DEPARTMENT; OPERATION AND FUNDING.

(A) The municipality owns and operates the municipal sewer system through the Sewer Superintendent or its authorized agent.

(B) For the purpose of defraying the cost of the maintenance and repairing of any sewer or water utilities in the municipality, the City Council may each year levy a tax not exceeding the maximum limit prescribed by state law on the taxable value of all the taxable property in the municipality. The revenue from the tax shall be known as the water and sewer maintenance fund and shall be used exclusively for the purpose of maintenance and repairs of the water and sewer system.

(C) (1) The Sewer Superintendent shall have the direct management and control of the Sewer Department, shall faithfully carry out the duties of the office, and shall have the authority to adopt rules and regulations for the sanitary and efficient management of the Department subject to the supervision and review of the City Manager.

(2) The City Council 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-Treasurer for public inspection at any reasonable time.

(1977 Code, § 3-201) (Ord. 78-634SC, passed 4-10-1978)

Statutory reference:

Authority to levy tax or establish rates by ordinance, see Neb. RS 17-925.01

Sewage and drainage districts; authority to regulate, see Neb. RS 17-149

§ 33.022 SOLID WASTE DEPARTMENT; OPERATION AND FUNDING.

(A) The municipality owns and operates the municipal solid waste system through the City Manager or his or her authorized agent.

(B) The City Manager shall have the direct management and control of the Solid Waste Department, shall faithfully carry out the duties of the office, and shall have the authority to adopt rules and regulations for the sanitary and efficient management of the Department subject to the supervision and review of the City Council. The City Council 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-Treasurer for public inspection at any reasonable time.

Statutory reference:

Authority to establish rates or charges, see Neb. RS 13-2020

§ 33.023 ELECTRICAL SYSTEM; OPERATION AND FUNDING.

(A) The municipality owns and operates the municipal electrical system through the City Council or its authorized agent.

(B) For the purpose of defraying the cost of the maintenance and repairing of any electrical system utilities in the municipality, the City Council may each year levy a tax not exceeding the maximum limit prescribed by state law on the taxable value of all the taxable property in the municipality. The revenue from the tax shall be known as the electrical fund and shall be used exclusively for the purpose of maintenance and repairs of the electrical system.

(C) The City Manager shall have the direct management and control of the electrical system, shall faithfully carry out the duties of the office, and shall have the authority to adopt rules and regulations for the sanitary and efficient management of the department subject to the supervision and review of the City Council. The City Council 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-Treasurer for public inspection at any reasonable time.

(1977 Code, § 3-1001)

Statutory reference:

Authority to provide for rates by ordinance, see Neb. RS 19-1404

Electrical systems generally, see Neb. RS 17-901 through 17-909, 19-1401 through 19-1404

Taxing authority, see Neb. RS 17-903, 17-909 and 19-1402

FIRE DEPARTMENT

§ 33.035 OPERATION AND FUNDING.

(A) The city may operate a Fire Department through the Fire Chief and firefighters.

(B) The city shall have power to procure fire engines, hooks, ladders, buckets and other apparatus, to organize fire engine, hook and ladder, and bucket companies, to prescribe rules of duty and the government thereof with such penalties as the City Council may deem proper, not exceeding \$100, and to make all necessary appropriations therefor.

(Neb. RS 17-147)

(C) If the city has only a voluntary fire department or companies, the City Council may levy a tax annually of not more than \$0.07 on each \$100 upon the taxable value of all the taxable property within the city for the maintenance and benefit of the fire department or companies. The amount of such tax shall be established at the beginning of the year and shall be included in the adopted budget statement.

Upon collection of such tax, the City Clerk-Treasurer shall disburse the same upon the order of the Fire Chief with the approval of the City Council.

(Neb. RS 17-718)

(1977 Code, § 3-301)

Statutory reference:

Fire station acquisition, construction and maintenance, see Neb. RS 17-953 et seq.

§ 33.036 FIRE CHIEF.

The Fire Chief shall manage the Fire Department, and it shall be his or her duty to inform the City Council when any of the fire engines, hose, ladders or other apparatus needs repair. Upon the written consent and directive of the City Council, the Fire Chief shall cause the repair, improvement or maintenance of the equipment and shall personally supervise and approve of the same. It shall be the duty of the Fire Chief to come before the City Council at the regular meeting in January of each year to give an annual report to the City Council of the general condition and the proposed additions or improvements recommended by him or her.

(1977 Code, § 3-302)

§ 33.037 MEMBERSHIP.

(A) The Fire Department shall consist of so many members as may be decided by the City Council. The members may organize themselves in any way they may decide, subject to the review of the City Council.

(B) The volunteer Fire Department shall not have upon its rolls at one time more than 25 persons, for each engine and hose company in the Fire Department, and no hook and ladder company shall have upon its rolls at any one time more than 25 members. The foreman and secretary of every such company shall, on April 1 and October 1 in each year, file in the office of the Clerk of the District Court in and for the county a certified copy of the rolls of their respective companies so as to obtain for the members thereof the privilege of the exemption from militia duty in time of peace mentioned in Neb. RS 35-101. No organization shall be deemed to be a bona fide fire or hook and ladder company until it has procured for active service apparatus for the extinguishment or prevention of fires, in case of a hose company, to the value of \$700, and of a hook and ladder company to the value of \$500.

(Neb. RS 35-102)

(C) Members in good standing are those who keep their dues promptly paid up and are present and render active service when called out for the legitimate purposes of the Fire Department.

(Neb. RS 35-103)

(D) Volunteer firefighters of the Fire Department shall be deemed employees of the city while in the performance of their duties as members of the Department. Members of the volunteer Fire Department, before they are entitled to benefits under the Nebraska Workers' Compensation Act, shall be recommended by the Fire Chief or some person authorized to act for the Chief for membership therein to the City Council and upon confirmation shall be deemed employees of the city. Members of the Fire

Department after confirmation to membership may be removed by a majority vote of the City Council and thereafter shall not be considered employees of the city. Firefighters of the Fire Department shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of the city, but only if directed to do so by the Fire Chief or some person authorized to act for the Chief.

(Neb. RS 48-115)

(E) The City Council shall purchase and maintain in force a policy of group term life insurance to age 65 covering the lives of all of the active volunteer fire and rescue personnel, except that when any such person serves more than one city or rural or suburban fire protection district, the policy shall be purchased only by the first city or district which he or she serves. The policy shall provide a minimum death benefit of \$10,000 for death from any cause and shall, at the option of the insured, be convertible to a permanent form of life insurance at age 65. The coverage of such policy shall terminate as to any individual who ceases to be an active volunteer member of the Fire Department.

(Neb. RS 35-108)

(F) For purposes of the prohibition on receipt of any witness fee, attendance fee or mileage fee by an employee of the city called as a witness in connection with his or her officially assigned duties, volunteer firefighters and rescue squad members testifying in that capacity alone shall not be deemed employees of the city.

(Neb. RS 33-139.01)

(G) The City Council may compensate or reimburse any member of the Fire Department for expenses incurred in carrying out his or her duties in an amount set by resolution.

(H) All members of the Fire Department shall be subject to such rules and regulations, and shall perform such duties, as may be prescribed or required of them by the Fire Chief or the City Council. The members of the Fire Department shall, during the time of a fire or great public danger, have and exercise the powers and duties of police officers and shall have full power and authority to arrest all persons guilty of any violation of the city code or the laws of the state.

(I) Members of the Fire Department may hold meetings and engage in social activities with the approval of the City Council. The Secretary shall, upon request, keep a record of all meetings and shall make a report to the City Council of all meetings and activities of the Fire Department.

(1977 Code, § 3-303)

§ 33.038 RECORDS.

The Fire Chief shall keep or cause to be kept a record of all meetings of the Fire Department, the attendance record of all members, and a record of all fires and shall make a full report of these records to the City Clerk-Treasurer during the last week in April each year. The record of any fire shall include the cause, origin, circumstances, property involved, and whether criminal conduct may have been involved. In the event of sizable property damage, the Fire Chief shall include the information of whether the losses were covered by insurance, and if so, in what amount. All records shall be available to the public at any reasonable time.

§ 33.039 FIRES.

It shall be the duty of the Fire Department to use all proper means for the extinguishment of fires, to protect property within the city, and to secure the observance of all ordinances, laws and other rules and regulations with respect to fires and fire prevention.

(1977 Code, § 3-304)

§ 33.040 DISTANT FIRES.

(A) Upon the permission of the City Manager or Fire Chief, or pursuant to any agreement with a fire district for mutual aid protection, such fire equipment of the city as may be designated by the City Council as rural equipment may be used beyond the corporate limits to extinguish reported fires.

(1977 Code, § 3-305)

(B) The firefighters of the city shall be considered as acting in the performance and within the scope of their duties in fighting fire or saving property or life outside the corporate limits of the city when directed to do so by the City Council or the Fire Chief or some person authorized to act for the Chief, and in so doing, may take such fire equipment of the city as may be designated by the City Council.

(1977 Code, § 3-306)

§ 33.041 INSPECTIONS.

(A) The Fire Chief where a Fire Department is established, at all reasonable hours, may enter into all buildings and upon all premises within his or her jurisdiction for the purposes of examination, in harmony with Neb. RS 81-501.01 to 81-531, the Nebraska Natural Gas Pipeline Safety Act of 1969, the Petroleum Products and Hazardous Substances Storage and Handling Act, and any other statutory duties imposed upon the State Fire Marshal.

(Neb. RS 81-512)

(B) It shall be the duty of the Fire Chief, when directed to do so by the City Council, to inspect or cause to be inspected by Fire Department officers, members, or some other official as often as may be necessary, but not less than two times a year, all buildings, premises and public thoroughfares, except the interiors of private dwellings, for the purpose of ascertaining and causing to be corrected any conditions liable to create a fire hazard. The inspection shall be of the storage, sale and use of flammable liquids, combustibles and explosives; electric wiring and heating; the means and adequacy of exits, in case of fire in schools, churches, hotels, halls, theaters, factories, hospitals and all other buildings in which numbers of persons congregate from time to time for any purpose whether publicly or privately owned; the design, construction, location, installation and operation of equipment for storing, handling and utilizing liquefied petroleum gases, specifying the odorization of such gases and the degree thereof; and chemicals, prozylin plastics, nitrocellulose films or any other hazardous material that may now or hereafter exist.

§ 33.042 NOTICE OF VIOLATION.

(A) Upon the finding that the city code has been violated, the Fire Chief shall notify, or cause to be notified, the owner, occupant or manager of the premises where a violation has occurred. Notice may be made personally or by delivering a copy to the premises and affixing it to the door of the main entrance of the premises. Whenever it may be necessary to serve such an order upon the owner, the order may be served personally, or by mailing a copy to the owner's last known post office address if the owner is absent from the jurisdiction.

(B) Any such order shall be immediately complied with by the owner, occupant or manager of the premises or building. The owner, occupant or manager may, within five days after the order by the Fire Chief or his or her agent, appeal the order with the City Council requesting a review, and it shall be the duty of the City Council to hear the same within not less than five days nor more than ten days from the time when the request was filed in writing with the City Clerk-Treasurer. The City Council shall then affirm, modify or rescind the order as safety and justice may require, and the decision shall then be final, subject only to any remedy which the aggrieved person may have at law or equity. The order shall be modified or rescinded only where it is evident that reasonable safety exists and that conditions necessitate a variance due to the probable hardship in complying literally with the order of the Fire Chief. A copy of any decision so made shall be sent to both the Fire Chief and the owner, occupant or manager making the appeal.

§ 33.043 POWER OF ARREST.

The Fire Chief or the Assistant Fire Chief shall have the power, during the time of a fire and for a period of 36 hours after its extinguishment, to arrest any suspected arsonist, or other person hindering or resisting the firefighting effort, or any person who conducts himself or herself in a noisy or disorderly manner. The officials shall be severally vested with the usual powers and authority of city police officers to command all persons to assist them in the performance of their duties.
(1977 Code, § 3-310)

§ 33.044 FIRE INVESTIGATION.

The Fire Chief shall investigate or cause to be investigated the cause, origin and circumstances of every fire occurring in the city by which property has been destroyed or damaged. All fires of unknown origin shall be reported, and such officer shall especially make an investigation and report as to whether the fire was the result of carelessness, accident or design. The investigation shall begin immediately after of the occurrence of the fire, and the State Fire Marshal shall have the right to supervise and direct the investigation whenever he or she deems it expedient or necessary. The officer making the investigation of fires occurring in the city shall forthwith notify the State Fire Marshal and shall within one week of the occurrence of the fire furnish him or her written statement of all the facts relating to the cause and origin of the fire and such further information as he or she may call for.

(Neb. RS 81-506) (1977 Code, § 3-311)

POLICE DEPARTMENT**§ 33.055 DUTIES.**

(A) If the City Manager and City Council have provided for the appointment of a Police Chief, the Police Department shall consist of the Chief of Police and such further number of regular police officers as may be duly ordered by resolution of the Council.

(B) The Chief of Police shall, subject to the direction of the City Manager, have control and management of all matters relating to the Police Department and its officers and members and shall have the custody and control of all property and books belonging to the Department. The Chief shall devote his or her whole time to the city affairs and interests of the city and to the preservation of peace, order, safety and cleanliness thereof.

(C) The Department shall execute and enforce all laws and also the orders of the City Manager. It shall be the duty of the Department to protect the rights of persons and property. The Department shall take notice of all nuisances, impediments, obstructions and defects in the streets, avenues, alleys, business places and residences of the city. The Department shall execute, or cause to be executed, the processes issued and shall cause all persons arrested to be brought before the proper court for trial as speedily as possible. The Chief of Police and all regular and special police officers shall become thoroughly conversant with the laws of the city and shall see that the same are strictly enforced and shall make sworn complaints against any person or persons for violation of the same. It shall be the duty of every city police officer making a lawful arrest to search all persons in the presence of some other person, whenever possible, and to carefully keep and produce to the proper judicial official upon the trial everything found upon the person of such prisoners. All personal effects so taken from prisoners shall be restored to them upon their release. The Police Chief and other police officers shall file such reports as may be required by the city ordinances and the laws of the state. No law enforcement official shall have any interest in any establishment having a liquor license.

(D) Suitable badges shall be furnished to the city police by the city. Any police officer who loses or destroys the same shall be required to pay the replacement costs. If a police officer leaves the city police force, he or she shall immediately deliver his or her badge to the Police Chief.

(E) City police officers shall have full power and authority to call on any person whenever necessary to assist them in performing public duties, and failure, neglect, or refusal to render such assistance shall be deemed an offense.

(1977 Code, § 3-401) Penalty, see § 10.99

§ 33.056 RESERVE OFFICER BOND.

No appointment of a law enforcement reserve officer shall be valid until a bond in the amount of \$2,000, payable to the city, has been filed with the City Clerk-Treasurer by the individual appointed or a

blanket surety bond arranged and paid for by the City Council and bonding all such officers of the City Council has been filed. These bonds shall be subject to the provisions of Neb. RS Ch. 11, art. 1. (Neb. RS 81-1444)

§ 33.057 ARREST AND ENFORCEMENT JURISDICTION.

(A) The police officers of the city shall have the power to arrest all offenders against the laws of the state or of the city, by day or by night, in the same manner as the County Sheriff and to keep such offenders in the city prison or other place to prevent their escape until trial can be had before the proper officer.

(Neb. RS 17-118)

(B) Every city law enforcement officer has the power and authority to enforce the laws of this state and the city or otherwise perform the functions of that office anywhere within his or her primary jurisdiction.

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

LAW ENFORCEMENT OFFICER IN NEED OF ASSISTANCE.

(a) A law enforcement officer whose life is in danger; or

(b) A law enforcement officer who needs assistance in making an arrest and the suspect:

1. Will not be apprehended unless immediately arrested;

2. May cause injury to himself or herself or others or damage to property unless immediately arrested; or

3. May destroy or conceal evidence of the commission of a crime.

PRIMARY JURISDICTION. The geographic area within territorial limits of the city.

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

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

(2) Any city law enforcement officer, if in a fresh attempt to apprehend a person suspected of

committing a misdemeanor or a traffic infraction, may follow that person anywhere in an area within 25 miles of the boundaries of the officer's primary jurisdiction and there arrest and detain that person and return that person to the officer's primary jurisdiction;

(3) Any city law enforcement officer has this enforcement and arrest and detention authority when responding to a call in which a local, state or federal law enforcement officer is in need of assistance; and

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

(E) When probable cause exists to believe that a person is operating or in the actual physical control of any motor vehicle, motorboat, personal watercraft or aircraft while under the influence of alcoholic liquor or of any drug or otherwise in violation of Neb. RS 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01 or 60-6,211.02, a city law enforcement officer has the power and authority to do any of the following or any combination thereof:

(1) Transport that person to a facility outside of the law enforcement officer's primary jurisdiction for appropriate chemical testing of the person;

(2) Administer outside of the law enforcement officer's primary jurisdiction any post-arrest test advisement to the person; or

(3) With respect to that person, perform other procedures or functions outside of the law enforcement officer's primary jurisdiction which are directly and solely related to enforcing the laws that concern a person operating or being in the actual physical control of any motor vehicle, motorboat or aircraft while under the influence of alcoholic liquor or of any other drug or otherwise in violation of Neb. RS 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01 or 60-6,211.02.

(Neb. RS 29-215)

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

(Neb. RS 81-829.65)

§ 33.058 OFFICERS; DISCIPLINE OR REMOVAL FROM DUTY.

(A) (1) The City Council shall by ordinance adopt rules and regulations governing the removal or discipline of any police officer, including the Chief of Police. The ordinance shall 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.

(2) Both the police officer and the individual imposing the disciplinary action shall have the right at the hearing to be heard and to present evidence to the Council for its consideration.

(3) Not later than 30 days following the adjournment of the meeting at which the hearing was held, the Council shall vote to uphold, reverse or modify the removal or disciplinary action. The failure of the Council to act within 30 days or the failure of a majority of the elected Council members to vote to reverse or modify the removal or disciplinary action shall be construed as a vote to uphold the removal or disciplinary action. The decision of the Council shall be based upon its determination that, under the facts and evidence presented at the hearing, the challenged removal or disciplinary 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.

(4) 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 division, in cases of gross misconduct, neglect of duty or disobedience of orders.

(Neb. RS 17-107)

(B) (1) Except as provided otherwise in an ordinance adopted by the Council, the procedures specified in this division (B) shall constitute the rules and regulations required by Neb. RS 17-107.

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

(3) Any police officer so disciplined, suspended, demoted, removed or discharged may, within ten days after being notified of such disciplinary action, suspension, demotion, removal or discharge, file with the City Clerk-Treasurer a written demand for a hearing before the City Council. The Council shall set the matter for hearing not less than ten nor more than 20 days after the filing of the written demand for a hearing. The Council shall give the police officer written notice of the hearing not less than seven days prior to the hearing.

(4) At the hearing, the police officer shall have the right to:

(a) Respond in person to the charges and to present witnesses and documentary evidence;

Valentine - Administration

- (b) Confront and cross-examine available adverse witnesses; and
- (c) To be represented by counsel.

CHAPTER 34: ELECTIONS

Section

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

§ 34.01 GENERALLY.

(A) All city issues and offices shall be combined on the statewide primary and general election ballots whenever possible. The issuance of separate ballots shall be avoided in a statewide election if city offices or issues can reasonably be combined with the 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.
(Neb. RS 32-556)

(B) When the city holds an election in conjunction with the statewide primary or general election, the election shall be held as provided in the Election Act. Any other election held by the city shall be held as provided in the Election Act unless otherwise provided by the charter, code or bylaws of the city.
(Neb. RS 32-404) (1977 Code, § 1-701)

§ 34.02 NOTICE.

The notice of election required to be published by the Election Commissioner or County Clerk pursuant to Neb. RS 32-802 shall serve as the notice requirement for all city elections which are held in conjunction with the statewide primary or general election.
(1977 Code, §§ 1-709, 1-711)

§ 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 current 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 city on or before election day shall be entitled to vote at all city elections.
(Neb. RS 17-602) (1977 Code, § 1-713)

Statutory reference:

Definition of elector, see Neb. RS 32-110

§ 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-Treasurer 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 under this section shall be subject to division (B) below.

(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-Treasurer 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-Treasurer shall be responsible for the publication or posting of any required special notice of the submission of the 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)

(1977 Code, § 1-710)

§ 34.05 ELECTION OF OFFICERS; CERTIFICATION.

No later than January 5 of each even-numbered year, the City Council shall certify to the Secretary of State, the Election Commissioner or the County Clerk the name of the city, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office. The Secretary of State, Election Commissioner and County Clerk shall prescribe the forms to be used for certification to him or her.

(Neb. RS 32-404)

§ 34.06 CANDIDATE FILING FORMS; DEADLINES; FILING OFFICER.

(A) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in division (B) below. If a candidate is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between December 1 and February 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office between December 1 and March 1 prior to the date of the general election.

(Neb. RS 32-606)

(B) Candidate filing forms shall be filed in the office of the Election Commissioner or County Clerk.

(Neb. RS 32-607)

Statutory reference:

Filing of vacancy on ballot, see Neb. RS 32-625 and 32-627

Withdrawal after filing, see Neb. RS 32-622

§ 34.07 PARTISAN BALLOT; WHEN ALLOWED; REQUIREMENTS.

All elective city officers shall be nominated and elected on a nonpartisan basis unless the city provides for a partisan ballot by ordinance. No ordinance providing for nomination and election on a partisan ballot shall permit affiliation with any party not recognized as a political party for purposes of the Election Act. Such ordinance providing for nomination and election on a partisan ballot shall be adopted and effective not less than 60 days prior to the filing deadline.

(Neb. RS 32-557)

§ 34.08 FILING FEE.

(A) Except as provided in division (D) or (E) below, a filing fee shall be paid to the City Clerk-Treasurer by or on behalf of each candidate for city office prior to filing for office. The fee shall be placed in the General Fund of the city. No candidate filing forms shall be filed until the proper payment or the proper receipt showing the payment of such filing fee is presented to the filing officer. On the day of the filing deadline, the City Clerk-Treasurer's office shall remain open to receive filing fees until the hour of the filing deadline.

(B) Except as provided in division (D) or (E) below, 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.

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

(D) No filing fee shall be required for 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.

(E) (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. Includes every type of property or interest in property that an individual owns and may convert into cash except:

1. Real property used as a home;
2. Household goods of a moderate value used in the home; and
3. 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.

(F) 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) (1977 Code, § 1-708)

§ 34.09 PETITION, WRITE-IN AND OTHER CANDIDATES FOR GENERAL ELECTION BALLOT; PROCEDURE.

(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 this section and Neb. RS 32-621 or by nomination by political party convention or committee pursuant to Neb. RS 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 divisions (B) and (C) below, 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. RS 32-710.
(Neb. RS 32-616)

(B) Petitions for nomination shall conform to the requirements of Neb. RS 32-628. Petitions shall state the office to be filled and the name and address of the candidate. Petitions for partisan office shall also indicate the party affiliation of the candidate. A sample copy of the petition shall be filed with the filing officer prior to circulation. Petitions shall be signed by registered voters residing in the city, if candidates are chosen at large, or in the ward in which the officer is to be elected, if candidates are chosen by ward, and shall be filed with the filing officer in the same manner as provided for candidate filing forms in § 34.07. Petition signers and petition 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 the 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 city or in the ward in which the officer is to be elected, not to exceed 2,000.

(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 city or in the ward in which the officer is to be elected, as appropriate, not to exceed 2,000.

(Neb. RS 32-618)

(1977 Code, § 1-712, 1-718)

§ 34.10 EXIT POLLS.

No person shall conduct an exit poll, a 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 or, if inside the polling place or building, within 100 feet of any voting booth.

(Neb. RS 32-1525) Penalty, see § 10.99

CHAPTER 35: FINANCE AND REVENUE

Section

General Provisions

- 35.01 Definitions
- 35.02 Contracts and purchases; bidding and other requirements
- 35.03 Annual audit; financial statements
- 35.04 Claims; warrants
- 35.05 Expenditures
- 35.06 Collection of special assessments; procedure
- 35.07 Special assessment fund
- 35.08 Sinking funds
- 35.09 Deposit of funds
- 35.10 Certificates of deposit; time deposits; conditions
- 35.11 Investment of funds
- 35.12 Bond issues
- 35.13 Debt collection; authority to contract with collection agency
- 35.14 Credit cards and electronic funds transfers

Annual Budget

- 35.25 Fiscal year
- 35.26 Budget procedures
- 35.27 Expenditures prior to adoption of budget
- 35.28 Proposed budget statement; contents; availability; correction
- 35.29 Proposed budget statement; hearing; adoption; certification of tax
- 35.30 Adopted budget statement; filing; certification of amount of tax
- 35.31 Appropriation bill
- 35.32 Revision of budget
- 35.33 Proprietary functions; fiscal year; budget statements; filing; hearing; adoption; reconciliation
- 35.34 General Fund
- 35.35 Transfer of funds

Tax Levies

- 35.50 Property tax levy for general revenue purposes
- 35.51 Levies for other taxes and special assessments
- 35.52 All-purpose levy; allocation; abandonment; extraordinary levies

- 35.53 Property tax levy; maximum; authority to exceed
- 35.54 Property tax; certification of amount
- 35.55 Property tax levy and request; authority to set
- 35.56 Motor vehicle fee

GENERAL PROVISIONS

§ 35.01 DEFINITIONS.

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

BIENNIAL BUDGET. A budget by the city that provides for a biennial period to determine and carry on the city's financial and taxing affairs.

BIENNIAL PERIOD. The two fiscal years comprising a biennium commencing in odd-numbered or even-numbered years used by the city in determining and carrying on its financial and taxing affairs.

PUBLIC FUNDS. All money, including non-tax money, used in the operation and functions of governing bodies. If the city has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the city from a licensed lottery operator shall be considered ***PUBLIC FUNDS***, and ***PUBLIC FUNDS*** shall not include amounts awarded as prizes.
(Neb. RS 13-503)

§ 35.02 CONTRACTS AND PURCHASES; BIDDING AND OTHER REQUIREMENTS.

(A) Except, as provided in Neb. RS 18-412.01, for a contract with a public power district to operate, renew, replace or add to the electric distribution, transmission or generation system of the municipality, no contract for the enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, costing over \$30,000, shall be made unless it is first approved by the City Council.

(B) Except as provided in Neb. RS 18-412.01, before the City Council makes any contract in excess of \$30,000 for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the City Engineer and submitted to the City Council. In advertising for the bids as provided for in divisions (C) and (E) below, the City Council may publish the amount of the estimate.

(C) Advertisements for bids shall be required for any contract costing over \$30,000, entered into:

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

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

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

(1) \$30,000, or less;

(2) \$60,000, or less and the municipal electric utility has gross annual revenue from retail sales in excess of \$1,000,000;

(3) \$90,000, or less and the municipal electric utility has gross annual revenue from retail sales in excess of \$5,000,000; or

(4) \$120,000, or less and the municipal electric utility has gross annual revenue from retail sales in excess of \$10,000,000.

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

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

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

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

(1) When materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding procedure in Neb. RS 81-145 to 81-162; or

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

(I) (1) Notwithstanding any other provisions of law or a home rule charter, a municipality which has established, by an interlocal agreement with any county, a joint purchasing division or agency may purchase personal property without the competitive bidding if the price for the property has been established by the Federal General Services Administration or the material division of the Department of Administrative Services.

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

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

PURCHASING or PURCHASE. The obtaining of personal property by sale, lease or other contractual means.

(1977 Code, § 1-814) (Ord. 97-1032M, passed 11-17-1997; Ord. 2008-2088M, passed 5-8-2008)

§ 35.03 ANNUAL AUDIT; FINANCIAL STATEMENTS.

(A) (1) For the purpose of this division (A), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCOUNTANT. A duly licensed public accountant or certified public accountant who otherwise is not an employee of or connected in any way with the city.

ANNUAL AUDIT REPORT. The written report of the accountant and all appended statements and schedules relating thereto presenting or recording the findings of an examination or audit of the financial transactions, affairs or financial condition of the city and its proprietary functions for the fiscal year immediately prior to the making of the annual report.

FISCAL YEAR. The fiscal year for the city or the fiscal year established in Neb. RS 18-2804 for a proprietary function if different than the city fiscal year.
(Neb. RS 19-2902)

(2) The City Council shall cause an audit of the city's accounts to be made by a recognized independent and qualified accountant as expeditiously as possible following the close of the fiscal year and to cover all financial transactions and affairs of the city for that preceding fiscal year. The audit shall be made on a cash or accrual method at the discretion of the City Council. The audit shall be completed and the annual audit report made by the accountant shall be submitted within six months after the close of the fiscal year in any event, unless an extension of time is granted by a written resolution adopted by the City Council. If the city owns or operates any type of public utility or other enterprise which substantially generates its own revenue, that phase of the affairs of the city shall be audited separately from other functions of the city and the result shall appear separately in the annual audit report made by the accountant to the city and such audit shall be on an accrual basis and shall contain statements and materials which conform to generally accepted accounting principles.
(Neb. RS 19-2903)

(3) The annual audit report shall set forth, insofar as possible, the financial position and results of financial operations for each fund or group of accounts of the city. When the accrual method is selected for the annual audit report, the report shall be in accordance with generally accepted accounting principles. The annual audit report shall also include the professional opinion of the accountant with respect to the financial statements, or, if an opinion cannot be expressed, a declaration that the accountant is unable to express such an opinion with an explanation of the reasons why he or she cannot do so.
(Neb. RS 19-2904)

(4) At least three copies of such annual audit report shall be properly signed and attested by the accountant; two copies shall be filed with the City Clerk-Treasurer, and one copy shall be filed with the Auditor of Public Accounts. The annual audit report filed, together with any accompanying comment or explanation, shall become a part of the public records of the City Clerk-Treasurer and shall at all times thereafter be open and subject to public inspection.
(Neb. RS 19-2905)

(B) The City Council shall provide and file with the City Clerk-Treasurer, not later than August 1 of each year, financial statements showing the city's actual and budgeted figures for the most recently completed fiscal year.
(Neb. RS 13-606) (1977 Code, § 1-815)

Statutory reference:

Other provisions on audits, Neb. RS 19-2906 through 19-2909

§ 35.04 CLAIMS; WARRANTS.

(A) The City Manager and City Council shall have no power to appropriate, issue or draw any order or warrant on the City Clerk-Treasurer for money, unless the same has been appropriated or ordered by ordinance, or the claim for the payment of which such order or warrant is issued has been allowed according to the provisions of § 35.05, and funds for the class or object out of which such claim is payable have been included in the adopted budget statement or transferred according to law.
(Neb. RS 17-708)

(B) No contract shall be hereafter made by the City Council, or any committee or member thereof, and no expense shall be incurred by any of the officers or departments of the city, whether the object of the expenditures shall have been ordered by the City Council or not, unless an appropriation shall have been previously made concerning such expense, except as otherwise expressly provided in division (A).
(Neb. RS 17-709)

(C) All warrants drawn upon the City Clerk-Treasurer must be signed by the City Manager and countersigned by the City Clerk-Treasurer, stating the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount included in the adopted budget statement for such fund upon which it is drawn and the amount already expended of such fund.
(Neb. RS 17-711) (1977 Code, §§ 1-816, 1-817)

Statutory reference:

Other provisions on warrants, see Neb. RS 77-2201 through 77-2215

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

§ 35.05 EXPENDITURES.

(A) 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.
(Neb. RS 17-708)

(B) No expenditure for any improvement to be paid for out of the General Fund of the municipality shall exceed in any one year the amount provided for that improvement in the adopted budget statement.
(1977 Code, § 1-813)

§ 35.06 COLLECTION OF SPECIAL ASSESSMENTS; PROCEDURE.

(A) The municipality shall have the authority to collect the special assessments which it levies and perform all other necessary functions related thereto including foreclosure.

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

(C) A municipality that elects to collect its special assessments shall:

(1) File notice of the assessments and the amount of assessment being levied for each lot or tract of land to the Register of Deeds; and

(2) File a release of assessment upon final payment of each assessment with the Register of Deeds.

(Neb. RS 18-1216)

§ 35.07 SPECIAL ASSESSMENT FUND.

All money received on special assessments shall be held by the City Clerk-Treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and this money shall be used for no other purpose whatever, unless to reimburse the city for money expended for any such improvement.

(Neb. RS 17-710) (1977 Code, § 1-818)

§ 35.08 SINKING FUNDS.

(A) The city is hereby empowered to receive money or property by donation, bequest, gift, devise or otherwise for the benefit of any one or more of the public purposes for which sinking funds are established by the provisions of this section, as stipulated by the donor. The title to the money or property so donated shall vest in the City Council, or in its successors in office, who shall become the owners thereof in trust to the uses of the sinking fund or funds; provided, if the donation is real estate, the City Council may manage the same as in the case of real estate donated to the city for city library purposes under the provisions of Neb. RS 51-215 and 51-216.

(Neb. RS 19-1301)

(B) The City Council, subject to all the limitations set forth in this section, shall have the power to levy a tax of not to exceed \$0.105 on each \$100 in any one year upon the taxable value of all the taxable property within the city for a term of not to exceed ten years, in addition to the amount of tax which may be annually levied for the purposes of the adopted budget statement of the city, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension, original equipment or repair, not including maintenance, of any one or more of the following public improvements, including acquisition of any land incident to the making thereof: city library; city auditorium or community house for social or recreational purposes; city hall; city public library, auditorium or community house in a single building; city swimming pool and appurtenances thereto; city jail; city building to house equipment or personnel of a fire department, together with firefighting equipment or apparatus; city park; city cemetery; city medical clinic building, together with furnishings and equipment; or city hospital. The city shall not be authorized to levy the tax or to establish the sinking fund as provided in this division (B) if, having bonded indebtedness, such city has been in default in the payment of interest thereon or principal thereof for a period of ten years prior to the date of the passage of the resolution providing for the submission of the proposition for establishment of the sinking fund as required in division (C) below.

(Neb. RS 19-1302)

(C) Before any sinking fund or funds are established or before any annual tax is levied for any such planned city improvement mentioned in division (B) above by the city, the City Council shall declare its purpose by resolution to submit to the qualified electors of the city at the next general city election the proposition to provide the city with the specific city improvement planned for consummation under this section. The resolution of submission shall, among other things, set forth a clear description of the improvement planned, the estimated cost according to the prevailing costs, the amount of annual levy over a definite period of years, not exceeding ten years, required to provide such cost, and the specific name or designation for the sinking fund sought to be established to carry out the planned improvement, together with a statement of the proposition for placement upon the ballot at the election. Notice of the submission of the proposition, together with a copy of the official ballot containing the same, shall be published in its entirety three successive weeks before the day of the election in a legal newspaper published in the city or, if no legal newspaper is published therein, in some legal newspaper published in the county in which the city is located and of general circulation. If no legal newspaper is published in the county, such notice shall be published in some legal newspaper of general circulation in the county in which the city is located. No such sinking fund shall be established unless the same has been authorized by a majority or more of the legal votes of the city cast for or against the proposition. If less than a majority of the legal votes favor the establishment of the sinking fund, the planned improvement shall not be made, no annual tax shall be levied therefor, and no sinking fund or sinking funds shall be established in connection therewith, but such resolution of submission shall immediately be repealed. If the proposition shall carry at such election in the manner prescribed in this division (C), the City Council and its successors in office shall proceed to do all things authorized under such resolution of submission but never inconsistent with this section. Provisions of the statutes of this state relating to election of officers, voting places, election apparatus and blanks, preparation and form of ballots, information to voters, delivery of ballots, conduct of elections, manner of voting, counting of votes, records and certificates of elections, and recounts of votes, so far as applicable, shall apply to voting on the proposition under this section.

(Neb. RS 19-1303)

(D) All funds received by the City Clerk-Treasurer, by donation or by tax levy, as hereinbefore provided, shall, as they accumulate, be immediately invested by the Clerk-Treasurer, with the written approval of the City Council, in the manner provided in § 35.11. Whenever investments of such sinking fund or funds are made, as aforesaid, the nature and character of the same shall be reported to the City Council, and the investment report shall be made a matter of record by the City Clerk-Treasurer in the proceedings of the City Council. The sinking fund, or sinking funds, accumulated under the provisions of this section, shall constitute a special fund, or funds, for the purpose or purposes for which the same was authorized and shall not be used for any other purpose unless authorized by 60% of the qualified electors of the city voting at a general election favoring such change in the use of the sinking fund or sinking funds; provided that the question of the change in the use of the sinking fund or sinking funds, when it fails to carry, shall not be resubmitted in substance for a period of one year from and after the date of such election.

(Neb. RS 19-1304) (1977 Code, § 1-819)

Statutory reference:

Additional levy limitations, see Neb. RS 17-702

Investment in warrants, see Neb. RS 77-2337

§ 35.09 DEPOSIT OF FUNDS.

(A) The City Clerk-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 Clerk-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 City Manager, as a member of the City Council, or as any other officer of the city shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds.

(B) (1) The City Council shall require from all banks, capital stock financial institutions or qualifying mutual financial institutions:

(a) A bond in such penal sum as may be the maximum amount on deposit at any time less the amount insured by the Federal Deposit Insurance Corporation; or in lieu thereof

(b) Security given as provided in the Public Funds Deposit Security Act to secure the payment of all such deposits and accretions.

(2) The City Council shall approve such bond or giving of security. The City Clerk-Treasurer shall not be liable for any loss of any money sustained by reason of the failure of any such depository so designated and approved.

(Neb. RS 17-607)

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

(Neb. RS 77-2362)

(D) Neb. RS 77-2366 shall apply to deposits in capital stock financial institutions. Neb. RS 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

(Neb. RS 17-607, 77-2362)

(1977 Code, § 1-820) (Ord. 2006-2059M, passed 10-16-2006)

§ 35.10 CERTIFICATES OF DEPOSIT; TIME DEPOSITS; CONDITIONS.

The City Clerk-Treasurer may, upon resolution of the City Council authorizing the same, purchase certificates of deposit from and make time deposits in any bank, capital stock financial institution or qualifying mutual financial institution in the state to the extent that such certificates of deposit or time deposits are insured by the Federal Deposit Insurance Corporation. Deposits may be made in excess of the amounts so secured by the corporation, and the amount of the excess deposit shall be secured by a bond or by security given in the same manner as provided for cities of the first class in Neb. RS 16-714 to 16-716. Neb. RS 77-2366 shall apply to deposits in capital stock financial institutions. Neb. RS77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

(Ord. 2006-2060M, passed 10-16-2006)

§ 35.11 INVESTMENT OF FUNDS.

(A) When the City Clerk-Treasurer holds funds of the city in excess of the amount required for maintenance or set aside for betterments and improvements, the City Council may, by resolution, direct and authorize the Clerk-Treasurer to invest the surplus funds in the outstanding bonds or registered warrants of the city, bonds and debentures issued either singly or collectively by any of the 12 federal land banks, the 12 intermediate credit banks or the 13 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 the bonds or warrants were purchased.

(Neb. RS 17-608)

(B) All income received by the city from public utilities and from the payment and collection of water taxes, rents, rates or assessments shall be applied to the payment of running expenses, interest on bonds or money borrowed and the erection and construction of public utilities; should there be any surplus, it shall be annually created into a sinking fund for the payment of public utility bonds or for the improvements of the works, or into the General Fund as the Council may direct. The surplus remaining, if any, may, if the Council, be invested in interest-bearing bonds or obligations of the United States.

(Neb. RS 17-540)

(C) The City Council may, by resolution, direct and authorize the Clerk-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.

(Neb. RS 17-609)

(D) Any surplus funds arising out of the operation of any system of waterworks, power plant, ice plant, gas plant, sewerage, heating or lighting plant, or distribution system by the City Council, may be invested, if not invested pursuant to the provisions of any other law upon the subject, in like manner and subject to the same conditions as the investment of similar funds of cities of the first class, as provided in Neb. RS 16-691.01.

(Neb. RS 17-803)

(E) (1) Whenever the city has accumulated a surplus of any fund in excess of its current needs or has accumulated a sinking fund for the payment of its bonds and the money in such sinking fund exceeds the amount necessary to pay the principal and interest of any such bonds which become due during the current year, the City Council may invest any such surplus in excess of current needs or such excess in its sinking fund in certificates of deposit, in time deposits, and in any securities in which the State Investment Officer is authorized to invest pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and as provided in the authorized investment guidelines of the Nebraska Investment Council in effect on the date the investment is made. The State Investment Officer shall upon request furnish a copy of current authorized investment guidelines of the Nebraska Investment Council.

(2) Nothing in division (E)(1) above shall be construed to authorize investments in venture capital.

(Neb. RS 77-2341)

(1977 Code, § 1-821)

§ 35.12 BOND ISSUES.

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

(1977 Code, § 1-822)

Statutory reference:

Bonds in general, see Neb. RS 18-1801 through 18-1805

Funding and refunding bonds, see Neb. RS 10-606 through 10-612

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

§ 35.13 DEBT COLLECTION; AUTHORITY TO CONTRACT WITH COLLECTION AGENCY.

(A) The city may contract to retain a collection agency licensed pursuant to Neb. RS 45-601 through 45-622, within or without this state, for the purpose of collecting public debts owed by any person to the city.

(B) No debt owed pursuant to division (A) above may be assigned to a collection agency unless:

(1) There has been an attempt to advise the debtor by first-class mail, postage prepaid, at the last known address of the debtor:

(a) Of the existence of the debt; and

(b) That the debt may be assigned to a collection agency for collection if the debt is not

paid.

(2) At least 30 days have elapsed from the time the notice was sent.

(C) A collection agency which is assigned a debt under this section shall have only those remedies and powers which would be available to it as an assignee of a private creditor.

(D) For purposes of this section, debt shall include all delinquent fees or payments except delinquent property taxes on real estate. In the case of debt arising as a result of an order or judgment of a court in a criminal or traffic matter, a collection fee may be added to the debt. The collection fee shall be \$25 or 4.5% of the debt, whichever is greater. The collection fee shall be paid by the person who owes the debt directly to the person or agency providing the collection service.

(Neb. RS 45-623)

§ 35.14 CREDIT CARDS AND ELECTRONIC FUNDS TRANSFERS.

(A) If authorized by the City Council, any city official may accept credit cards, charge cards or debit cards, whether presented in person or electronically, or electronic funds transfers as a method of cash payment of any tax, levy, excise, duty, custom, toll, interest, penalty, fine, license, fee or assessment of whatever kind or nature, whether general or special, as provided by Neb. RS 77-1702.

(B) The total amount of the taxes, levies, excises, duties, customs, tolls, interest, penalties, fines, licenses, fees or assessments of whatever kind or nature, whether general or special, paid for by credit card, charge card, debit card or electronic funds transfer shall be collected by the city official.

(C) With respect to a facility which it operates in a proprietary capacity, the City Council may choose to accept credit cards, charge cards or debit cards, whether presented in person or electronically, or electronic funds transfers as a means of cash payment and may adjust the price for services to reflect the handling and payment costs.

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

(E) The types of credit cards, charge cards or debit cards accepted and the payment services provided shall be determined by the State Treasurer and the Director of Administrative Services with the advice of a committee convened by the State Treasurer and the director. The committee shall consist of the State Treasurer, the Tax Commissioner, the director and representatives from counties, cities and other political subdivisions as may be appropriate. The committee shall develop recommendations for the contracting of such services. The State Treasurer and the director shall contract with one or more credit card, charge card or debit card companies or third-party merchant banks for services on behalf of the state and those counties, cities and political subdivisions that choose to participate in the state contract for such services. The State Treasurer and the director shall consider, for purposes of this section, any negotiated discount, processing or transaction fee imposed by a credit card, charge card or debit card company or third-party merchant bank as an administrative expense. If the City Council

chooses not to participate in the state contract, it may choose types of credit cards, charge cards and debit cards and may negotiate and contract independently or collectively as a governmental entity with one or more financial institutions, vending service companies, credit card, charge card or debit card companies, or third-party merchant banks for the provision of these services.

(F) Subject to the direction of the City Council, a city official authorizing acceptance of credit card or charge card payments shall be authorized but not required to impose a surcharge or convenience fee upon the person making a payment by credit card or charge card so as to wholly or partially offset the amount of any discount or administrative fees charged to the city, but the surcharge or convenience fee shall not exceed the surcharge or convenience fee imposed by the credit card or charge card companies or third-party merchant banks which have contracted under division (E) above. The surcharge or convenience fee shall be applied only when allowed by the operating rules and regulations of the credit card or charge card involved or when authorized in writing by the credit card or charge card company involved. When a person elects to make a payment to the city by credit card or charge card and such a surcharge or convenience fee is imposed, the payment of the surcharge or convenience fee shall be deemed voluntary by that person and shall be in no case refundable. If a payment is made electronically by credit card, charge card, debit card or electronic funds transfer as part of a system for providing or retrieving information electronically, the city official shall be authorized but not required to impose an additional surcharge or convenience fee upon the person making a payment.

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

ELECTRONIC FUNDS TRANSFER. The movement of funds by nonpaper means, usually through a payment system, including, but not limited to, an automated clearinghouse or the Federal Reserve's Fedwire system.

(Neb. RS 13-609)

ANNUAL BUDGET

§ 35.25 FISCAL YEAR.

The fiscal year of the city and any public utility of the city commences on October 1 and extends through the following September 30 except as provided in the Municipal Proprietary Function Act.

(Neb. RS 17-701) (1977 Code, § 1-801)

§ 35.26 BUDGET PROCEDURES.

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

(1977 Code, § 1-805)

§ 35.27 EXPENDITURES PRIOR TO ADOPTION OF BUDGET.

(A) On and after the first day of its fiscal year in 1993 and of each succeeding year or on or after the first day of its biennial period and until the adoption of the budget by the City Council in September, the City Council may expend any balance of cash on hand for the current expenses of the city. Except as provided in division (B) below, these expenditures shall not exceed an amount equivalent to the total amount expended under the last budget in the equivalent period of the prior budget year or biennial period. These expenditures shall be charged against the appropriations for each individual fund or purpose as provided in the budget when adopted.

(Neb. RS 13-509.01)

(B) The restriction on expenditures in division (A) above may be exceeded upon the express finding of the City Council that expenditures beyond the amount authorized are necessary to enable the city to meet its statutory duties and responsibilities. The finding and approval of the expenditures in excess of the statutory authorization shall be adopted by the City Council in open public session. Expenditures authorized by this section shall be charged against appropriations for each individual fund or purpose as provided in the budget when adopted, and nothing in this section shall be construed to authorize expenditures by the city in excess of that authorized by any other statutory provision.

(Neb. RS 13-509.02)

§ 35.28 PROPOSED BUDGET STATEMENT; CONTENTS; AVAILABILITY; CORRECTION.

(A) The City Council shall annually or biennially prepare a proposed budget statement on forms prescribed and furnished by the Auditor of Public Accounts. The proposed budget statement shall be made available to the public prior to publication of the notice of the hearing on the proposed budget statement pursuant to § 35.29. A proposed budget statement shall contain the following information, except as provided by state law:

(1) For the immediately preceding fiscal year or biennial period, the revenue from all sources, including motor vehicle taxes, other than revenue received from personal and real property taxation, allocated to the funds and separately stated as to each such source: the unencumbered cash balance at the beginning and end of the year or biennial period; the amount received by taxation of personal and real property; and the amount of actual expenditures;

(2) For the current fiscal year or biennial period, actual and estimated revenue from all sources, including motor vehicle taxes, allocated to the funds and separately stated as to each such source: the actual unencumbered cash balance available at the beginning of the year or biennial period; the amount received from personal and real property taxation; and the amount of actual and estimated expenditures, whichever is applicable. This statement shall contain the cash reserve for each fiscal year or biennial period and shall note whether or not the reserve is encumbered. The cash reserve projections shall be based upon the actual experience of prior years or biennial periods. The cash reserve shall not exceed 50% of the total budget adopted exclusive of capital outlay items;

(3) For the immediately ensuing fiscal year or biennial period, an estimate of revenue from all

sources, including motor vehicle taxes, other than revenue to be received from taxation of personal and real property, separately stated as to each such source: the actual or estimated unencumbered cash balances, whichever is applicable, to be available at the beginning of the year or biennial period; the amounts proposed to be expended during the year or biennial period; and the amount of cash reserve, based on actual experience of prior years or biennial period, which cash reserve shall not exceed 50% of the total budget adopted exclusive of capital outlay items;

(4) A statement setting out separately the amount sought to be raised from the levy of a tax on the taxable value of real property:

(a) For the purpose of paying the principal or interest on bonds issued by the City Council;
and

(b) For all other purposes.

(5) A uniform summary of the proposed budget statement, including each proprietary function fund included in a separate proprietary budget statement prepared pursuant to the Municipal Proprietary Function Act, and a grand total of all funds maintained by the City Council; and

(6) A list of the proprietary functions which are not included in the budget statement. These proprietary functions shall have a separate budget statement which is approved by the City Council as provided in the Municipal Proprietary Function Act.

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

(C) The city shall correct any material errors in the budget statement detected by the Auditor of Public Accounts or by other sources.

(Neb. RS 13-504)

(D) The estimated expenditures plus the required cash reserve for the ensuing fiscal year or biennial period less all estimated and actual unencumbered balances at the beginning of the year or biennial period and less the estimated income from all sources, including motor vehicle taxes, other than taxation of personal and real property shall equal the amount to be received from taxes, and that amount shall be shown on the proposed budget statement pursuant to this section. The amount to be raised from taxation of personal and real property, as determined above, plus the estimated revenue from other sources, including motor vehicle taxes, and the unencumbered balances shall equal the estimated expenditures, plus the necessary required cash reserve, for the ensuing year or biennial period.

(Neb. RS 13-505)

(1977 Code, § 1-802) (Ord. 2003-2013M, passed 8-18-2003)

§ 35.29 PROPOSED BUDGET STATEMENT; HEARING; ADOPTION; CERTIFICATION OF TAX.

(A) The City Council shall each year or biennial period conduct a public hearing on its proposed budget statement. Notice of the place and time of the hearing, together with a summary of the proposed budget statement, shall be published at least five days prior to the date set for hearing in a newspaper of general circulation within the city's jurisdiction. When the total operating budget, not including reserves, does not exceed \$10,000 per year or \$20,000 per biennial period, the proposed budget summary may be posted at the City Council's principal headquarters.

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

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

(D) Upon approval by City Council, the budget shall be filed with the Auditor of Public Accounts. The Auditor may review the budget for errors in mathematics, improper accounting and noncompliance with the Nebraska Budget Act or Neb. RS 13-518 to 13-522. If the Auditor detects such errors, he or she shall immediately notify the Council of such errors. The Council shall correct any such error as provided in § 35.32. Warrants for the payment of expenditures provided in the budget adopted under this section shall be valid notwithstanding any errors or noncompliance for which the Auditor has notified the Council.

(Neb. RS 13-506)

(E) When a levy increase has been authorized by vote of the electors, the adopted budget statement shall indicate the amount of the levy increase.

(Neb. RS 13-507)

(1977 Code, § 1-803)

§ 35.30 ADOPTED BUDGET STATEMENT; FILING; CERTIFICATION OF AMOUNT OF TAX.

(A) (1) After publication and hearing on the proposed budget statement and within the time prescribed by law, the City Council shall file with and certify to the levying board or boards on or before September 20 of each year or September 20 of the final year of a biennial period and file with the Auditor of Public Accounts a copy of the adopted budget statement which complies with Neb. RS 13-518 to 13-522, together with the amount of the tax required to fund the adopted budget, setting out separately:

(a) The amount to be levied for the payment of principal or interest on bonds issued by the City Council; and

(b) The amount to be levied for all other purposes.

(2) Proof of publication shall be attached to the statements.

(B) The City Council, in certifying the amount required, may make allowance for delinquent taxes not exceeding 5% of the amount required plus the actual percentage of delinquent taxes for the preceding tax year or biennial period and for the amount of estimated tax loss from any pending or anticipated litigation which involves taxation and in which tax collections have been or can be withheld or escrowed by court order. For purposes of this section, anticipated litigation shall be limited to the anticipation of an action being filed by a taxpayer who or which filed a similar action for the preceding year or biennial period which is still pending. Except for such allowances, the City Council shall not certify an amount of tax more than 1% greater or lesser than the amount determined under § 35.28.

(C) The City Council shall use the certified taxable values as provided by the County Assessor pursuant to Neb. RS 13-509 for the current year in setting or certifying the levy. The City Council may designate one of its members to perform any duty or responsibility required of the Council by this section.

(Neb. RS 13-508)

(1977 Code, § 1-804) (Ord. 96-1007M, passed 4-15-1996)

§ 35.31 APPROPRIATION BILL.

The City Council shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed "The Annual Appropriation Bill," in which are appropriated such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the city.

(Neb. RS 17-706) (1977 Code, § 1-806) (Ord. 96-1005M, passed 4-15-1996)

§ 35.32 REVISION OF BUDGET.

(A) (1) Unless otherwise provided by law, the City Council may propose to revise the previously adopted budget statement and shall conduct a public hearing on that proposal whenever during the current fiscal year it becomes apparent to the City Council that:

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

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

(c) The City Council has been notified by the Auditor of Public Accounts of a mathematical or accounting error or noncompliance with the Nebraska Budget Act.

(2) The public hearing requirement shall not apply to emergency expenditures pursuant to Neb. RS 81-829.51.

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

(1) The time and place of the hearing;

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

(3) A statement setting forth the nature of the unanticipated circumstances and, if the budget requirements are to be increased, the reasons why the previously adopted budget of expenditures cannot be reduced during the remainder of the current year to meet the need for additional money in that manner;

(4) A copy of the summary of the originally adopted budget previously published; and

(5) A copy of the summary of the proposed revised budget.

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

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

(E) Within 30 days after the adoption of the budget under § 35.29, the City Council may, or within 30 days after notification of an error by the Auditor of Public Accounts, the Council shall correct an adopted budget which contains a clerical, mathematical or accounting error which does not affect the total amount budgeted by more than 1% or increase the amount required from property taxes. No public hearing shall be required for such a correction. After correction, the City Council shall file a copy of the corrected budget with the County Clerk of the county or counties in which the City Council is located and with the Auditor of Public Accounts. The City Council may then issue warrants in payment for expenditures authorized by the budget.

(Neb. RS 13-511)

§ 35.33 PROPRIETARY FUNCTIONS; FISCAL YEAR; BUDGET STATEMENTS; FILING; HEARING; ADOPTION; RECONCILIATION.

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

PROPRIETARY FUNCTION. A water supply or distribution utility, a wastewater collection or treatment utility, an electric generation, transmission or distribution utility, a gas supply, transmission or distribution utility, an integrated solid waste management collection, disposal or handling utility, or a hospital or a nursing home owned by the city.

(Neb. RS 18-2803)

SUBSIDIZATION. The costs of operation of a proprietary function are regularly financed by appropriations from the city's General Fund in excess of the amount paid by the city to the proprietary function for actual service or services received.

(Neb. RS 18-2804)

(B) The City Council may establish a separate fiscal year for each proprietary function, except that any proprietary function which is subsidized by appropriations from the city's General Fund shall have the same fiscal year as the city.

(C) (1) At least 30 days prior to the start of the fiscal year of each proprietary function, a proposed proprietary budget statement shall be prepared in writing and filed with the City Clerk-Treasurer containing the following information:

(a) For the immediately preceding fiscal year, the revenue from all sources, the unencumbered cash balance at the beginning and end of the year, the amount received by taxation, and the amount of actual expenditure;

(b) For the current fiscal year, actual and estimated revenue from all sources separately stated as to each such source, the actual unencumbered cash balance available at the beginning of the year, the amount received from taxation and the amount of actual and estimated expenditure, whichever is applicable;

(c) For the immediately ensuing fiscal year, an estimate of revenue from all sources separately stated as to each such source, the actual or estimated unencumbered cash balance, whichever is applicable, to be available at the beginning of the year, the amounts proposed to be expended during the fiscal year, and the amount of cash reserve based on actual experience of prior years; and

(d) A uniform summary of the proposed budget statement which shall include a total of all funds maintained for the proprietary function.

(2) The statement shall contain the estimated cash reserve for each fiscal year and shall note whether or not the reserve is encumbered. The cash reserve projections shall be based upon the actual experience of prior years.

(3) Each proprietary budget statement shall be filed on forms prescribed and furnished by the Auditor of Public Accounts following consultation with representatives of such governing bodies as operate proprietary functions subject to the provisions of the Municipal Proprietary Function Act.

(Neb. RS 18-2805)

(D) (1) After a proposed proprietary budget statement is filed with the City Clerk-Treasurer, the

City Council shall conduct a public hearing on the statement. Notice of the time and place of the hearing, a summary of the proposed proprietary budget statement, and notice that the full proposed proprietary budget statement is available for public review with the City Clerk-Treasurer during normal business hours shall be published one time at least five days prior to the hearing in a newspaper of general circulation within the City Council's jurisdiction or by mailing to each resident within the City Council's jurisdiction.

(2) After the hearing, the proposed proprietary budget statement shall be adopted or amended and adopted as amended, and a written record shall be kept of the hearing. If the adopted proprietary budget statement reflects a change from the proposed proprietary statement presented at the hearing, a copy of the adopted proprietary budget statement shall be filed with the City Clerk-Treasurer within 20 days after its adoption and published in a newspaper of general circulation within the City Council's jurisdiction or by mailing to each resident within the City Council's jurisdiction.
(Neb. RS 18-2806)

(E) If the actual expenditures for a proprietary function exceed the estimated expenditures in the proprietary budget statement during its fiscal year, the City Council shall adopt a proprietary function reconciliation statement within 90 days after the end of the fiscal year which reflects any difference between the adopted proprietary budget statement for the previous fiscal year and the actual expenditures and revenue for that fiscal year. After the adoption of a proprietary function reconciliation statement, it shall be filed with the City Clerk-Treasurer and published in a newspaper of general circulation within the City Council's jurisdiction or by mailing to each resident within the City Council's jurisdiction. If the difference between the adopted proprietary budget for the previous fiscal year and the actual expenditures and revenues for that fiscal year is greater than 10%, the proprietary function reconciliation statement shall only be adopted following a public hearing.
(Neb. RS 18-2807)

(F) If the budget of a proprietary function is included in the city budget statement created pursuant to the Nebraska Budget Act, the Municipal Proprietary Function Act need not be followed for that proprietary function. Any income from a proprietary function which is transferred to the General Fund of the city shall be shown as a source of revenue in the city budget statement created pursuant to the Nebraska Budget Act.
(Neb. RS 18-2808)

§ 35.34 GENERAL FUND.

If the city has not decided to follow the all-purpose levy method of financing for the fiscal year, all money not specifically appropriated in the annual appropriation bill shall be deposited in and known as the General Fund.

§ 35.35 TRANSFER OF FUNDS.

(A) Whenever during the current fiscal year it becomes apparent to the City Council that due to unforeseen emergencies there is temporarily insufficient money in a particular fund to meet the

requirements of the adopted budget of expenditures for that fund, the Council may by a majority vote, unless otherwise provided by state law, transfer money from other funds to such fund.

(B) No expenditure during any fiscal year shall be made in excess of the amounts indicated in the adopted budget statement, except as authorized in § 35.32 or by state law.

(C) Any officer or officers of the City Council who obligate funds contrary to the provisions of this section shall be guilty of an offense.

(Neb. RS 13-510) Penalty, see § 10.99

TAX LEVIES

§ 35.50 PROPERTY TAX LEVY FOR GENERAL REVENUE PURPOSES.

(A) The city shall have power to levy taxes for general revenue purposes in any one year not to exceed \$0.35 on each \$100 upon the taxable value of all the taxable property in the city.

(B) The valuation of such property shall be ascertained from the books or assessment rolls of the County Assessor.

(Neb. RS 17-506)

§ 35.51 LEVIES FOR OTHER TAXES AND SPECIAL ASSESSMENTS.

The city shall have power to levy any other tax or special assessment authorized by law.

(Neb. RS 17-507)

§ 35.52 ALL-PURPOSE LEVY; ALLOCATION; ABANDONMENT; EXTRAORDINARY LEVIES.

(A) Notwithstanding provisions in the statutes of the state and this code to the contrary, for any fiscal year the City Council may decide to certify to the County Clerk for collection one all-purpose levy required to be raised by taxation for all city purposes instead of certifying a schedule of levies for specific purposes added together. Subject to the limits in § 35.53, the all-purpose levy shall not exceed an annual levy of \$1.05 on each \$100 upon the taxable valuation of all the taxable property in the city. Otherwise authorized extraordinary levies to service and pay bonded indebtedness of the city may be made by the city in addition to such all-purpose levy.

(Neb. RS 19-1309)

(B) If the method provided in division (A) above is followed in city financing, the city shall allocate the amount so raised to the several departments of the city in its annual budget and appropriation

ordinance, or in other legal manner, as the City Council deems wisest and best.
(Neb. RS 19-1310)

(C) If the city elects to follow the method provided in division (A) above, it shall be bound by that election during the ensuing fiscal year but may abandon such method in succeeding fiscal years.
(Neb. RS 19-1311)

(D) If it is necessary to certify the amount to county officers for collection, the same shall be certified as a single amount for General Fund purposes.
(Neb. RS 19-1312)
(1977 Code, §§ 1-807, 1-808, 1-810, 1-811)

§ 35.53 PROPERTY TAX LEVY; MAXIMUM; AUTHORITY TO EXCEED.

(A) Property tax levies for the support of the city for fiscal years beginning on or after July 1, 1998, shall be limited to the amounts set forth in this division (A), except as provided in division (C) below. The city may levy a maximum levy of \$0.45 per \$100 of taxable valuation of property subject to the levy plus an additional \$0.05 per \$100 of taxable valuation to provide financing for the city's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to Neb. RS 51-201, museum pursuant to Neb. RS 51-501, visiting community nurse, home health nurse or home health agency pursuant to Neb. RS 71-1637, or statue, memorial or monument pursuant to Neb. RS 80-202. Property tax levies for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against the city which require or obligate the city to pay that judgment, to the extent the judgment is not paid by liability insurance coverage of the city, for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport are not included in the levy limits established by this division (A). The limitations on tax levies provided in this division (A) are to include all other general or special levies provided by law. Notwithstanding other provisions of law, the only exceptions to the limits in this division (A) are those provided by or authorized by this section. Tax levies in excess of the limitations in this section shall be considered unauthorized levies under Neb. RS 77-1606 unless approved under division (C) below.
(Neb. RS 77-3442)

(B) (1) All city airport authorities established under the Cities Airport Authorities Act, community redevelopment authorities established under the Community Development Law, and off-street parking districts established under the Offstreet Parking District Act may be allocated property taxes as authorized by law which are authorized by the city and are counted in the municipal levy limit provided by division (A) above, except that such limitation shall not apply to property tax levies for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport. For off-street parking districts established under the Offstreet Parking District Act, the tax shall be counted in the allocation by the city proportionately, by dividing the total taxable valuation of the taxable

property within the district by the total taxable valuation of the taxable property within the city multiplied by the levy of the district. The City Council shall review and approve or disapprove the levy request of the political subdivisions subject to this division (B). The City Council may approve all or a portion of the levy request and may approve a levy request that would allow a levy greater than that permitted by law. The levy allocated by the city may be exceeded as provided in division (C) below.

(2) On or before August 1, all political subdivisions subject to city levy authority under this division (B) shall submit a preliminary request for levy allocation to the City Council. The preliminary request of the political subdivision shall be in the form of a resolution adopted by a majority vote of members present of the political subdivision's governing body. The failure of a political subdivision to make a preliminary request shall preclude that political subdivision from using procedures set forth in Neb. RS 77-3444 to exceed the final levy allocation as determined in this division (B).

(3) (a) The City Council shall:

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

2. Forward a copy of that resolution to the Chairperson of the governing body of each of its political subdivisions.

(b) No final levy allocation shall be changed after September 1 except by agreement between both the City Council and the governing body of the political subdivision whose final levy allocation is at issue.

(Neb. RS 77-3443)

(C) (1) The city may exceed the limits provided in division (A) above by an amount not to exceed a maximum levy approved by a majority of registered voters voting on the issue in a primary, general or special election at which the issue is placed before the registered voters. A vote to exceed the limits must be approved prior to October 10 of the fiscal year which is to be the first to exceed the limits.

(2) The City Council may call for the submission of the issue to the voters:

(a) By passing a resolution calling for exceeding the limits by a vote of at least two-thirds of the members of the City Council and delivering a copy of the resolution to the County Clerk or Election Commissioner of every county which contains all or part of the city; or

(b) Upon receipt of a petition by the County Clerk or Election Commissioner of every county containing all or part of the city requesting an election signed by at least 5% of the registered voters residing in the city.

(3) The resolution or petition shall include the amount of levy which would be imposed in excess of the limits provided in division (A) above and the duration of the excess levy authority. The excess levy authority shall not have a duration greater than five years. Any resolution or petition calling for a special election shall be filed with the County Clerk or Election Commissioner no later than 30 days prior to the date of the election, and the time of publication and providing a copy of the notice of election

required in Neb. RS 32-802 shall be no later than 20 days prior to the election.

(4) The County Clerk or Election Commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least 30 days after receipt of the resolution or petition. The election shall be held pursuant to the Election Act. For petitions filed with the County Clerk or Election Commissioner on or after May 1, 1998, the petition shall be in the form as provided in Neb. RS 32-628 through 32-631.

(5) Any excess levy authority approved under this division (C) shall terminate pursuant to its terms, on a vote of the City Council to terminate the authority to levy more than the limits, at the end of the fourth fiscal year following the first year in which the levy exceeded the limit, or as provided in division (C)(8) below, whichever is earliest.

(6) The City Council may pass no more than one resolution calling for an election pursuant to this division (C) during any one calendar year. Only one election may be held in any one calendar year pursuant to a petition initiated under this division (C). The ballot question may include any terms and conditions set forth in the resolution or petition and shall include the language specified in Neb. RS 77-3444.

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

(8) (a) The city may rescind or modify a previously approved excess levy authority prior to its expiration by a majority of registered voters voting on the issue in a primary, general or special election at which the issue is placed before the registered voters. A vote to rescind or modify must be approved prior to October 10 of the fiscal year for which it is to be effective.

(b) The City Council may call for the submission of the issue to the voters:

1. By passing a resolution calling for the rescission or modification by a vote of at least two-thirds of the members of the City Council and delivering a copy of the resolution to the County Clerk or Election Commissioner of every county which contains all or part of the city; or

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

(c) The resolution or petition shall include the amount and the duration of the previously approved excess levy authority and a statement that either the excess levy authority will be rescinded or the excess levy authority will be modified. If the excess levy authority will be modified, the amount and duration of the modification shall be stated. The modification shall not have a duration greater than five years. The County Clerk or Election Commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least 30 days after receipt of the resolution or petition, and the time of publication and providing a copy of the notice of election required in Neb. RS 32-802

shall be no later than 20 days prior to the election. The election shall be held pursuant to the Election Act.
(Neb. RS 77-3444)
(1977 Code, § 1-809)

§ 35.54 PROPERTY TAX; CERTIFICATION OF AMOUNT.

The City Council shall, at the time and in the manner provided by law, cause to be certified to the County Clerk the amount of tax to be levied upon the taxable value of all the taxable property of the city which the city requires for the purposes of the adopted budget statement for the ensuing year, including all special assessments and taxes assessed as otherwise provided. The County Clerk shall place the same on the property tax lists to be collected in the manner provided by law for the collection of county taxes in the county where the city is situated. In all sales for any delinquent taxes for municipal purposes, if there are other delinquent taxes due from the same person or a lien on the same property, the sale shall be for all the delinquent taxes. Such sales and all sales made under or by virtue of this section or the provision of law herein referred to shall be of the same validity and in all respects be deemed and treated as though such sales had been made for the delinquent county taxes exclusively.
(Neb. RS 17-702) (1977 Code, § 1-812)

§ 35.55 PROPERTY TAX LEVY AND REQUEST; AUTHORITY TO SET.

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

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

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

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

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

(C) Any resolution setting a tax request under this section shall be certified and forwarded to the County Clerk on or before October 13 of the year for which the tax request is to apply.

(D) Any tax levy which is not in compliance with this section and Neb. RS 77-1601 shall be construed as an unauthorized levy under Neb. RS 77-1606.
(Neb. RS 77-1601.02)

§ 35.56 MOTOR VEHICLE FEE.

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

LIMITS OF THE CITY. Includes the extraterritorial zoning jurisdiction of the city.

PERSON. Includes bodies corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, cooperatives and associations. **PERSON** does not include any federal, state or local government or any political subdivision thereof.

(B) Except as otherwise provided in division (D) below, the governing body of the city shall have power to require any individual whose primary residence or person who owns a place of business which is within the limits of the city and that owns and operates a motor vehicle within such limits to pay an annual motor vehicle fee and to require the payment of such fee upon the change of ownership of such vehicle. All such fees which may be provided for under this section shall be used exclusively for constructing, repairing, maintaining or improving streets, roads, alleys, public ways, or parts thereof or for the amortization of bonded indebtedness when created for such purposes.

(C) No motor vehicle fee shall be required under this section if:

(1) A vehicle is used or stored but temporarily in the city for a period of six months or less in a 12-month period;

(2) An individual does not have a primary residence or a person does not own a place of business within the limits of the city and does not own and operate a motor vehicle within the limits of the city; or

(3) An individual is a full-time student attending a postsecondary institution within the limits of the city and the motor vehicle's situs under the Motor Vehicle Certificate of Title Act is different from the place at which he or she is attending such institution.

(D) After December 31, 2012, no motor vehicle fee shall be required of any individual whose primary residence is or person who owns a place of business within the extraterritorial zoning jurisdiction of the city.

(E) The fee shall be paid to the County Treasurer of the county in which the city is located when the registration fees as provided in the Motor Vehicle Registration Act are paid. These fees shall be credited by the County Treasurer to the road fund of the city.

(Neb. RS 18-1214)

Statutory reference:

Motor Vehicle Registration Act, see Neb. RS 60-301

