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§ 1-101 TITLE OF CODE.

This codification of ordinances shall be designated as the City of Hartington Code of Ordinances, and may be so cited.

§ 1-102 INTERPRETATION.

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

§ 1-103 APPLICATION TO FUTURE ORDINANCES.

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

§ 1-104 CAPTIONS.

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

§ 1-105 DEFINITIONS.

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

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

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

CITY COUNCIL or CITY COUNCIL. The City Council of Hartington, Nebraska.

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

COUNTY. Cedar County, Nebraska.

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MAY. The act referred to is permissive and not mandatory.

MONTH. A calendar month.

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

OFFICER, OFFICE, EMPLOYEE, COMMISSION, or DEPARTMENT. An officer, office, employee, commission, or department of Hartington, Nebraska, unless the context clearly requires otherwise.

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

POLICE or POLICE OFFICER. Any law enforcement officer or deputy of the Cedar County Sheriff's Office.

POLICE CHIEF. The Cedar County Sheriff.

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

SHALL. The act referred to is mandatory, not merely permissive.

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

STATE. The State of Nebraska.

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

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

YEAR. A calendar year, unless otherwise expressed.  
***AMENDED February 26, 2018 – ORDINANCE # 851***

§ 1-106 RULES OF INTERPRETATION.

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

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(A) AND or OR. Either conjunction shall include the other as if written "and/or," if the sense requires it.

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

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

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

### § 1-107 SEVERABILITY.

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

### § 1-108 REFERENCE TO OTHER SECTIONS.

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

### § 1-109 REFERENCE TO OFFICES.

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

### § 1-110 ERRORS AND OMISSIONS.

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express the intent, the

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spelling shall be corrected and the word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

### § 1-111 REASONABLE TIME.

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

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

### § 1-112 ORDINANCES REPEALED.

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

### § 1-113 ORDINANCES UNAFFECTED.

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

- (A) Vacating or setting the boundaries of streets, alleys, or other public places;
- (B) Annexing or detaching territory;
- (C) Granting or accepting easements, plats, or dedication of land to public use;
- (D) Providing for the acquisition or conveyance of real or personal property;
- (E) Authorizing or directing public improvements to be made;
- (F) Levying taxes or special assessments;

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(G) Appropriating money;

(H) Granting franchises or special licenses; or

(I) Providing for the issuance of bonds or other instruments of indebtedness.

§ 1-114 REPEAL OR MODIFICATION OF ORDINANCE.

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

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

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

§ 1-115 SECTION HISTORIES; STATUTORY REFERENCES.

(A) A statutory cite included in the history indicates that the text of the section reads substantially the same as the statute.

*Example: (Neb. RS 17-100)*

(B) A statutory cite set forth as a "statutory reference" following the text of the section indicates that the reader should refer to that statute for further information.

*Example:*

*This municipality shall make available to any person for inspection or copying all public records, unless otherwise exempted by state law.*

**Statutory reference:**

*Inspection of public records, see Neb. RS 84-712 et seq.*

§ 1-116 SUPPLEMENTATION OF CODE OF ORDINANCES.

(A) Discretion. When preparing a supplement to this municipal code, the codifier (that is, the person, agency, or organization authorized to prepare the supplement) may make formal nonsubstantive changes in ordinances and parts of ordinances included in the supplement as necessary to embody them into a unified code.

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(B) Prohibition. In no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the code and not repealed by any ordinance.

**VIOLATIONS**

§ 1-201 GENERAL PENALTY.

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

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

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

***Statutory reference:***

*Authority to abate nuisances, see Neb. RS 18-1720 and 18-1722*

*Ordinance enforcement powers, see Neb. RS 17-505*



**CHAPTER 2 – CITY OFFICIALS**

**Elected City Officials: General Provisions**

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***ELECTED CITY OFFICIALS: GENERAL PROVISIONS***

§ 2-101 VACANCIES; EXCEPTIONS.

(A) Every elective office shall be vacant upon the happening of the following events before the officer's term has expired:

- (1) Resignation of officer;
- (2) Death of officer;
- (3) Removal of the officer from office;
- (4) Decision of the City Council declaring the office vacant;
- (5) Officer ceasing to be a resident of the City in which the duties of his or her office are to be exercised or for which he or she may have been elected;
- (6) Failure to elect at an election when there is no officer to continue in office until his or her successor is elected and qualified;
- (7) The candidate who received the highest number of votes is ineligible, disqualified, deceased, or for any other reason unable to assume the office for which he or she was a candidate;
- (8) Forfeiture of office as provided by law;
- (9) Conviction of a felony or of any public offense involving the violation of the oath of office of the incumbent; or
- (10) Elected officer assuming another elective office as provided under Nebraska State Law.  
(Neb. RS 32-560, 561)

(B) (1) Except as otherwise provided in this section, vacancies in City elected offices shall be filled by the Mayor and City Council for the balance of the unexpired term. Notice of a vacancy, except a vacancy resulting from death, 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 that 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 (3) public places in the City the office vacated and the length of the unexpired term.

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(2) The Mayor shall call a special meeting of the City Council or place the issue of filling the vacancy on the agenda at the next regular meeting, at which time the Mayor shall submit the name of a qualified registered voter to fill the vacancy for the balance of the unexpired term. The regular or special meeting shall occur upon the death of the incumbent or within four weeks after the meeting at which such notice of vacancy has been presented.

(3) The Council shall vote upon the nominee, and if a majority votes in favor of the nominee, the vacancy shall be declared filled. If the nominee fails to receive a majority of the votes, the nomination shall be rejected and the Mayor shall, at the next regular or special meeting, submit the name of another qualified registered voter to fill the vacancy. If the subsequent nominee fails to receive a majority of the votes, the Mayor shall continue at that meeting to submit the names of qualified registered voters in nomination and the Council shall continue to vote upon those nominations at such meeting until the vacancy is filled. The Mayor shall cast his or her vote for or against the nominee in the case of a tie vote of the Council. All Council members present shall cast a ballot for or against the nominee. Any member of the Council who has been appointed to fill a vacancy on the Council shall have the same rights elected Council members.

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

(D) 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 those vacancies.

**Statutory reference:**

*Additional and similar provisions, see Neb. RS 32-567 through 32-572, as amended by LB 1067 (2006).*

§ 2-102 RESTRICTIONS ON OTHER EMPLOYMENT OR ELECTIVE OFFICE.

(A) The Mayor and members of the City Council shall hold no other elective or appointive office or employment with the City, unless the offices have been merged as provided for under § 2-402 of this Code.

**Statutory reference:**

*Merger of offices or employment, see Neb. RS 17-108.02*

*For guidance on whether elective offices may be held simultaneously, see Neb. RS 32-603*

**Cross reference:**

Merger of City offices, §2-402

**MAYOR**

§ 2-201 SELECTION AND DUTIES.

The Mayor shall be elected at the municipal election and shall serve a four (4)-year term of office. The Mayor shall be a resident and registered voter of the City. The Mayor of the City shall have the general and immediate control over all property and officials, whether elected or appointed, of the City. The Mayor shall preside at all meetings of the City Council and may vote when his vote shall be decisive and the Council is equally divided on any pending matter, legislation, or transaction, and the Mayor shall, for the purpose of that vote, be deemed to be a member of the Council. The Mayor's signature must appear on all resolutions which have been passed and warrants for the payment of money when ordered by the City Council. The Mayor shall have the power to veto or sign any ordinance passed by the City Council. Any ordinance vetoed by the Mayor may be passed over the veto by a vote of two-thirds (2/3) of the members of the City Council. If the Mayor neglects or refuses to sign any ordinance, the same shall become a law without his signature. The Mayor shall from time to time communicate to the Council such information and recommendations as, in his opinion, may improve the City. The Mayor may require at reasonable intervals any City official to exhibit accounts and make reports to the Council on any subject pertaining to the official's office. The Mayor shall have the power to remit fines or pardon any offense arising under the ordinances of the City and may remove at any time an appointed police officer of the City. The Mayor's territorial authority shall extend over all places within five (5) miles of the corporate limits of the City for the enforcement of any health ordinance, and one-half (1/2) mile in all matters vested in the Mayor except taxation. He shall also have such other duties as the City Council may by resolution confer upon the Mayor or in any other matters which the laws of the state repose in the Mayor.

***Statutory reference:***

*Authorizing and similar provisions, see Neb. RS 17-107, 17-110 through 17-117, & Neb. RS 32-533*

§ 2-202 VACANCY.

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

***CITY COUNCIL***

§ 2-301 SELECTION AND DUTIES.

The City Council shall consist of not less than four (4) members. The members of the City Council shall be elected and serve for a four (4)-year term. The City Council shall be the legislative division of the City government and shall perform those duties and have those powers as may be authorized by law. The City Council shall maintain the peace, regulate business, protect the public health and safety, and assess such taxes and fees as are necessary and appropriate in the exercise of these functions.

***Statutory reference:***

*Additional provisions, see Neb. RS 32-533.*

§ 2-302 COUNCIL ORGANIZATION.

City Council members of this City shall take office and commence their duties on the first regular meeting in December following their election. The newly elected Council members who have qualified as prescribed by law, together with the members of the City Council holding over, shall assemble in a regular meeting and perfect the reorganization of the City Council as herein provided, and all appointive offices in which the terms of incumbents are expired shall be filled by appointment. After the meeting has been called to order, the City Clerk shall report to the City Council the names of all City Council Members-Elect who have qualified for their respective offices, and this report shall be made simultaneously with the minutes of the meeting preceding the roll call. If City Council Members are elected by ward, each ward of the City shall be represented by at least two (2) Council Members. No person shall be eligible who is not at the time of election an actual resident of the ward for which the person is qualified and a registered voter. If any City Council member moves from the ward from which the Council member was elected, his office shall thereby become vacant.

***Statutory reference:***

*Council member qualifications, see Neb. RS 17-104.*

§ 2-303 PRESIDENT; ACTING PRESIDENT.

The City Council shall elect one of its own body each year who shall be styled the President of the Council and who shall preside at all meetings of the City Council in the absence of the Mayor. In the absence of the Mayor and the President of the Council, the City Council shall elect one of its own body to occupy that place temporarily, who shall be styled Acting President of the Council. Both the President of the Council and the Acting President of the Council, when occupying the position of the Mayor, shall have the same privileges as the other members of the City Council, and all acts of the President of the Council, or Acting President of the Council, while so acting, shall be as binding

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upon the City Council and upon the City as if done by the elected Mayor. (Neb. RS 17-148)

§ 2-304 STANDING COMMITTEES.

At the organizational meeting of the City Council, the Mayor shall appoint members of such standing committees as the City Council may by ordinance, or resolution, create. The membership of the standing committees may be changed at any time by the Mayor. The membership of the committees shall be appointed or reappointed each year unless otherwise provided by the City Council.

§ 2-305 VACANCY DUE TO UNEXCUSED ABSENCES.

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

(B) 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.

***APPOINTED CITY OFFICIALS: GENERAL PROVISIONS***

§ 2-401 APPOINTMENT; REMOVAL.

(A) The Mayor, with the consent of the City Council, may appoint such officers as shall be required by ordinance or otherwise required by law. The Mayor, by and with the consent of the City Council, shall appoint such a number of regular police officers as may be necessary. The City Council may establish and provide for the appointment of members of a law enforcement reserve force as provided by law.

(B) All police officers and other appointed officials may be removed at any time by the Mayor.

***Statutory reference:***

*Appointments generally, see Neb. RS 17-107*

§ 2-402 MERGER OF OFFICES.

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

§ 2-403 CITY CLERK.

(A) The City Clerk shall attend the meetings of the City Council and keep a correct journal of the proceedings of that body. She shall keep a record of all outstanding bonds against the City and when any bonds are sold, purchased, paid, or canceled, the record shall show the fact. The City Clerk shall make, at the end of the fiscal year, a report of the business of the City transacted through her office for the year. That record shall describe particularly the bonds issued and sold during the year, and the terms of the sale with each, and every item, and expense thereof. She shall file all official bonds after the same shall have been properly executed and approved. She shall make the proper certificate of passage which shall be attached to original copies of all bond ordinances hereafter enacted by the City Council.

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

(C) The City Clerk 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 those officers of the City as may be entitled to the use of the same, but only upon their leaving a receipt therefore. She shall keep all the records of her office, including a record of all licenses issued by her in a blank book with a proper index. She shall include as part of 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. She shall endorse the date and hour of filing upon every paper or document so filed in her office. All such filings made by her shall be properly docketed. Included in her records shall be all standard codes, amendments thereto, and other documents incorporated by reference, and arranged in a manner convenient for reference. She shall keep an accurate and complete account of the appropriation of the several funds, draw, sign, and attest all warrants ordered for the payment of money on the particular fund from which the same is payable. At the end of each month, she shall then make a report of the amounts appropriated to the various funds and the amount of the warrants drawn thereon. Nothing herein shall be construed to prevent any citizen, official, or other person from examining any public records at all reasonable times.

(D) (1) The City Clerk shall deliver all warrants, ordinances, and resolutions under her charge to the Mayor for his signature. She shall also deliver to officers, employees, and committees all resolutions and communications which are directed at those officers, employees, or committees. With the seal of the City, she shall duly attest the Mayor's signature to all ordinances, deeds, and papers required to be attested to when ordered to do so by the City Council. The City Clerk shall keep, and preserve the proceedings of the City Council in the Record books, The Records shall contain a record of all the miscellaneous, and informal doings of the City Council. The Record shall also contain the formal proceedings of the City Council in the matter of passing, approving, publishing, posting, and certifying of ordinances. After the formalities for the legal enactment of an ordinance have been completed, the City Clerk shall record, and include in the Record her ordinance minutes on printed forms. In all cases hereafter where single ordinances are introduced for the consideration of the City Council, the City Clerk shall cause to be introduced an appropriate resolution incorporating by reference the Ordinance Record into the Record.

(2) Within thirty (30) days after any meeting of the City Council, the City Clerk shall prepare and publish the official proceedings of the City Council in a legal newspaper of general circulation in the City, and which was duly designated as such by the City Council. This publication shall set forth a statement of the proceedings thereof



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and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to those job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position. The charge for this publication shall not exceed the rates provided by the statutes of the state and shall be charged against the general fund. (Neb. RS 19-1102, 1103 and 23-122)

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

(Neb. RS 19-1102)

(E) The City Clerk may charge a reasonable fee for certified copies of any record in her office as set by resolution of the City Council. She shall destroy municipal records under the direction of the state Records Board pursuant to Nebraska State law, provided that the City Council shall not have the authority to destroy the minutes of the City Clerk, the permanent ordinances, and resolution books, or any other records classified as permanent by the State Records Board.

***Statutory reference:***

*Additional duties, see Neb. RS 17-605*

*Records Management Act, see Neb. RS 84-1201 through 84-1227*

### § 2-404 CITY TREASURER.

(A) The City Treasurer shall be the custodian of all money belonging to the City. She shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. She shall give every person paying money into the treasury a receipt therefore, specifying the date of payment and on what account paid. She shall also file copies of those receipts with her monthly reports. The City Treasurer shall, at the end of every month, and as often as may be required, render an account to the City Council, under oath, showing the state of the treasury at the date of the account and the balance of money in the treasury. She shall also accompany these accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by her, which warrants, with any and all vouchers held by her, shall be filed with her account in the City Clerk's office. The City Treasurer shall keep all money belonging to the City separate and distinct from her own money. She shall invest and collect all money owned by or owed to the City as directed by the City Council. She shall maintain depository evidence that all City money is, in the name of the City, in a solvent and going financial institution of a type authorized by state law for deposit of municipal funds. (Neb. RS 17-606)

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

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

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

(Neb. RS 77-2209)

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

(C) (1) The City Treasurer shall prepare and publish annually within 60 days following the first (1st) day of August of each year, a statement of the receipts and expenditures by funds of the City for the preceding fiscal year. (Neb. RS 19-1101)

(2) Publication shall be made in one legal newspaper of general circulation in the City. If no legal newspaper is published in the City, then the publication shall be made in one legal newspaper published or of general circulation within the county in which the City is located. Not more than the legal rate under State law shall be charged and paid for such publication. (Neb. RS 19-1103, Neb. RS 33-141 for legal rate)

(D) The City Treasurer shall cancel all bonds, coupons, warrants, and other evidences of debt against the City, whenever paid by her, by writing or stamping on the face thereof, "Paid by the City Treasurer," with the date of payment written or stamped thereon. 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.

***Statutory reference:***

*Free examination of public records, see Neb. RS 84-712*

*Statutory duties, see Neb. RS 17-606 through 17-609*

### § 2-405 CITY ATTORNEY.

The City Attorney is the City's legal advisor, and as such shall commence and defend all civil suits on behalf of the City. When requested by the City Council, he shall attend meetings of the City Council and shall advise any City official in all matters of law in which the interests of the City may be involved. He shall draft such ordinances, bonds, contracts, and other writings as may be required in the administration of the affairs of the

City. He shall examine all bonds, contracts, and documents on which the City Council will be required to act. He shall also examine, when requested to do so by the City Council, the ordinance records and advise and assist the City Clerk as much as may be necessary to the end that each procedural step will be taken in the passage of each ordinance to ensure that they will be valid. The City Council shall have the right to compensate the City Attorney for legal services on such terms as the City Council and the City Attorney may agree, and to employ any additional legal assistance as may be necessary out of the funds of the City.

***Statutory reference:***

*Authorizing and similar provisions, see Neb. RS 17-610*

§ 2-406 CITY UTILITIES SUPERINTENDENT.

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

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

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

(2) Water Department. The Utilities Superintendent shall have general supervision and control over the City water system and shall be primarily responsible for its economic operation and prudent management. Included in the water system shall be all facilities, machinery, and appliances used in connection with producing and distributing water to inhabitants of the City. All actions, decisions, and procedures of the Utilities Superintendent shall be subject to the general directives and control of the City Council. The Utilities Superintendent shall have the general control and supervisory authority over all employees of the water system which the City Council may from time to time hire to operate and maintain the system. He shall make a detailed report to the City Council at least once every six (6) months of the condition of the water system, of all mains, pipes, hydrants, reservoirs, and machinery, and such improvements, repairs,

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and extensions thereof as he may think proper. The report shall show the amount of receipts and expenditures on account thereof for the preceding six (6) months. No money shall be expended for improvements, repairs, or extensions of the waterworks system except upon the recommendation of the Superintendent. He shall perform those additional duties as may be prescribed by the City Council. (Neb. RS 17-541)

***Statutory reference:***

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

*Utilities Superintendent required, see Neb. RS 17-541*

### § 2-407 SPECIAL ENGINEER.

The City Council may employ a Special Engineer to make any particular estimate, survey, or other work. The Special Engineer shall make a record of the minutes of his surveys and all other work done for the City. He 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 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 City, and make all surveys, estimates, and calculations necessary for the establishment of grades, bridges, or culverts and for the building, constructing, or repairing of any public improvement of the City. All records of the special engineer shall be public records which shall belong to the City, and shall be turned over to his successor. The Special Engineer shall, when directed by the City Council, inspect all works of public improvement, and if found to be properly done, shall accept the same, and report his acceptance to the City Council. He shall estimate the cost of all proposed City utilities and public improvements, together with any extensions thereof which the City Council may propose to construct or improve. (Neb RS 17-405, 17-568, 17-919)

### § 2-408 ZONING ADMINISTRATOR.

The Mayor may appoint a Zoning Administrator, whose responsibility it shall be to enforce the City's zoning regulations and to issue building permits. His duties shall be as outlined in the City Zoning ordinance.

### § 2-409 POLICE CHIEF.

The City Police Chief shall direct the police work of the City and shall be responsible for the maintenance of law and order. He shall file the necessary complaints in cases arising out of violations of City ordinances, and shall make all necessary reports required by the City ordinances, or the laws of the state. (Neb. RS 17-107 and 17-121)

§ 2-410 CITY POLICE OFFICERS.

The City police, whether regular or special, shall have the power to arrest all offenders against the laws of the State of Nebraska, or the Ordinances of the City of Hartington, by day or by night, and keep the offenders in the City jail, or some other place to prevent their escape until trial can be held before the proper official of the state, or the City. They shall have full power and authority to call on any person whenever necessary to assist them in performing public duties, and failure, neglect, or refusal to render that assistance shall be deemed a misdemeanor punishable upon conviction by a fine. Every City police officer is expected to be conversant and knowledgeable with the City and state laws, and no law enforcement official shall have any interest in any establishment having a liquor license. City police officers shall have the duty to file those complaints and reports as may be required by the City ordinances, and the laws of the state. Any City police officer who shall willfully fail, neglect, or refuse to make an arrest, or who purposely and willfully fails to make a complaint after an arrest is made, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined. It shall be unlawful for the City Council to retain any City police officer in that position after he shall have been duly convicted of the willful violation of any law of the country, the state, or any ordinance of the City, except minor traffic violations. The City Council shall from time to time provide the City police with such badges, uniforms, equipment, and transportation as may be essential in the performance of their official duties. Any City police officer who shall lose or destroy the same shall be required to pay the replacement costs, and in the event that any member shall leave the force, he shall immediately deliver his badge and all items provided by the City to the Police Chief. (Neb. RS 17-118 and 17-124)

## **CHAPTER 3 – FINANCE AND REVENUE**

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- 3-102: Contracts and Purchases; Bidding and Other Requirements.**
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**GENERAL PROVISIONS**

§ 3-101 PUBLIC FUNDS DEFINED.

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

**PUBLIC FUNDS.** All money, including non-tax money, used in the operation and functions of governing bodies. If a City has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the county, City, or village from a licensed lottery operator shall be considered PUBLIC FUNDS, and PUBLIC FUNDS shall not include amounts awarded as prizes. (Neb. RS 13-503(7))

**AMENDED March 9, 2009 – ORDINANCE # 801**

§ 3-102 CONTRACTS AND PURCHASES; BIDDING AND OTHER REQUIREMENTS.

(A) Except as provided in Neb. RS 18-412.01 for a contract with a public power district to operate, renew, replace, or add to the electric distribution, transmission, or generation system of the City, no contract for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of the enlargement or improvement is assessed to the property, costing over \$30,000.00 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 \$30,000.00 for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of the enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the City Engineer and submitted to the City Council. In advertising for bids as provided in divisions (C) and (D) of this section, the City Council may publish the amount of the estimate.

(C) Advertisements for bids shall be required for any contract costing over \$30,000.00 entered into:

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

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

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(D) The advertisement provided for in division (C) of this section shall be published at least seven (7) days prior to the bid closing in a legal newspaper published in or of general circulation in the City, and if there is no legal newspaper published in or of general circulation in the City, then in some newspaper of general circulation published in the county in which the City is located. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of or serious injury or damage to life, health, or property, estimates of costs and advertising for bids may be waived in an emergency ordinance if adopted by a three-fourths (3/4) vote of the City Council.

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

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

***Statutory reference:***

*see Neb. RS 17-568.01*

(G) 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; or

(2) When the contract is negotiated directly with a sheltered workshop.

***Statutory reference:***

*see Neb. RS 17-568.02*

(H) (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 competitive bidding if the price for the property has been established by the federal General Services Administration or the Department of Administrative Services.

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



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

**AMENDED March 9, 2009 – ORDINANCE # 801**

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

(Neb. RS 17-568.01 and 568.02; 18-1756; 48-1503; 81-145 through 81-162)

**Statutory reference:**

*Requirements for public lettings, see Neb. RS 73-101 et seq.*

*Authority to adopt emergency ordinance, Neb. RS 17-613*

§ 3-103 ANNUAL AUDIT; FINANCIAL STATEMENTS.

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

(B) The City Council shall provide and file with the City Clerk not later than August 1 of each year financial statements showing its actual and budgeted figures for the most recently completed fiscal year. (Neb. RS 13-606)

**Statutory reference:**

*State municipal auditing regulations; similar provisions, see Neb. RS 19-2901 through 19-2909*

§ 3-104 CLAIMS; WARRANTS.

(A) All claims against the City shall be presented to the City Council in writing with a full account of the items, and no claim or demand shall be audited or allowed unless presented as provided for in this section. No costs shall be recovered against the

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City in any action brought against it for an unliquidated claim which has not been presented to the City Council to be audited, nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed, with the interest due. No order or warrant shall be drawn in excess of eighty-five (85 %) percent of the current levy for the purpose for which it is drawn unless there shall be sufficient money in the City treasury for the appropriate fund against which it is to be drawn, provided that in the event there exist obligated funds from the federal or state government for the general purpose of that warrant, then that warrant may be drawn in excess of eighty-five (85 %) percent, but not more than one-hundred (100 %) percent of the current levy for the stated purpose.

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

***Statutory reference:***

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

### § 3-105 EXPENDITURES.

(A) No City official shall have the power to appropriate, issue, or draw any order or warrant on the City treasury for money, unless the same has been appropriated or ordered by ordinance.

(B) No expenditure for any improvement to be paid for out of the general fund of the City shall exceed in any one year the amount provided for that improvement in the adopted budget statement. (Neb. RS 17-708)

### § 3-106 COLLECTION OF SPECIAL ASSESSMENTS; PROCEDURE.

(A) The City 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 City 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 those special assessments are assessed or to the lending institution or other party responsible for paying those special assessments. Failure to receive the notice shall not relieve the taxpayer from any liability to pay the special assessments and any interest or penalties accrued thereon.

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

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(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)

### § 3-107 SPECIAL ASSESSMENT FUND.

All money received on special tax assessments shall be held by the City Treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, 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)

### § 3-108 SINKING FUNDS.

(A) The City Council, subject to the limitations set forth herein, shall have the power to levy a tax not to exceed that prescribed by state law upon the taxable value of all taxable property within the City for a term not to exceed that prescribed by state law in addition to the amount of tax which may be annually levied for the purposes of the adopted budget statement of the City, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension, original equipment, or repair, not including maintenance, of the approved uses as authorized by state law. (Neb. RS 19-1302)

(B) To initiate the sinking fund, the City Council shall declare its purpose by resolution to submit to the qualified electors of the City the proposition to provide the improvement at the next general City election. The resolution shall set forth a clear description of the improvement, the estimated cost, the amount of the annual levy, over a definite period of years (not exceeding ten (10) years) required to pay that 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 proposition shall be published in its entirety three (3) times on successive weeks before the day of the election in a legal newspaper of general circulation in the City. The sinking fund may be established after the election if a majority or more of the legal votes were in favor of the establishment of the fund. The City Council may then proceed to establish the fund in conformity with the provisions of the proposition and applicable state law. The funds, received by the City Treasurer shall, as they accumulate, be immediately invested with the written approval of the City Council in the manner provided by state law. No sinking fund so established shall be used for any purpose or purposes contrary to the purpose as it appeared on the ballot unless the City Council is authorized to do so by sixty (60 %) percent of the qualified electors of the City voting at a general election favoring such a change in the use of the sinking fund.

***Statutory reference:***

*Investment of funds, see Neb. RS 77-2337 and 77-2339*

*Similar provisions, see Neb. RS 19-1301 through 19-1304*

§ 3-109 DEPOSIT OF FUNDS.

(A) The City 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 her as City Treasurer. These deposits shall be subject to all regulations imposed by law or adopted by the City Council. The fact that a stockholder, director, or other officer of the bank, capital stock financial institution, or qualifying mutual financial institution is also serving as Mayor, as a member of the City Council, or as any other officer of the City shall not disqualify the bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for the City funds.

(B) The City Council shall require from all banks, capital stock financial institutions, or qualifying mutual financial institutions 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, security given as provided in the Public Funds Deposit Security Act to secure the payment of all such deposits and accretions. The City Council shall approve this bond or giving of security. The City Treasurer shall not be liable for any loss of any money sustained by reason of the failure of any such depository so designated and approved.

(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 that corporation, and for deposits so insured, no other surety bond or other security shall be required.

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

***Statutory reference:***

*Deposits of public funds regulated, see Neb. RS 77-2362 through 77-2364*  
*Public Funds Deposit Security Act, see Neb. RS 77-2386 through 77-2397*

§ 3-110 CERTIFICATES OF DEPOSIT; TIME DEPOSITS; CONDITIONS.

The City Treasurer may, upon resolution of the Mayor and City Council authorizing the same, purchase certificates of deposit from and make time deposits in any bank, capital stock financial institution, or qualifying mutual financial institution in this state to the extent that those 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

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bond or by security. (Neb. RS 17-720; 16-714 through 16-716; Neb. RS 77-2366; Neb. RS 77-2365.01)

### § 3-111 INVESTMENT OF FUNDS.

Whenever a 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 the 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 certificates of deposit, in time deposits, and in any securities in which the state investment officer is authorized by law and as provided in the authorized investment guidelines of the Nebraska Investment Council in effect on the date the investment is made. (Neb. RS 77-2341(1))

***Statutory reference:***

*Investment in bonds, see Neb. RS 17-608 and 17-609*

*Investment in cooperative credit associations, see Neb. RS 21-1316.01*

### § 3-112 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.

***Statutory reference:***

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

*Funding and refunding bonds, see Neb. RS 10-606 through 10-614*

*Uniform registration and cancellation of bonds, see Neb. RS 10-201 through 10-209*

***ANNUAL BUDGET***

§ 3-201 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)

§ 3-202 BUDGET PROCEDURES.

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

§ 3-203 EXPENDITURES PRIOR TO ADOPTION OF BUDGET.

(A) 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 herein, 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. These expenditures shall be charged against the appropriations for each individual fund or purpose as provided in the budget when adopted. (Neb. RS 13-509.02)

(B) The restriction on expenditures in division (A) of this section 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 funding 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 13-509.01)

§ 3-204 PROPOSED BUDGET STATEMENT; CONTENTS; AVAILABILITY; CORRECTION.

(A) The City Council shall annually 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. A proposed budget statement shall contain the following information, except as provided by state law:

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(1) For the immediately preceding fiscal year, 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; the amount received by taxation of personal and real property; and the amount of actual expenditures;

(2) For the current fiscal year, 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; 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 and shall note whether or not the reserve is encumbered. These cash reserve projections shall be based upon the actual experience of prior years. The cash reserve shall not exceed fifty (50%) percent of the total budget adopted exclusive of capital outlay items;

(3) For the immediately following fiscal year, 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; the amounts proposed to be expended during the year; and the amount of cash reserve, based on actual experience of prior years, which cash reserve shall not exceed fifty (50%) per cent 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 for the purpose of paying the principal or interest on bonds issued by the City Council and 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.

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(D) The estimated expenditures plus the required cash reserve for the ensuing fiscal year less all estimated and actual unencumbered balances at the beginning of the year and less the estimated income from all sources, 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 balances, shall equal the estimated expenditures, plus the necessary required cash reserve, for the following year. (Neb. RS 13-505) (Neb. RS 13-504)

### § 3-205 PROPOSED BUDGET STATEMENT; HEARING; ADOPTION; CERTIFICATION OF TAX AMOUNT.

(A) The City Council shall each year 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 (5) days prior to the date set for the hearing in a newspaper of general circulation within the City.

(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:

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

(2) 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 those changes.

(D) 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) (Neb. RS 13-506)

### § 3-206 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



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levying board on or before September 20 of each year and file with the Auditor of Public Accounts, a copy of the adopted budget statement, 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 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 which is still pending.

Except for such allowances, the City Council shall not certify an amount of tax more than one (1 %) percent greater or lesser than the amount determined in the proposed budget statement.

(C) The City Council may designate one of its members to perform any duty or responsibility required of that body by this section. (Neb. RS 13-508)

§ 3-207 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 those sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the City. (Neb. RS 17-706)

§ 3-208 REVISION OF BUDGET.

(A) 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:

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

(2) The budget adopted violated Nebraska law such that the revenue of the current fiscal year for any fund thereof will be insufficient, additional expenses will be

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necessarily incurred, or there is a need to reduce the budget requirements to comply with Nebraska law; or

(3) 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.

(B) Notice of the time and place of the hearing shall be published at least five (5) days prior to the date set for hearing in a newspaper of general circulation within the City. 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 hearings of this type.

(D) Upon conclusion of the public hearing on the proposed revised budget and approval of the proposed revised budget by the City Council, the City 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.

(E) Within thirty (30) days after the adoption of the budget, a City Council may, or within thirty (30) days after notification of an error by the Auditor of Public Accounts, a City 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 one (1 %) percent 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.

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(Neb. RS 13-511) (Neb. RS 13-518 through 13-522, under Neb. RS 13-506)

§ 3-209 PROPRIETARY FUNCTIONS; FISCAL YEAR; BUDGET STATEMENTS; FILING; HEARING; ADOPTION; RECONCILIATION.

(A) (1) Pursuant to the Municipal Proprietary Function Act, the City Council may prepare a proprietary budget statement for its proprietary functions separate and apart from its municipal budget statement prepared pursuant to the Nebraska Budget Act.

(2) For the purpose of this section, the following definition 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.

(B) (1) 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.

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

**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)

(C) (1) If the City does not include its proprietary functions in its municipal budget statement, a proposed proprietary statement shall be prepared in writing on forms provided by the State Auditor and filed with the City Clerk, at least thirty (30) days prior to the start of the fiscal year of each proprietary function, containing the following information:

(a) For the immediate two (2) prior fiscal years, 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;

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(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.

(D) (1) After the proposed proprietary budget statement is filed with the City Clerk, 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 during normal business hours shall be published at least five (5) days prior to the hearing in a newspaper of general circulation within the City Council's jurisdiction or by mailing 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 report 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 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.

(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 ninety (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 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 ten (10%) percent, the proprietary function reconciliation statement shall only be adopted following a public hearing.

(F) 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 municipal budget statement created pursuant to the Nebraska Budget Act. (Neb. RS 18-2808) (Neb. RS 18-2803(5))(Neb. RS 18-2806)(Neb. RS 18-2807)(Neb. RS 18-2805)

**TAX LEVIES**

**§ 3-301 ALL-PURPOSE LEVY; ALLOCATION; ABANDONMENT; EXTRAORDINARY LEVIES.**

(A) 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 municipal purposes instead of certifying a schedule of levies for specific purposes added together. Subject to the limits in Neb. RS 77-3442, the all-purpose levy shall not exceed the annual levy specified in Neb. RS 19-1309 to be levied upon the taxable valuation of all taxable property in the City.

(B) (1) An amount of the all-purpose levy shall be certified as a single amount for general fund purposes.

(2) If the all-purpose levy method is followed in City financing, the City Council shall allocate the amount raised to the several departments of the City.

(C) The City shall be bound by its election to follow the all-purpose levy method during the following fiscal year but may abandon this method in succeeding fiscal years.

(D) Otherwise authorized extraordinary levies to service and pay bonded indebtedness of the City may be made by the City in addition to the all-purpose levy. (Neb. RS 19-1309 through 19-1312)

**§ 3-302 PROPERTY TAX LEVY; MAXIMUM; AUTHORITY TO EXCEED.**

(A) Property tax levies for the support of the City shall be limited to the amounts set forth in this division (A), except as provided in division (C). 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; museum; visiting community nurse, home health nurse, or home health agency; or statue, memorial, or monument. 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).

(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

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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). This 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).

(2) On or before August 1, all political subdivisions subject to municipal 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 exceeding the final levy allocation.

(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.

(C) (1) The City may exceed the limits provided in division (A) 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:

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(a) By passing a resolution calling for exceeding the limits by a vote of at least two-thirds (2/3) 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 five (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) and the duration of the excess levy authority. The excess levy authority shall not have a duration greater than five (5) years. Any resolution or petition calling for a special election shall be filed with the County Clerk or Election Commissioner no later than thirty (30) days prior to the date of the election, and the time of publication and providing a copy of the notice of election shall be no later than twenty (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 thirty (30) days after receipt of the resolution or petition. The election shall be held pursuant to the Election Act.

(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), 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), 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.

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(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 (2/3) 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 request 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 five (5 %) percent 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 that modification shall be stated. The duration shall not be greater than five (5) 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 thirty (30) days after receipt of the resolution or petition, and the time of publication and providing a copy of the notice of election shall be no later than twenty (20) days prior to the election. The petition shall be in the form as provided in Neb. RS 32-628 through 32-631. The election shall be held pursuant to the Election Act.

***Statutory reference:***

*Similar provisions, see Neb. RS 77-3442 through 77-3444 and Neb. RS 77-1606 required in Neb. RS 32-802*

### § 3-303 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. Subject to Neb. RS 77-3442, the maximum amount of tax which may be so certified, assessed, and collected shall not require a tax levy in excess of the amounts specified in Neb. RS 17-702.

### § 3-304 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 unless the City Council passes by a majority vote a resolution or ordinance setting the tax



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request at a different amount. Such resolution or ordinance shall only be passed after a special public hearing called for such purpose is held and after notice is published in a newspaper of general circulation in the area of the municipality at least five (5) 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 shall be construed as an unauthorized levy.

(Neb. RS 77-1601.02) Neb. RS 77-1601 under Neb. RS 77-1606.

§ 3-305 MOTOR VEHICLE TAX.

The City Council may levy a tax on all motor vehicles owned or used in the City, which tax 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 taxes shall be credited by the County Treasurer to the road fund of the City. These funds shall be used by the City for constructing, resurfacing, maintaining, or improving streets, roads, alleys, public ways, or parts thereof, or for the amortization of bonded indebtedness when created for those purposes.

(Neb. RS 18-1214)

***Statutory reference:***

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

§ 3-306 CITY SALES TAX; DISTRIBUTION OF PROCEEDS.

(A) The City of Hartington imposes a sales and use tax of one percent (1%) upon the same transactions within the City on which the State of Nebraska is authorized to impose a tax pursuant to the Nebraska Revenue Act, and the administration of such sales and use taxes shall be by the Nebraska Tax Commissioner pursuant to state law.

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(B) The proceeds of the sales and use taxes imposed by this Ordinance shall be used as follows: thirty-five percent (35%) shall be used to fund the Economic Development Plan of the City of Hartington as approved by the voters; sixty percent (60%) shall be used to fund community infrastructure within the City of Hartington; and five percent (5%) shall be used to provide for the relief of bonds.

***Statutory reference:***

*Nebraska Revenue Act, see Neb. RS §§77-2701 et seq.*

**COMPENSATION**

§ 3-401 COMPENSATION OF CITY OFFICERS.

Compensation of any elected official of the City shall not be increased or diminished during the term for which she shall have been elected except where there has been a merger of offices. The compensation of the members of the City Council, a Board, or Commission, may be increased or diminished at the beginning of the full term of any member whether or not the terms of one or more members commence and end at different times. No elected officer may be rehired at a greater salary if she resigns and is rehired during the unexpired term. She may be rehired at a greater salary after the term of office during which she resigned expires. All salaries shall be set by ordinance of the City Council and available for public inspection at the office of the City Clerk.

**Statutory reference:**

*Neb. RS 17-108.02*

*Neb. RS 17-209.02*

*Neb. RS 17-612*

§ 3-402 CONFLICT OF INTEREST.

No officer of the City is permitted to benefit from any contract to which the City is a party when the consideration for said contract is an amount in excess of ten thousand (\$10,000.00) dollars in any one year, and no contract may be divided for the purpose of evading the requirements of this Section. Any such interest in a contract shall void the obligation on the part of the City. The receiving of deposits, cashing of checks, and buying and selling of the warrants and bonds of the City shall not be considered a contract under this Section. No officer shall receive any pay or compensation from the City other than his salary. The City Council shall not pay or appropriate any money or other valuable thing to pay a person who is not an officer for the performance of any act, service, or duty which shall come within the property scope of the duties of any officer of the City. The ownership of less than one (1%) per cent of the outstanding stock of any class in a corporation shall not constitute an interest within the meaning of this Section.

**Statutory reference:**

*Neb. RS 17-611, Neb. RS 18-301 through 18-312*

## **CHAPTER 4 – ADMINISTRATION**

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**Bonds and Oaths; Corporate Seal**

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**4-403: Official Corporate Seal.**

***ELECTIONS***

§ 4-101 ELECTIONS 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 Nebraska 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)

§ 4-102 NOTICE.

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

***Statutory reference:***

*Notice of election requirements, see Neb. RS 32-802*

§ 4-103 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. (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)

***Statutory reference:***

*Definition of elector, see Neb. RS 32-110*

§ 4-104 SPECIAL ELECTIONS.

(A) (1) Except as provided in Neb. RS 77-3444, any issue to be submitted to the registered voters at a special election by the City shall be certified by the City Clerk to the County Clerk at least fifty (50) days prior to the election. A special election may be

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held by mail as provided in Neb. RS 32-952 through 32-959. Any other special election shall be subject to division (B) of this section.

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

(3) After the County Clerk has received the certification of the issue to be submitted, he or she shall be responsible for all matters relating to the submission of the issue to the registered voters, except that the City Clerk shall be responsible for the publication or posting of any required special notice of the submission of the issue other than the notice required to be given of the statewide election issues. The 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 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 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)

### § 4-105 ELECTION OF OFFICERS; CERTIFICATIONS REQUIRED.

No later than January 5 of each even-numbered year, the City Council shall certify to the County Clerk, on forms prescribed by that official, 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. (Neb. RS 32-404)

### § 4-106 OFFICERS; TERMS; QUALIFICATIONS.

(A) Elected officers of the City shall be nominated at the statewide primary election and elected at the statewide general election. All elected officers of the City shall serve for terms of four (4) years or until their successors are elected and qualified. (Neb. RS 32-533)

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(B) The Mayor and Council members shall be residents and registered voters of the City.

(C) The members of the City Council shall be elected from the City by wards, as defined in § 4-113 of this code, unless the registered voters of the City vote to elect its Council members at large. Each ward of the City shall have two (2) Council members elected in the manner provided in the Election Act. The term of office shall begin on the first regular meeting of the City Council in December following the statewide general election. No person shall be eligible for the office of Council member who is not at the time of the election an actual resident of the ward for which he or she is elected and a registered voter. Each nominee for Council member shall be a resident and qualified elector of the ward for which he is a candidate, and only residents of that ward may sign the candidate's nomination petitions. (Neb. RS 32-533)

***Statutory reference:***

*Change from or to ward or at-large election, see Neb. RS 32-554*

### § 4-107 PARTISAN BALLOT; WHEN ALLOWED; REQUIREMENTS.

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

### § 4-108 FILING FEE.

(A) Except as provided in divisions (C) or (D) of this section, a filing fee shall be paid to the City Treasurer by or on behalf of each candidate prior to filing for office. The filing fee shall be a sum equal to one percent (1 %) of the annual salary the candidate will receive if he or she is elected and qualifies for the office for which he or she files as a candidate. The fee shall be placed in the general fund of the City. No candidate filing forms shall be filed until the proper receipt showing payment of the filing fee is presented to the filing officer.

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



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(C) No filing fee shall be required on any candidate filing for an office in which a per diem is paid rather than a salary or for which there is a salary of less than five hundred dollars (\$500.00) per year.

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

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

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. Available resources shall include 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.

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

### § 4-109 PRIMARY ELECTION; NUMBER OF CANDIDATES FILING.

If the names of candidates properly filed for nomination at the primary election for officers of the City do not exceed two (2) candidates for each position to be filled, any such candidates shall be declared nominated and their names shall not appear on any primary election ballots. (Neb. RS 32-811)

### § 4-110 PETITION, WRITE-IN, AND OTHER CANDIDATES FOR GENERAL ELECTION BALLOT; PROCEDURES.

(A) (1) Any registered voter who was not a candidate in the primary election 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.

## City of Hartington Code of Ordinances

(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 this section or files as a write-in candidate as prescribed in Neb. RS 32-615. (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. Petitions shall be signed by registered voters residing in the ward in which the officer is to be elected, if candidates are chosen by ward, or residing in the City, if candidates are not chosen by ward, and shall be filed with the filing officer in the same manner as provided for candidate filing forms in Neb. RS 32-607. Petition signers and circulators shall conform to the requirements of Neb. RS 32-629 and 32-630. No petition for nomination shall be filed unless there is attached thereto a receipt showing payment of the filing fee required pursuant to Neb. RS 32-608. The petitions shall be filed by September 1 in the year of the general election. (Neb. RS 32-617)

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

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

### § 4-111 PREPARATION OF BALLOT.

When more than one person becomes a candidate by filing, petition, or write-in procedures for the same position in the primary, the County Clerk, in preparing the official ballot for the general election shall place thereon the names of the persons who received the greatest number of votes in the primary, but in no event shall the names on the general election ballot be more than twice the number of vacancies to be filled at the general election. (Neb. RS 17-107.02)

### § 4-112 TIE VOTES.

In the case of a tie vote of any of the candidates in either the primary or general election, the County Clerk shall notify such candidates to appear at his office on a given day and hour to determine the same by lot before the canvassing board, and the certificate of

## City of Hartington Code of Ordinances

nomination or election shall be given accordingly. Notice to appear shall be given by certified mail. (Neb. RS 17-107.02)

### § 4-113 WARDS.

The City of Hartington shall be and is hereby divided into two (2) wards as follows:

#### FIRST WARD

The First Ward shall consist of all territory in said City lying and situated north of the center line of Hoese Street from its intersection with west corporate limits on the west to the center line of Robinson Avenue on the east and west of the center line of Robinson Avenue from its intersection with the center line of Hoese Street on the south to its intersection with the north corporate limits on the north and all territory in said City lying and situated north of the center line of Center Street from its intersection with the center line of Robinson Avenue on the west to the east corporate limits of the City.

#### SECOND WARD

The Second Ward shall consist of all territory in said City lying and situated south of the center line of Hoese Street from its intersection with west corporate limits on the west to the center line of Robinson Avenue on the east and west of the center line of Robinson Avenue from its intersection with the center line of Hoese Street on the north to its intersection with the south corporate limits on the south and all territory in said City lying and situated south of the center line of Center Street from its intersection with the center line of Robinson Avenue on the west to the west corporate limits of the City.  
(Neb. RS 17-102)

### § 4-114 INABILITY TO ASSUME OFFICE

In any general election where the person who received the highest number of votes is ineligible, disqualified, deceased, or for any other reason is unable to assume the office for which he was a candidate and the electorate had reasonable notice of such disability at the time of the election, the candidate in such election who received the next highest number of votes shall be declared elected and shall be entitled to the certificate of election: Provided, that any candidate so declared elected received not less than thirty-five percent (35%) of the total number of votes cast for such office in the election. If any of the qualifications of this section are not met by the candidate to be declared elected or reasonable notice of the winner's ineligibility is not available to the voters, a vacancy in such office shall be declared to exist at the time of commencement of the term and shall be filled as prescribed by law. (Neb. RS 32-537 (7) +(8))

§ 4-115 EXIT POLLS PROHIBITED.

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

***MEETINGS***

§ 4-201 DEFINITIONS.

For the purpose of this subchapter, 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.

**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.

§ 4-202 OPEN TO PUBLIC; NOTICE; AGENDA.

(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. (Neb. RS 84-1408)

(B) All meetings of public bodies shall be held at City Hall unless the notice required by this section designates some other public building or specified place.

(C) 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. If a public body has not designated a method, the Mayor shall designate the method. 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 City Clerk during normal business hours.

## City of Hartington Code of Ordinances

(D) Except for items of an emergency nature, the agenda shall not be altered later than twenty-four (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.

### § 4-203 NOTICE TO NEWS MEDIA.

The City Clerk, secretary, or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

### § 4-204 COUNCIL MEETINGS; WHERE; WHEN; QUORUM.

(A) Regular meetings of the City Council shall be held monthly on such dates and at such times as the City Council shall determine in the City Hall Conference Room.

(B) (1) A majority of all the members elected to the Council shall constitute a quorum for the transaction of any business, but a fewer number may adjourn from time to time and compel the attendance of absent members.

(2) Unless a greater vote is required by law, an affirmative vote of at least one-half (1/2) of the elected members shall be required for the transaction of any business. (Neb. RS 17-105)

(C) At the time appointed for a regular meeting of the City Council, if a quorum is present, the Council shall be called to order by the Mayor, if present, or if absent, by the President of the Council.

**AMENDED February 26, 2018 – ORDINANCE # 852**

### § 4-205 SPECIAL MEETINGS.

(A) The Mayor or any three (3) Council members may call special meetings of the City Council, the object of which shall be submitted to the Council in writing. The call and object, as well as the disposition thereof, shall be entered upon the journal by the City Clerk. (Neb. RS 17-106)

(B) On filing the call for a special meeting, the City Clerk shall notify the Mayor and Council members of the special meeting, stating the time and its purpose.

§ 4-206 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 § 4-205 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.

§ 4-207 ATTENDANCE OTHER THAN IN PERSON.

(A) 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.

(B) A member of the City Council may appear by telephone or other telecommunications equipment with the approval of the Mayor and the other members of the Council, provided that the Council member meets all attendance and other requirements of his office under this Code.

§ 4-208 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 that 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 that person has not requested a public meeting.

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(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) of this section.

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

### § 4-209 PROHIBITED ACTS; EXEMPT EVENTS.

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

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



§ 4-210 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 § 4-208, 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) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

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

(D) No public body shall, for the purpose of circumventing the provisions of 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 the Open Meetings Act are met.

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

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

§ 4-211 ORDER OF BUSINESS.

Promptly at the hour set by law on the day of each regular meeting, the members of the City Council, the Mayor, the City Clerk, 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.

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### § 4-212 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 17-616 and 84-1413)

***Statutory reference:***

*Voting procedure generally, see Neb. RS 17-105 and 17-616*

### § 4-213 PARLIAMENTARY PROCEDURE.

The Mayor shall preserve order during meetings of the City Council and shall decide all questions of order, subject to an appeal to the Council. In all cases in which provisions are not made by these rules, *Robert's Rules of Order* is the authority by which the Council shall decide all procedural disputes that may arise.

### § 4-214 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. The minutes shall also include a record of the manner and time by which the advance publicized notice was given and a statement of how the availability of an agenda of the then-known subjects was communicated.

(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 at the office of the City Clerk during normal business hours.

(C) In all cases where a motion or resolution is entered on the minutes, the name of the member of the Council making the motion or resolution shall be entered also. After each vote, the "yeas" and "nays" shall be taken and entered in the minutes.

(D) Minutes shall be written and available for inspection within ten (10) working days or prior to the next convened meeting, whichever occurs earlier, except that the City may have an additional ten (10) working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency. (Neb. RS 84-1413)

§ 4-215 CHANGE IN OFFICE.

(A) The Mayor and 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) The newly elected members of the Council and those continuing in office shall convene immediately after the prior Council adjourns and proceed to organize for the next year. The Mayor shall call the meeting to order. The Clerk shall report to the Council the names of all Council members-elect who have qualified for their respective offices. The Council shall examine the credentials of its members and any other elective officers of the City to see that each has been duly and properly elected and to see that such oaths and bonds as are required have been given. The Clerk's report shall be spread upon the minutes of the meeting preceding the roll call.

(C) After ascertaining that all Council members and officers are duly qualified and after the Clerk has called the roll, the Council shall elect a President of the Council. The Mayor shall nominate his candidates for appointive offices in which the terms of incumbents are expired and call for a vote on approval of the candidates. The Mayor shall then proceed with the regular order of business.

***ORDINANCES, RESOLUTIONS, AND MOTIONS***

§ 4-301 GRANT OF POWER.

The City Council may make all ordinances, 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 and commerce. (Neb. RS 17-505)

§ 4-302 INTRODUCTION OF ORDINANCES.

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

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

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

§ 4-303 PROCEDURE FOR RESOLUTIONS AND MOTIONS.

Resolutions and motions shall be introduced in one of the methods prescribed for the introduction of ordinances. After their introduction, they shall be fully and distinctly read by title one time in the presence and hearing of a majority of the members elected to the City Council. 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. A majority vote of all elected City Council Members present at the meeting shall be required to pass any resolution or motion. The vote on any resolution or motion shall be by roll call vote.

§ 4-304 ORDINANCES; STYLE, TITLE.

(A) Style. The style of all municipal ordinances shall be: "Be it ordained by the Mayor and Council of the City of Hartington, Nebraska:...."

(B) Title. No ordinance shall contain a subject which is not clearly expressed in the title. (Neb. RS 17-613)

***Statutory reference:***

*Additional requirements, see Neb. RS 17-614*

§ 4-305 READING AND PASSAGE OF ORDINANCES, RESOLUTIONS, ORDERS, BYLAWS.

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

(Neb. RS 17-614)

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

§ 4-306 PUBLICATION OR POSTING.

All ordinances of a general nature shall, before they take effect, be published one time, within fifteen (15) days after they are passed in some newspaper published in the City.

**Statutory reference:**

*Additional provisions, see Neb. RS 18-131*

*Emergency ordinance, see Neb. RS 17-613*

§ 4-307 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 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)

**Statutory reference:**

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

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§ 4-308 EFFECTIVE DATE; EMERGENCY ORDINANCES.

(A) Except as set forth in division (B) of this section, 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 fifteen days after the passage of the ordinance.

(B) In the case of riot, infectious or contagious diseases, or other impending danger, failure of a public utility, or any other emergency requiring its immediate operation, an ordinance shall take effect upon the proclamation of the Mayor and the posting thereof in at least three (3) of the most public places in the City. The emergency ordinance shall recite the emergency, be passed by a three-fourths (3/4) vote of the City Council, and be entered of record on the City Clerk's minutes. (Neb. RS 19-3701; Neb. RS 17-613)

§ 4-309 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)

***BONDS AND OATHS; CORPORATE SEAL***

§ 4-401 BONDS; FORM.

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

***Statutory reference:***

*Bonds generally and similar provisions, see Neb. RS 11-103 through 11-118*

§ 4-402 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. (Neb. RS 11-101)

§ 4-403 OFFICIAL CORPORATE SEAL.

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



**CHAPTER 5 - DEPARTMENTS, BOARDS, AND COMMISSIONS**

**Standing Committees**

**5-101: Standing Committees; General Provisions.**

**Boards and Commissions**

**5-201: Library Board.**

**5-202: Planning Commission.**

**5-203: Board of Adjustment.**

**5-204: Board of Health.**

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**Fire Department**

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**City Auditorium**

**5-1001: Ownership of Auditorium.**

**5-1002: Rentals.**

**City Campground**

**5-1101: Ownership of Campground.**

**5-1102: Rentals Rates.**

***STANDING COMMITTEES***

§ 5-101 STANDING COMMITTEES; GENERAL PROVISIONS.

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

**BOARDS AND COMMISSIONS**

§ 5-201 LIBRARY BOARD.

(A) (1) The Library Board shall consist of at least five (5) members who shall be appointed by the Mayor, by and with the approval of the City Council. The members shall be residents of the City who shall serve terms of four (4) years. Neither the Mayor nor any member of the City Council shall be a member of the Library Board. In the event of a vacancy by resignation, removal or otherwise, the Mayor shall appoint a successor to 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.

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

(B) (1) The members of the Library Board shall elect from their number a chairperson, 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.

(2) No member of the Board shall serve in the capacity of both the chairperson 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 City Clerk where they shall be available for public inspection at any reasonable time.

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

**Statutory reference:**

*Authority; regulations, see Neb. RS 51-202, 51-204, 51-211*

**Cross-reference:**

Library provisions, including powers of Library Board, §§ 5- 601 et. seq.

§ 5-202 PLANNING COMMISSION.

(A) (1) The Planning Commission shall consist of nine (9) members who shall represent the different professions or occupations in the City and shall be appointed by the Mayor, by and with the approval of the City Council. One of the members shall be a resident of the area over which the City is authorized to exercise extraterritorial zoning and subdivision regulation. The term of each member shall be three (3) years, except that three (3) members of the first Commission shall serve for terms of one year, three (3) for terms of two (2) years, and three (3) for terms of three (3) years. All members shall hold office until their successors are appointed. Any member may, after a public hearing before the City Council, be removed by the Mayor, with the consent of a majority vote of

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the members elected to the City Council, for inefficiency, neglect of duty or malfeasance in office, or other good and sufficient cause. In the event of a vacancy by resignation, removal or otherwise, the Mayor shall appoint a successor to fill the vacancy for the unexpired term. All regular members of the Commission shall serve without compensation and shall hold no other City office except when appointed to serve on the Board of Adjustment.

(2) All members of the Commission may be required, in the discretion of the City Council, to give bond in a sum set by resolution of the Council, and conditioned upon the faithful performance of their duties.

(B) (1) 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 City Clerk where they shall be available for public inspection during office hours.

(2) The Commission shall be funded by the City Council from time to time out of the general fund. The expenditures of the Commission 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 those amounts.

(3) A number of Commissioners equal to a majority of the number of regular members appointed to the Commission shall constitute a quorum for the transaction of any business. The Commission shall hold at least one regular meeting in each calendar quarter, except the City Council may require the Commission to meet more frequently and the chairperson of the Commission may call for a meeting when necessary to deal with business pending before the Commission. Special meetings may also be held upon the call of any three (3) members of the Commission.

(4) 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 City, including any areas outside its boundaries which, in the Commission's judgment, bear relation to the planning of the City.

(5) The Commission may, with the consent of the City Council, in its own name (a) make and enter into contracts with public or private bodies, (b) receive contributions, bequests, gifts, or grant funds from public or private sources, (c) expend the funds appropriated to it by the City, (d) employ agents and employees, and (e) acquire, hold, and dispose of property. The commission may on its own authority make arrangements consistent with its program, conduct or sponsor special studies or planning work for any public body or appropriate agency, receive grants, remuneration, or reimbursement for such studies or work, and at its public hearings, summon witnesses,

administer oaths, and compel the giving of testimony.

(6) All actions by the Commission shall be subject to the review and supervision of the Mayor and City Council. The Commission shall make its recommendations to the City Council so that they are received by the City Council within sixty (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 those reports and performing those other duties as the City Council may, from time to time, designate.

(C) The Mayor, with the approval of a majority vote of the elected members of the City Council, shall appoint one (1) alternate member to the Commission. The alternate member shall serve without compensation and shall hold no other City office. The term of the alternate member shall be three (3) years, and she shall hold office until her successor is appointed and approved. The alternate member may be removed from office in the same manner as a regular member. If the alternate member position becomes vacant other than through the expiration of the term, the vacancy shall be filled for the unexpired portion of the term by the Mayor with the approval of a majority vote of the elected members of the City Council. The alternate member may attend any meeting and may serve as a voting and participating member of the Commission at any time when less than the full number of regular Commission members is present and capable of voting.

***Statutory reference:***

*General provisions; Planning Commissions regulated, see Neb. RS 19-924 through 19-929*

*Serving on Board of Adjustments, Neb. RS 19-908*

§ 5-203 BOARD OF ADJUSTMENT.

(A) The Mayor shall appoint by and with the approval of the City Council, a Board of Adjustment which shall consist of five (5) regular members plus one (1) additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason. Each member shall be appointed for a term of three (3) years and removable for cause by City Council upon written charges and after a public hearing. In the event of a vacancy by resignation, removal or otherwise, the Mayor shall appoint a successor to fill the vacancy for the unexpired term. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by that member shall also result in his immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment. Neither the Mayor nor any member of the City Council shall serve as a member of the Board of Adjustment.

(B) The members of the Board shall serve without compensation and may be required, in the discretion of the City Council, to give a bond in a sum set by resolution of

the City Council and conditioned upon the faithful performance of their duties. The Board shall elect from its membership a chairperson and secretary. No member of the Board of Adjustment shall serve in the capacity of both chairperson and secretary of the Board.

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

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

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

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

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

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

(F) (1) No such variance shall be authorized by the Board unless it finds that:

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

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

(c) The authorization of the 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

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

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

(G) In exercising the powers granted in this section, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, or may make such order, requirement, decision, or determination as ought to be made, and shall have all powers of the officer from whom the appeal is taken. The concurring vote of four (4) 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.

(H) Appeals from a decision by the Board may be presented by a verified petition to the district court.

***Statutory reference:***

*Zoning regulations, Neb. RS 19-901 through 19-914*



§ 5-204 BOARD OF HEALTH.

(A) A Board of Health shall consist of four (4) members: The Mayor, who shall serve as chairperson, the President of the City Council, and two other members appointed by the Mayor with the consent of 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.

(B) The members of the Board of Health shall serve without compensation and, except for the Mayor, President of the Council, shall serve a one (1) year term of office, unless reappointed. The Board shall reorganize at the first meeting each year after the annual appointments are made.

(C) The President of the Council, as secretary of the Board, shall keep full and correct minutes and records of all meetings and file the same with the City Clerk 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 two (2) 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 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 and enforce all laws of the state and ordinances of the City relating to nuisances or to matters of sanitation of the City. The Board shall also have control of hospitals, dispensaries, places for treatment of sick, and matters relating to the same under such restrictions and provisions as may be provided by ordinance of the City.

(E) The Board of Health shall regularly inspect such premises and businesses as the City Council may direct. All members of the Board shall be responsible for making such reports and performing such other duties as the City Council may, from time to time, designate.

***Statutory reference:***

*Authority, see Neb. RS 17-121*

**Cross-reference:**

Health and safety regulations, §§7-101 et. seq.

***AMENDED January 22, 2018 – ORDINANCE #850***

§ 5-205 BOARD OF PARK COMMISSIONERS.

(A) The Mayor shall appoint with the approval of the City Council the Board of Park Commissioners. The Board shall consist of not less than three (3) members, who shall be residents of the City. The members of the Board shall serve a one year term of office unless reappointed. The Board shall serve without compensation and may be

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required, in the discretion of the City Council, to give a bond in a sum set by resolution of the City Council, and conditioned upon the faithful performance of their duties.

(B) At the time of the Board's first meeting, the Board shall organize by selecting from their number a chairperson and secretary. It shall be the duty of the secretary to keep the full and correct minutes and records of all meetings, and to file the same with the City Clerk where they shall be available for public inspection at any reasonable time. A majority of the board members shall constitute a quorum for the transaction of business. The Board shall meet at such times as the City Council may designate. Special meetings may be held upon the call of the chairman, or any two (2) of the Board members.

(C) It shall be the duty of the Board to take immediate charge of all parks, swimming pools and recreational facilities belonging to the City. The Board shall establish appropriate rules and regulations for the management, use, and operation of the same. All employees of the City doing work in or for the City parks, swimming pool and recreational facilities shall be under the supervision and direction of the Board. All actions of the Board shall be subject to the review and control of the City Council. The Board shall be responsible for making such reports and performing such other duties as the City Council may, from time to time, designate. No member of the City Council shall serve as a member of the Board of Park Commissioners while serving a term of office as a member of the City Council. No member of the Park Commission shall serve in the capacity of both the chairman and secretary of the Board.

### § 5-206 TREE BOARD

(A) There is hereby created and established a City Tree Board for the City of Hartington, Nebraska, which shall consist of three (3) members, who shall be residents of the City, and shall be appointed by the Mayor with the approval of the City Council.

(B) The term of the three (3) persons to be appointed by the Mayor shall be four (4) years, except that the term of two (2) of the members appointed to the first Board shall be for only three (3) years and the term of the remaining member of the first Board shall be for four (4) years. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed by the Mayor to finish the term. Any or all members can be reappointed in back to back terms.

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

(D) It shall be the responsibility of the Tree Board to study, investigate, counsel and develop and/or update annually, and administer written plans (annual and long range) for the care, replacement, maintenance, and removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the City Council and upon their acceptance and approval shall constitute the official Comprehensive City Tree Plan for the City of Hartington, Nebraska. The Tree Board,

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when requested by the City Council, shall consider, investigate, make finding report and recommend upon any special matter or question relating to trees.

(E) The Tree Board shall choose its own chairperson and secretary, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

### § 5-207 CEMETERY BOARD

(A) The Mayor shall appoint the Cemetery Board with the approval of the City Council which shall consist of four (4) members who are residents of the City and who shall serve without compensation for a term of three (3) years. Two (2) members shall be appointed each year and may be required in the discretion of the City Council, to give a bond in a sum set by resolution of the City Council, and conditioned upon the faithful performance of their duties. The Board shall organize by selecting from its membership a chairperson and secretary. The secretary shall keep the full and correct minutes and records of all meetings and file the same with the City Clerk where they shall be available for public inspection at any reasonable time. A majority of the Board members shall constitute a quorum for the purpose of doing business.

(B) The Board shall meet at such times as the City Council may designate. Special meetings may be held upon the call of the chairman or any three (3) members of the Board. The Board shall have the general care, management, and supervision of the City Cemetery with the power and authority to limit and regulate the number of cemetery lots that may be owned by the same person; to prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots; and to prohibit any diverse or improper use thereof; Provided, no religious test shall be made as to the ownership of lots, the burial therein, and the ornamentation of graves. The Board shall pass rules and regulations for the proper use of the Cemetery and prescribe penalties and fines for violations thereof. The Board shall use all revenue received from the sale of lots, gifts, or by devise for the care, management and administration of the Cemetery. All actions of the Board shall be subject to the review and supervision of the City Council and it shall be responsible for making such reports and performing such additional duties as the City Council may designate. No member of the City Council shall serve as a member of the Board while serving a term of office as a member of the City Council. No member of the Cemetery Board shall hold more than one Cemetery Board office.

***Statutory Reference:***

*Neb. RS 12-401 through 12-403*

***FIRE DEPARTMENT***

§ 5-301 OPERATION AND FUNDING.

The City, in cooperation with the Rural Fire Board, operates the City Fire Department through the City Fire Chief and volunteer firefighters. The City Council, for the purpose of defraying the cost of the management, maintenance, and improving the Fire Department, may each year levy a tax not exceeding the maximum limits prescribed by state law on the taxable value of all taxable property within the City. The revenue from the tax shall be known as the Fire Department Fund. The Fund shall be at all times in the possession of the City Treasurer.

***Statutory reference:***

*Authority to create; operation, see Neb. RS 17-147*

*Fire station as public building, see Neb. RS 17-953*

*Taxing authority, see Neb. RS 17-718*

§ 5-302 FIRE CHIEF.

(A) The City Fire Chief shall be elected by the members of the Fire Department. He shall enforce all laws and ordinances covering the prevention of fires; the storage and use of explosives and flammable substances; the installation of fire alarm systems; the maintenance of fire extinguishing equipment; the regulation of fire escapes; and the inspection of all premises for fire hazards and dangers requiring adequate fire escapes. He shall within two (2) days investigate the cause, origin, and circumstances of fires arising within his jurisdiction. He shall, on or before the first day in April and October of each year, cause the secretary to file with the City Clerk, and the Clerk of the District Court a certified copy of the rolls of all members in good standing in order to obtain the exemptions provided by law. The Fire Chief, or his assistant in charge of operations at a fire may command the services of any person present at any fire in extinguishing the same or in the removal, and protection of property. Failure to obey such an order shall be a misdemeanor punishable by a fine. The Fire Chief shall have the right to enter at all reasonable hours into buildings, and upon all premises within his jurisdiction for the purpose of examining the same for fire hazards, and related dangers.

***Statutory reference:***

*Neb. RS 17-505 and 35-102*

(B) The Fire Chief shall manage the Fire Department, and it shall be his 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.

§ 5-303 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. The Fire Chief shall appoint no more than twenty-five (25) members for each Fire Department company (engine and hose) subject to the review and approval of the City Council. All vacancies shall be filled in this manner.

(B) All members of the Fire Department shall be subject to those rules and regulations, and shall perform those duties, as may be prescribed or required of them by the Fire Chief or the City Council.

(C) Members of the Fire Department may hold meetings and engage in social activities with the approval of the City Council.

(D) Members of the Fire Department, before they are entitled to workers' compensation benefits, shall be recommended by the Chief of the fire department to the City Council and upon confirmation shall be deemed employees of the City. Members of such 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. The City Council may compensate or reimburse any member of the Fire Department for expenses incurred in carrying out his duties in an amount set by resolution.

(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 City's 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 this policy shall terminate as to any individual who ceases to be an active volunteer member of the Fire Department of the City.

(F) When a volunteer firefighter is called to testify as a witness in his/her official capacity, while testifying as witnesses in that capacity alone he/she shall not be deemed employees of the City and may be compensated by witness fee, attendance fee, or mileage fee as allowed by Nebraska law.

***Statutory reference:***

*General regulations, see Neb. RS 35-101 through 35-103*

*Life insurance required, see Neb. RS 35-108*

*Witness fees prohibited, see Neb. RS 33-139.01*

§ 5-304 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, a record of all fires, and shall make a full report of these records to the City Clerk 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, he 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.

§ 5-305 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.

§ 5-306 DISTANT FIRES.

(A) Upon the permission of the Fire Chief, 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.

(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 Chief of the Fire Department 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.

§ 5-307 PRESERVATION OF PROPERTY.

Any member of the City Fire Department shall have the power during the time of a fire to cause the removal of any private or public property whenever it shall become necessary to do so for the preservation of such property from fire, to prevent the spreading of fire, or to protect adjoining property. The Fire Chief may direct the volunteer firefighters to remove any building, structure, or fence for the purpose of checking the progress of any fire, and the official in charge of the fire fighting effort shall have the power to blow up, or cause to be blown up, with powder or otherwise, any building or erection during the progress of a fire for the purpose of extinguishing or checking the same.

§ 5-308 INSPECTIONS.

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, 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.

§ 5-309 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 premise where a violation has occurred. Notice may be made personally or by delivering a copy to the premise and affixing it to the door of the main entrance of the premise. 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 premise or building. The owner, occupant, or manager may, within five (5) days after the order by the Chief of the Fire Department or his agent, appeal the order to 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 (5) days nor more than ten (10) days from the time when the request was filed in writing with the City Clerk. 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 the Fire Chief and the owner, occupant, or manager making the appeal.

§ 5-310 POWER OF ARREST.

The City Fire Chief shall have the power, during the time of a fire and for a period of thirty-six (36) hours after its extinguishment, to arrest any suspected arsonist, or other person hindering or resisting the fire fighting effort, or any person who conducts himself or herself in a noisy or disorderly manner. The members of the Fire Department 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. 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.

§ 5-311 FIRE INVESTIGATION.

It shall be the duty of the Fire Chief to investigate or cause to be investigated the cause, origin, and circumstances of every fire occurring in the City in which property has been destroyed or damaged. All fires of unknown origin shall be reported, and the Fire Chief 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 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 Fire Chief shall immediately notify the State Fire Marshal and shall within one week of the occurrence of the fire furnish him or her with a 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.

***Statutory reference:***

*Investigation and report required, see Neb. RS 81-506*



**RESCUE SQUAD**

§ 5-401 OPERATION AND FUNDING.

The City, in cooperation with the Rural Fire Board, operates the Rescue Squad. The City Council may apply property taxes for the purpose of defraying the cost of the management, maintenance, and improving the Rescue Squad in the same manner as for the City Fire Department.

***Statutory reference:***

*Authority to create; operation, see Neb. RS 17-147*

§ 5-402 MEMBERSHIP.

(A) The Rescue Squad 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) All members of the Rescue Squad must be certified by Nebraska Law and approved by the City Council.

(C) Members of the Rescue Squad may hold meetings and engage in social activities with the approval of the City Council.

(D) Members of the Rescue Squad, upon confirmation, shall be deemed employees of the City. Members of such Rescue Squad may be removed by a majority vote of the City Council and thereafter shall not be considered employees of the City. The City Council may compensate or reimburse any member of the Rescue Squad for expenses incurred in carrying out her duties in an amount set by resolution.

(E) The City Council shall purchase and maintain in force a policy of group term life insurance to age sixty-five (65) covering the lives of all of the City's active rescue personnel, except that when any such person serves more than one City or rural fire protection district, the policy shall be purchased by the first City or district 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 sixty-five (65). The coverage of this policy shall terminate as to any individual who ceases to be an active volunteer member of the Rescue Squad of the City.

(F) When a Rescue Squad member is called to testify as a witness in his/her official capacity, while testifying as a witness in that capacity alone, he/she shall not be deemed an employee of the City and may be compensated by witness fee, attendance fee, or mileage fee as allowed by Nebraska law.

***POLICE DEPARTMENT***

§ 5-501 DUTIES.

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. The Chief of Police shall, subject to the direction of the Mayor, have control and management of all matters relating to the Police Department, its officers and members, and shall have the custody and control of all property and books belonging to the Department. The Chief shall devote his whole time to the City affairs and interests of the City and to the preservation of peace, order, safety, and cleanliness thereof. The Department shall execute and enforce all laws and also the orders of the Mayor. It shall be the duty of the Department to protect the rights of persons and property. 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. (Neb. RS 16-323)

§ 5-502 RESERVE OFFICER BOND.

No appointment of a law enforcement reserve officer shall be valid until a bond in the amount of two thousand dollars (\$2,000), payable to the City, has been filed with the City Clerk 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.

***Statutory reference:***

*Bond of reserve officers, Neb. RS 81-1444*

*Provisions governing bonds, Neb. RS Ch. 11, Art. 1*

§ 5-503 ARREST AND ENFORCEMENT JURISDICTION.

(A) 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 the geographic area within territorial limits of the City.

(B) It shall be the duty of the City Police to report to the Utilities Superintendent all cases of leakage and waste in the use of water and all violations of the City Code relating to the Water Department. They shall have the additional duty of enforcing the observance of all such regulations.

***Statutory references:***

*Arrest power, Neb. RS 17-118*

*Jurisdiction, powers, Neb. RS 29-215*

§ 5-504 OFFICERS; DISCIPLINE OR REMOVAL FROM DUTY; NOTICE AND HEARING.

(A) No police officer, including the Chief of Police, shall be disciplined, removed, or discharged except upon written notice stating the reasons for that disciplinary action, removal, or discharge. The notice shall also contain a statement informing the police officer of the right to a hearing before the City Council.

(B) Any police officer so disciplined, suspended, demoted, removed, or discharged may, within ten (10) days after being notified of the disciplinary action, removal, or discharge, file with the City Clerk a written demand for a hearing before the City Council. The City Council shall set the matter for hearing not less than ten (10) or more than twenty (20) days after the filing of the written demand for a hearing. The City Council shall give the police officer written notice of the hearing not less than seven (7) or more than fourteen (14) days prior to the hearing.

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

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

(2) Confront and cross-examine available adverse witnesses; and

(3) Be represented by counsel.

(D) Not later than thirty (30) days following the adjournment of the meeting at which the hearing was held, the City Council shall vote to uphold, reverse, or modify the disciplinary action, removal, or discharge. The failure of the City Council to act within thirty (30) days or the failure of a majority of the elected Council members to vote to reverse or modify the disciplinary action, removal, or discharge shall be construed as a vote to uphold the disciplinary action, removal, or discharge. The decision of the City Council shall be based upon its determination that, under the facts and evidence presented at the hearing, the challenged disciplinary action, removal, or discharge was necessary for the proper management and the effective operation of the Police Department in the performance of its duties under the statutes of the State of Nebraska.

(E) Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the City Council, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders. (Neb. RS 17-107)

**CITY PARKS**

§ 5-601 CITY PARKS DEFINED.

CITY PARKS. Felber Park, East Side Park, and the Community Complex in the City of Hartington, Nebraska.

§ 5-602 OPERATION AND FUNDING.

The City owns and operates the City Parks and other recreational areas through the Board of Park Commissioners. The City Council, for the purpose of defraying the cost of the care, management, and maintenance of the City Parks may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Park Fund and shall include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the City Parks and shall remain in the custody of the City Treasurer. The Board shall have the authority to adopt rules and regulations for the efficient management of the City Parks and other recreational areas of the City. The Board shall not enter into a contract of any nature which involves an expenditure of funds, except for ordinary operating expenses, unless the contract has been approved by resolution of the majority of the members of the City Council prior to the contractual agreement.

***Statutory reference:***

*Authority, Neb. RS 17,948 through 17-952*

§ 5-603 HOURS OF PUBLIC USE.

The City Parks shall be open daily to the public during the hours of five o'clock (5:00) A.M. to twelve o'clock (12:00) Midnight. It shall be unlawful for any person or persons, other than City personnel conducting City business therein, to occupy or be present in the City Parks during any hours in which the City Parks are not open to the public, except persons driving through Felber Park or persons using the track at the Community Complex. The Board may extend by permit the hours of use of the City Parks facilities to groups, associations or organizations desiring to use the City Parks facilities for a particular purpose.

***CITY SWIMMING POOL***

§ 5-701 OPERATION AND FUNDING.

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

§ 5-702 ADMISSION CHARGE.

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

§ 5-703 RULES AND REGULATIONS.

The Board of Park Commissioners shall have the power and authority to enact bylaws, rules, and regulations for the protection of those using the Swimming Pool and for the efficient management thereof. They may provide suitable penalties for the violation of such bylaws, rules, and regulations. (Neb. RS 17-949)

**LIBRARY**

§ 5-801 OPERATION AND FUNDING.

The City owns and manages the City Library through the Library Board. The City Council, for the purpose of defraying the cost of the management, purchases, improvements, and maintenance of the Library may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the City that is subject to taxation. The revenue from the said tax shall be known as the Library Fund and shall include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the City Library. The Library Fund shall at all times be in the custody of the City Treasurer. The Board shall have the power and authority to appoint the librarian and to hire such other employees as they may deem necessary and may pass such other rules and regulations for the operation of the Library as may be proper for its efficient operation.

**Statutory reference:**

*Establishment, Neb. RS 51-201(for Terms, see Neb. RS 51-202)*

**Cross Reference:**

Library Board, Section 5-201 of this Code

§ 5-802 BOOKS AND BOOK REMOVAL.

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

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

**Cross-reference:**

General Penalty, §1-201

§ 5-803 COST OF USE.

The City Library shall be free for the use of the inhabitants of the City. The Librarian may exclude from the use of the Library and reading rooms any person who shall willfully violate or refuse to comply with the rules and regulations established for the government thereof. (Neb. RS 51-201 and 51-212)

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§ 5-804 MONIES COLLECTED.

Any money collected by the Library shall be turned over monthly by the Librarian to the City Treasurer along with a report of the sources of the revenue. (Neb. RS 51-209)

§ 5-805 RULES AND REGULATIONS.

The Library Board shall establish rules and regulations for the governing of the City Library for the preservation and efficient management thereof. They shall fix and impose by general rules, penalties and forfeitures for injury to the Library grounds, rooms, books, or other property, or for failure to return a book. All fees, penalties, and forfeitures may be collected in civil action in the event of failure, neglect, or refusal to pay the said assessments. (Neb. RS 51-205 and 51-214)

***CEMETERY***

§ 5-901 OPERATION AND FUNDING.

The City owns and manages the City Cemetery through the Cemetery Board. The City Council, for the purpose of defraying the cost of the care, management, maintenance, and beautification of the Cemetery may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the City that is subject to taxation. The revenue from the said tax shall be known as the Cemetery Fund and shall include all gifts, grants, deeds of conveyance, bequests, money, stocks, bonds, or other valuable income producing personal property and real estate from any source for the purpose of endowing the Cemetery. The Cemetery Fund shall at all times be in the custody of the City Treasurer. The Board shall have the power and authority to hire and supervise such employees as they may deem necessary and to pass such rules and regulations for the operation of the Cemetery as may be proper for its efficient operation. (Neb. RS 12-301 through 12-403)

§ 5-902 SEXTON.

The Cemetery Board shall have the authority to appoint a Sexton who shall perform such duties and make such reports as the Cemetery Board shall direct. It shall be the duty of the Sexton, upon receiving a burial permit to locate and direct the party named in the permit to the lot mentioned therein and to dig and excavate, or cause the same to be dug or excavated, in compliance with the rules and regulations of the Cemetery Board.

§ 5-903 CONVEYANCE OF LOTS.

The Cemetery Board may convey cemetery lots by Certificate signed by the President of the Cemetery Board, and countersigned by the Secretary of the Board specifying that the person to whom the same is issued is the owner of the lot described therein by number for the purpose of interment. The said Certificate shall give a right in fee simple to the proprietor, his heirs, and assigns. The Certificate shall then be recorded in the office of the County Clerk. (Neb. RS 17-941)

§ 5-904 FORFEITURE OF LOTS.

If, for three (3) consecutive years, all charges and liens are not paid by the holders of the Lot Certificates, the said Certificates shall be declared forfeited and subject to resale. All Certificates sold shall contain a forfeiture clause to the effect that if no interment is made on the said lot and all liens paid, the Certificate and the rights under the same may, at the option of the Cemetery Board, be declared null and void and the lot shall be subject to resale. (Neb. RS 17-938)



§ 5-905 TRANSFERS OF LOTS.

Any person who wishes to transfer a Lot Certificate may do so by surrendering the original certificate to the Secretary of the Cemetery Board, who shall issue a new certificate upon the receipt of a recording fee set by the Cemetery Board.

§ 5-906 PERPETUAL CARE.

The City Treasurer shall allocate and set apart a percentage of the entire amount paid for lots or burial spaces if the said lots or burial spaces are to be, endowed with perpetual care. The fund shall be permanent in nature, and as it accumulates shall be invested in such interest bearing securities as authorized by State law. The income earned thereon shall be used solely for the purposes of perpetual care for the Cemetery lots. Any lot owner who shall not have, prior to the purchase of this lot, endowed his holdings with perpetual care, may do so by paying to the Secretary of the Cemetery Board such sum of money as the Board may in each case fix and determine. Thereafter, the owner shall not be liable for the payment of an annual maintenance assessment.

§ 5-907 BURIAL PERMIT.

All persons desiring to bury a deceased person shall first be required to file a completed death certificate with the Registrar of the County before any body may be buried in the City Cemetery. If it is impossible to complete the certificate of death within the legal period of time prescribed by State law, the funeral director shall notify the Registrar and obtain his written approval before the deceased person may be buried in the City Cemetery. The burial permit so issued by the Registrar shall then be filed with the Secretary of the Cemetery Board. It shall be unlawful for the Sexton, or other person, to allow the interment of a body without first receiving such permit. The burial permit shall then be countersigned and dated by the Sexton. The interment of any body shall be performed under the direct supervision of a licensed funeral director. The applicant shall also me with the burial permit an application containing the name, age, sex, race, and cause of death of the deceased person for the records of the Cemetery Board. Upon completion of the requirements herein, the Secretary of the Cemetery Board shall then issue a City Burial Permit which shall entitle the applicant to bury a deceased person in the City Cemetery. In the event that the removal of the body of any deceased person is requested the Secretary shall issue no permit until the applicant shall have first complied with the laws of the State of Nebraska with respect to such disinterment. (Neb. RS 71-605)

***CITY AUDITORIUM***

§ 5-1001 OWNERSHIP OF AUDITORIUM.

The City owns and manages the City Auditorium through the City Clerk. The City Council, for the purpose of defraying the cost of the management, maintenance, and improvements on the City Auditorium may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the City that is subject to taxation. The revenue from the said tax shall be known as the Auditorium Fund and shall include all gifts, grants, deed of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the City Auditorium. The Auditorium Fund shall at all times be in the custody of the City Treasurer. The City Clerk shall have the power to hire and supervise such employees as he may deem necessary and shall pass such rules and regulations for the operation of the Auditorium as may be proper for its efficient management. All actions by the City Clerk shall be under the supervision and control of the City Council. (Neb. RS 17-953 through 17-955)

§ 5-1002 RENTALS.

The City Clerk may, for the purpose of defraying the expenses involved in maintaining, improving, managing, and beautifying the Auditorium, make a reasonable rental charge for the use by any person or organization of the Auditorium. The Clerk shall prescribe rules and regulations for such rentals subject to the review of the City Council. Rates may be structured for classes of persons and organizations in a reasonable manner, provided that nothing herein shall be construed to permit or allow discrimination on the basis of race, creed, color, or national origin in the classification of persons and organizations for rental purposes. (Neb. RS 17-953)

Current rates for the City Auditorium are as follows:

0-50 people	\$35.00
Over 50 people	\$50.00
Open house/rummage sales	\$50.00

***CITY CAMPGROUND***

§ 5-1101 OWNERSHIP OF CAMPGROUND.

The City owns and manages the City Campground located as described below:

Lots 1A, 2A, 3A, 4A, 5A, and 6A, Block 8, Railroad Addition, City of Hartington, Cedar County, Nebraska.

The City Council, for the purpose of defraying the cost of the management, maintenance, and improvements on the City Campground may set the fees and policies for the management of the Campground. The revenue from the said rental fees shall be credited to the Park Account. The Auditorium Fund shall at all times be in the custody of the City Treasurer. The City Clerk shall have the power to hire and supervise such employees as he may deem necessary and shall pass such rules and regulations for the operation of the Campground as may be proper for its efficient management. All actions by the City Clerk shall be under the supervision and control of the City Council. (Neb. RS 17-953 through 17-955)

§ 5-1102 RENTAL RATES.

The rental rate for spaces at the City Campground is \$12.00 per night.

## **CHAPTER 6 - PUBLIC WORKS**

### **General Provisions**

- 6-101: Application of Public Works General Provisions.**
- 6-102: Mandatory Hookups.**
- 6-103: Fees and Collections.**
- 6-104: Minimum Rates.**
- 6-105: Denial of Service: When Prohibited.**
- 6-106: Discontinuance of Service: Notice Procedure.**
- 6-107: City Water Department; Sewer Department; Complaints.**
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### **Water Department**

- 6-201: Operation and Funding.**
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- 6-301: Operation and Funding.**
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- 6-326: Control Manholes/Sampling Stations; Method.**
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- 6-328: Sewer System; Unlawful Destruction of Property.**
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- 6-333: City Sewer Department; Sanitary Sewer Use Charge.**
- 6-334: City Sewer Department; Consumers; Classification.**
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**Waste Transfer Station and Recycling Center; Garbage Service**

- 6-401: Waste Transfer Station and Recycling Center Operation and Funding.**
- 6-402: Garbage Service; Definitions.**
- 6-403: Garbage Service; Commercial Rates.**
- 6-404: Garbage Service; Residential Containers.**
- 6-405: Garbage Service; Residential Rates and Additional Charges**
- 6-406: Transfer Station and Recycling Center Rates**

**GENERAL PROVISIONS**

§ 6-101 APPLICATION OF PUBLIC WORKS GENERAL PROVISIONS.

The following ordinances, § 6-102 through § 6-111, inclusive, shall apply to the Public Works of the City of Hartington including all Water and Sewer provided by the City, and all related property and procedures.

§ 6-102 MANDATORY HOOKUPS.

The Owner of all houses, buildings, or properties used for human habitation, employment, recreation, or other purposes, whose property line is within three hundred feet (300') of a water main and/or sewer line is hereby required at his expense to install suitable water and toilet facilities therein, and to connect such facilities directly with the City water system and public sewer in accordance with the provisions of this Chapter.

**AMENDED April 8, 2013 – ORDINANCE # 822**

§ 6-103 FEES AND COLLECTIONS.

The City Council has the power and authority to fix the rates to be paid for the use of water and sewer. All such fees and rates shall be on file for public inspection at the office of the City Clerk. The City Clerk shall bill the consumers and collect all money received by the City on the account of the Water and Sewer Departments. She shall faithfully account for, and pay to the City Treasurer all revenue collected by her, taking her receipt therefore in duplicate, filing one in the Water Department's records and keeping the other in her own official records.

**Statutory reference:**

*Use of money collected, see Neb. RS 17-540*

§ 6-104 MINIMUM RATES.

All water consumers shall be liable for the minimum rates set by the City Council unless and until the consumer shall, by written order, direct the Utilities Superintendent to shut off the water at the stop box, in which case he shall not be liable thereafter for water rental until the water is turned on again. The rate to residential consumers of water service whose premises are outside the corporate limits of the City of Hartington, shall be twice the minimum rate above; and the rate to business consumers outside the corporate limits of the City of Hartington, will be one and one-half (1 ½) times the minimum rates. (Neb. RS 17-542)

§ 6-105 DENIAL OF SERVICE; WHEN PROHIBITED.

No applicant for the services of a public utility furnishing water, natural gas, or electricity at retail in this City shall be denied service because of unpaid bills for similar service which are not collectible at law because of statutes of limitations or discharge in bankruptcy proceedings. (Neb. RS 70-1601)

§ 6-106 DISCONTINUATION OF SERVICE: NOTICE PROCEDURE.

(A) The City shall have the right to discontinue utility services and remove its properties if the charges for such services are not paid within seven days after the date that the charges become delinquent. Before any termination, the City shall first give notice by first-class mail or in person to any domestic subscriber whose service is proposed to be terminated. If notice is given by first-class mail, the notice shall be conspicuously marked as to its importance. Service shall not be discontinued for at least seven (7) days, weekends and holidays excluded, after notice is sent or given.

(B) The notice shall contain the following information:

(1) The reason for the proposed disconnection;

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

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

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

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

(6) A statement that the City may not disconnect service pending the conclusion of the conference;

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

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be allowed under this subdivision for each incidence of nonpayment of any past-due account;

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

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

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

(11) Any additional information not inconsistent with this section which has received prior approval from the City Council.

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

(D) This section shall not apply to any disconnections or interruptions of services made necessary by the City for reasons of repair or maintenance or to protect the health or safety of the consumer or of the general public.

***Statutory reference:***

*Utility discontinuance regulated, see Neb. RS 70-1605 et seq.*

**AMENDED February 24, 2014 – ORDINANCE # 830**

§ 6-107 CITY WATER DEPARTMENT; SEWER DEPARTMENT; COMPLAINTS.

Any consumer feeling himself aggrieved by reason of any controversy with the Utilities Superintendent or City Clerk may appear before the City Council and present his grievance. Any consumer who considers himself aggrieved by being required to pay the charge demanded for the use of water, or for the resumption of water service after the same shall have been shut off, shall pay such charge under protest, in which event the City Clerk shall write on the receipt given such customer the words, "Paid Under Protest." Such consumer may then present his verified claim in the manner provided for presenting claims to the City Council for a refund of the amount so paid under protest. Such claims shall then be considered by the City Council in the same manner as other claims against the City. Any consumer feeling himself aggrieved by reason of any controversy with the Sewer Commissioner or City Clerk may appear before the City Council and present his grievance. Any consumer who considers himself aggrieved by being required to pay the charge demanded for the use of the sewer, or for the resumption of sewer service after the same shall have been shut off, shall pay such charge under protest, in which event the City Clerk shall write on the receipt given such customer the



words, "Paid Under Protest." Such consumer may then present his verified claim in the manner provided for presenting claims to the City Council for a refund of the amount so paid under protest. Such claims shall then be considered by the City Council in the same manner as other claims against the City.

§ 6-108 DIVERSION OF SERVICES, METER TAMPERING, UNAUTHORIZED RECONNECTION, PROHIBITED; EVIDENCE.

(A) It is an offense for any person to divert or use without authorization any public utility supplied, owned, or operated by the City, including but not limited to any of the following:

(1) To connect any instrument, device, or contrivance with any pipe or conduit supplying water, without the knowledge and consent of the City, in such a manner that any water may be consumed without passing through the meter made or provided for measuring or registering the amount or quantity thereof passing through it;

(2) To knowingly use or knowingly permit the use of water obtained unlawfully pursuant to this section;

(3) To reconnect water service without the knowledge and consent of the City if the service has been disconnected pursuant to this section of the Code and Nebraska law; or

(4) To willfully injure, alter, or by any instrument, device, or contrivance in any manner interfere with or obstruct the action or operation of any meter made or provided for measuring or registering the amount or quantity of water passing through it, without the knowledge and consent of the City.

(B) Proof of the existence of any wire, pipe, or conduit connection or reconnection or of any injury, alteration, interference, or obstruction of a meter is prima facie evidence of the guilt of the person in possession of the premises where that connection, reconnection, injury, alteration, interference, or obstruction is proved to exist. (Neb. RS 70-1601 through 70-615)

***Statutory reference:***

*Criminal classification, Neb. RS 28-515.02*

§ 6-109 DIVERSION OF SERVICES, CIVIL ACTION.

(A) For purposes of this section, the following definitions shall apply:

(1) **BYPASSING.** The act of attaching, connecting, or in any manner affixing any wire, cord, socket, motor, pipe, or other instrument, device, or contrivance to the utility supply system or any part of the system in such a manner as to transmit,

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supply, or use any utility service without passing through an authorized meter or other device provided for measuring, registering, determining, or limiting the amount of water consumed. Bypassing also means the act of employing any means to obtain the use or benefit of water without paying for the use at the rate established by the City.

(2) CUSTOMER. The person responsible for payment for utility services for the premises and includes employees and agents of the customer;

(3) PERSON. Any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, and other legal entity;

(4) TAMPERING. The act of damaging, altering, adjusting, or in any manner interfering with or obstructing the action or operation of any meter or other device provided for measuring, registering, determining, or limiting the amount of electricity, gas, or water consumed;

(5) UNAUTHORIZED METERING. The act of removing, moving, installing, connecting, reconnecting, or disconnecting any meter or metering device for utility service by a person other than an authorized employee or agent of such utility;

(6) UTILITY SERVICE. The provision of water, sewage or any other service or commodity furnished by the City for compensation; and

(7) UTILITY SUPPLY SYSTEM. All wires, conduits, pipes, cords, sockets, motors, meters, instruments, load control equipment, and other devices used by the City for the purpose of providing utility services.

(B) (1) The City may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts bypassing, tampering, or unauthorized metering, when that act results in damages to a City utility. The City may bring a civil action for damages pursuant to this section against any person receiving the benefit of utility service through means of bypassing, tampering, or unauthorized metering.

(2) In any civil action brought pursuant to this section, the City shall be entitled, upon proof of willful or intentional bypassing, tampering, or unauthorized metering, to recover as damages:

(a) The amount of actual damage or loss if the amount of the damage or loss is susceptible of reasonable calculation; or

(b) Liquidated damages of \$750 if the amount of actual damage or loss cannot be reasonably calculated.

(3) In addition to damage or loss under division (B)(2)(a) or (B)(2)(b), the City may recover all reasonable expenses and costs incurred on account of the bypassing,

tampering, or unauthorized metering including, but not limited to, disconnection, reconnection, service calls, equipment, costs of the suit, and reasonable attorneys' fees (in cases with claims of two thousand dollars (\$2,000) or less).

(C) (1) There shall be a rebuttable presumption that a tenant or occupant at any premises where bypassing, tampering, or unauthorized metering is proven to exist caused or had knowledge of that bypassing, tampering, or unauthorized metering if the tenant or occupant:

(a) Had access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering is proven to exist; and

(b) Was responsible or partially responsible for payment, either directly or indirectly, to the utility or to any other person for utility services to the premises.

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

(D) The remedies provided by this section shall be deemed to be supplemental and additional to powers conferred by existing laws. The remedies provided in this section are in addition to and not in limitation of any other civil or criminal statutory or common-law remedies.

**Statutory reference:**

*Definitions related to diversion of utility services, see Neb. RS 86-331.01 and Neb. RS 25-21,275*

*Authority to recover, Neb. RS 25-21,276*

*Rebuttable Presumption, Neb. RS 25-21,277*

*Remedies, Neb. RS 25-21,278*

§ 6-110 LIEN.

In addition to all other remedies, if a customer shall for any reason remain indebted to the City for utilities service furnished, the amount due, together with any rents and charges in arrears, shall be considered a delinquent utility rent which is hereby declared to be a lien upon the real estate for which the same was furnished. The City Clerk shall notify in writing, or cause to be notified in writing, all owners of premises or their agents whenever their tenants or lessees are sixty (60) days or more delinquent in the payment of the utilities rent. It shall be the duty of the City Clerk to report to the City Council a list of all unpaid accounts due for utilities service together with a description of the premises served. The report shall be examined and, if approved by the City Council, shall be certified by the City Clerk to the County Clerk to be collected as a special tax in the manner provided by law.

**Statutory reference:**

*Assessments authorized, see Neb. RS 18-503, as amended*

*Lien authorized for water and sewer delinquency, see Neb. RS 17-538 and*

City of Hartington Code of Ordinances

*Neb. RS 17-925.01*

§ 6-111 VIOLATIONS, NOTICES, PENALTIES.

(1) Any person found to be violating any provisions of this Article shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(2) Any person who shall continue any violation beyond the time limit provided in subsection (1) of this section, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding \$100.00 dollars for each violation. Each 24-hour period in which any such violation shall continue, shall be deemed a separate offense.

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

§ 6-112 WATER RATES AND CHARGES

The rates and charges for water services shall be established from time to time by the Mayor and City Council by resolution, and shall be on file in the office of the City Clerk.

***AMENDED August 22, 2016 – ORDINANCE # 843***

**WATER DEPARTMENT**

§ 6-201 OPERATION AND FUNDING.

The City owns and operates the City Water Department through the Utilities Superintendent. The City Council, for the purpose of defraying the cost of the care, management, and maintenance of the City Water Department may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Water Fund and shall remain in the custody of the City Treasurer. The Utilities Superintendent shall have the direct management and control of the City Water Department and shall faithfully carry out the duties of his office. The Utilities Superintendent shall have the authority to adopt rules and regulations for the sanitary and efficient management of the Water Department subject to the supervision and review of the City Council.

**Statutory reference:**

*Grant of powers, waterworks, Neb. RS 17-531 through 17-534*

§ 6-202 WATER TERM DEFINITIONS.

The following definitions shall be applied throughout this Chapter. Where no definition is specified, the normal dictionary usage of the word shall apply.

**MAIN.** Any pipe other than a supply or service pipe that is used for the purpose of carrying water to, and disbursing the same in the City.

**SUPPLY PIPE.** Any pipe tapped into a main and extending from there to a point at or near the lot line of the consumer's premise where the shut-off, stop box, or curb cock is located.

**SERVICE PIPE.** Any pipe extending from the shut-off, stop box, or curb cock at or near the lot line to and beyond the property line of the consumer to the location on the premise where the water is to be disbursed.

**SEPARATE PREMISE.** More than one consumer procuring water from the same service or supply pipe. The separate premise may be a separate dwelling, apartment, building, or structure used for a separate business.

§ 6-203 CONSUMER'S APPLICATION.

Every person or persons desiring a supply of water must make application therefore to the City Clerk who shall then forward the application to the Utilities Superintendent. Water

may not be supplied to any house or private service pipe except upon the order of the Utilities Superintendent.

***Statutory reference:***

*Authority, Neb. RS 17-537*

§ 6-204 WATER CONTRACT.

- (A) Contracts for water service are not transferable. Any person wishing to change from one location to another shall make a new application and sign a new contract. If any consumer shall move from the premise where service is furnished, or if the said premise is destroyed by fire or other casualty, he shall at once inform the Utilities Superintendent who shall cause the water service to be shut off at the said premise. If the consumer should fail to give such notice, he shall be charged for all water used on the said premise until the Utilities Superintendent is otherwise advised of such circumstances.
- (B) The City, through its Water Department, shall furnish water to persons within its corporate limits whose premises abut a street or alley in which a City commercial main now is or may hereafter be laid. The City may furnish water to persons within its corporate limits whose premises do not abut a street or alley in which a City commercial main is now or may hereafter be laid and may also furnish water to persons whose premises are situated outside the corporate limits of the City. Applicants for water service to a residence outside of the corporate limits shall be solely responsible for all costs involved in the construction of the water main, supply pipe, and service pipe. All plans and specifications and the manner and form of construction must first be approved by the City Engineer and the applicant shall be responsible for any fees charged by the Engineer. The water main shall become the property of the City after the installation and the City shall be responsible for its repair and maintenance. Applicants for water service to an industry located outside the corporate limits shall be subject to the same responsibility for costs and obtaining approval of the City Engineer as residential applicants. The ownership of the main and responsibility for repair and maintenance shall also be the same as in the case of residential applicants. In considering all applications for water service, the capacity of the existing system shall be considered. The rules, regulations and water rates hereinafter named in this Article, shall be considered a part of the application hereafter made for water service and shall be considered a part of the contract between every consumer now or hereafter served. The acceptance of an application or the use or consumption of water service by present consumers and the furnishing of water service to said consumer creates a contract between the consumer and the City, to which said contract both parties are bound. If the consumer shall violate any of the provisions of said contract or any reasonable rules and regulations that the City Council may later adopt, the Utilities Superintendent or his agent, may disconnect the water service from the building or premise or place of such violation. No further connection for water service to said building, premise, or

place shall again be made except by order of said Utilities Superintendent or his agent.

**Statutory reference:**

Authority, Neb. RS 17-537, 17-542

**AMENDED May 28, 2019 – ORDINANCE # 862**

§ 6-205 INSTALLATION PROCEDURE.

Upon approval of the consumer's application, the City shall tap the City water main. The consumer shall then be responsible for installation of the service and supply pipe from the City main to the premises to be served including corporation cock, stop cock and stop box. In making excavations in streets, alleys, or sidewalks for the purpose of installing pipe, or making repairs, the paving, stones, and earth must be removed and deposited in a manner that will occasion the least inconvenience to the public and provide for adequate drainage. No person shall leave an excavation made in the street, alley, or sidewalk open at any time without a barricade, and during the night, warning lights. After service pipes are laid, the streets, alleys, and sidewalks shall be restored to good condition. If the excavation in any street, alley, or sidewalk is left open or unfinished for a period of twenty-four (24) hours or more, the Utilities Superintendent shall have the duty to finish or correct the work, and all expenses so incurred shall be charged to the consumer. All installations or repairs of pipes require two inspections by the Utilities Superintendent. The first inspection shall be made when connections or repairs are completed and before the pipes are covered. The second inspection shall be made after the dirt work is completed and the service is restored. It is the customer's responsibility to notify the Commissioner at the time the work is ready for each inspection. All installation shall be done under the supervision and strictly in accordance with the rules, regulations, and specifications prescribed for such installation by the Utilities Superintendent, provided that the said rules, regulations, and specifications have been reviewed and approved by the City Council.

**Statutory reference:**

Authority, Neb. RS 17-537, 17-542

§ 6-206 INSTALLATION EXPENSE.

The consumer, upon approval of his application for water service, shall pay to the City a tap fee in the amount of two hundred fifty dollars (\$250.00). He shall also deposit one hundred dollars (\$100.00) with the City Clerk as a meter deposit which shall be credited to the consumer's account in the event of the consumer's failure to pay his bills as they come due. The consumer shall then be responsible for all expenses incurred in installing the water service from the main to the premises served. The City shall pay the expense of obtaining a water meter but the expense of installation shall be paid by the consumer. If, however, the consumer should require an industrial size meter, said meter shall be purchased by the consumer.

**Statutory reference:**

*Authority, Neb. RS 17-542*

§ 6-207 REPAIRS.

Repairs to the service pipe and supply pipe from the main to the premises served shall be made by and at the expense of the customer. All other repairs to the property of the Water Department, including the meter, shall be made by the City. All water meters shall be kept in repair by the City at the expense of the City. When meters are worn out, they shall be replaced and reset by the City at the expense of the City; provided, that if the customer permits or allows a water meter to be damaged, injured, or destroyed through his own recklessness, carelessness, or neglect so that the meter must be repaired or replaced, the Utilities Superintendent shall bill and collect from the customer the cost of such meter repair or replacement in the same manner as water rent is collected. Permitting a water meter to be damaged or destroyed by freezing shall always be considered negligence on the part of the customer. All meters shall be tested at the customer's request at the expense of the customer any reasonable number of times; provided, that if the test shows the water meter to be running two percent (2%) or more fast, the expense of such test shall be borne by the City. The City reserves the right to test any water service meter at any time, and if said meter is found to be beyond repair, the City shall always have the right to place a new meter on the customer's water service fixtures at the City's expense. Should a consumer's meter fail to register properly, the customer shall be charged for water during the time the meter is out of repair on the basis of the monthly consumption during the same month of the preceding year; provided, that if no such basis for comparison exists, the customer shall be charged such amount as may be reasonably fixed by the City Council.

***Statutory reference:***

*Authority, Neb. RS 17-542*

***AMENDED August 22, 2016 – ORDINANCE # 843***

§ 6-208 PROHIBITION OF LEAD PIPES, SOLDER, AND FLUX.

Any pipe, solders or flux used in the installation or repair of any residential or nonresidential facility which is connected to the public water supply system shall be lead free. For purposes of this section, LEAD FREE means:

- (a) Solders and flux - not more than two-tenths percent (.2%) lead, and
- (b) Pipe and pipe fittings - not more than eight percent (8%) lead.

***Statutory reference:***

*Nebraska Safe Drinking Water Act, Neb. RS 71-5301, and  
42 U.S.C. 300g-6(e), as existed on July 16, 2004*



§ 6-209 BACKFLOW PREVENTION DEVICES REQUIRED; CUSTOMER INSTALLATION AND MAINTENANCE; TESTING.

A customer of the City Water Department may be required by the Utilities Superintendent to install and maintain a properly located backflow prevention device at customer expense appropriate to the potential hazards set forth in Title 179, Nebraska Department of Health, and approved by the Utilities Superintendent. The customer shall make application to the Utilities Superintendent to install a required backflow prevention device on a form provided by the City. The application shall contain at a minimum the name and address of the applicant, the type of potential hazard required, protection, and the type of backflow device to be installed including brand and model number. The Utilities Superintendent shall approve or disapprove the application based on whether such installation will protect the City Water Distribution System from potential backflow and back-siphoning hazards. The installation of the device shall be subject to all other sections of this code dealing with installation of plumbing, including the use of a plumber licensed by the City if applicable. Such customer shall also certify to the City at least one time annually that the backflow prevention device has been tested by a Nebraska Department of Health Grade VI Certified Water Operator if the device is equipped with a test port. Such certification shall be made on a form available at the office of the City Clerk. Any decision of the Utilities Superintendent may be appealed to the Mayor and City Council.

§ 6-210 WATER BILLS; DELINQUENT BILLS; RECONNECT.

Water bills shall be due and payable monthly at the office of the City Clerk. Bills are due by the (15<sup>th</sup>) fifteenth day of each month. Bills not paid by the 15<sup>th</sup> (fifteenth) day of each month shall be deemed to be delinquent, and shall be assessed a late payment fee. The City Clerk shall assess an additional fee in the event that water is shut off for the nonpayment of any water bill, to compensate the City for the additional reconnection necessary to again provide water service to the delinquent customer. The fees shall be established by resolution of the City Council. (Neb. RS 17-542)

***AMENDED October 24, 2016 – ORDINANCE # 844***

§ 6-211 SINGLE PREMISE.

No consumer shall supply water to other persons, or allow anyone to take water from his premise, nor after water is supplied into a building shall any person make or employ a plumber or other person to make a tap or connection with the pipe upon the premise for alteration, extension, or attachment without the written permission of the Utilities Superintendent.

***Statutory reference:***

*Authority to regulate, Neb. RS 17-537*

§ 6-212 RESTRICTED USE.

The City Council or the Utilities Superintendent may order a reduction in the use of water or shut off the water on any premise in the event of a water shortage due to fire or other good and sufficient cause. The City shall not be liable for any damages caused by shutting off the supply of water of any consumer while the system or any part thereof is undergoing repairs or when there is a shortage of water due to circumstances over which the City has no control.

**Statutory reference:**

*Authority to regulate, Neb. RS 17-537*

§ 6-213 FIRE HYDRANTS.

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

**Cross-reference:**

Obstructing water flow, §8-319

§ 6-214 WATER POLLUTION.

It shall be unlawful for any person to pollute or attempt to pollute any stream or source of water for the supply of the City Water Department.

**Statutory reference:**

*Authority to regulate, Neb. RS 17-536*

§ 6-215 INSPECTION.

The Utilities Superintendent, or his duly authorized agents, shall have free access at any reasonable time to all parts of each premise and building to or in which water is delivered for the purpose of examining the pipes, fixtures, and other portions of the system to determine if there is any disrepair or unnecessary waste of water.

**Statutory reference:**

*Authority to regulate, Neb. RS 17-537*

***SEWER DEPARTMENT***

§ 6-301 OPERATION AND FUNDING.

The City owns and operates the City Sewer System through the Utilities Superintendent. The City Council, for the purpose of defraying the cost of the management and maintenance of the City Sewer System may each year levy a tax not exceeding the maximum limit prescribed by State law on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Sewer Maintenance Fund. The Utilities Superintendent shall have the direct management and control of the Sewer Department and shall faithfully carry out the duties of his office. He 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.

***Statutory reference:***

*Authority, Neb. RS 17-149 and 17-925.01*

§ 6-302 CLASSIFICATION.

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

§ 6-303 SEWER BILLS; DELINQUENT BILLS.

Sewer bills shall be due and payable monthly on the same dates as water bills and are subject to the same late fees as specified for water bills in § 6-210.  
***AMENDED October 24, 2016 – ORDINANCE # 844***

§ 6-304 COMPLAINTS.

Any consumer feeling himself aggrieved by reason of any controversy with the Sewer Commissioner or City Clerk may appear before the City Council and present his grievance. Any consumer who considers himself aggrieved by being required to pay the charge demanded for the use of the sewer, or for the resumption of sewer service after the same shall have been shut off, shall pay such charge under protest, in which event the City Clerk shall write on the receipt given such customer the words, "Paid Under Protest." Such consumer may then present his verified claim in the manner provided for presenting claims to the City Council for a refund of the amount so paid under protest. Such claims shall then be considered by the City Council in the same manner as other claims against the City.

§ 6-305 DEFINITIONS.

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

**BOD.** (denoting Biochemical Oxygen Demand). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20° C, expressed in milligrams per liter.

**BUILDING DRAIN.** That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, or other drainage pipes inside the walls of any building, and conveys it to the building sewer, beginning five feet (5') (1.5 meters) outside the inner face of the building wall.

**BUILDING SEWER.** The extension from the building drain to and including the junction at the public sewer or to another place of disposal.

**COMBINED SEWER.** A sewer receiving both surface runoff and sewage.

**GARBAGE.** Solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

**INDUSTRIAL WASTES.** Wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.

**NATURAL OUTLET.** Any outlet into a watercourse, pond, ditch, lake, or other body of surface or ground water.

**PERSON.** Any individual, firm, company, association, society, corporation, or group.

**pH.** The logarithm of the reciprocal of the weight of hydrogen ions grams per liter of solution.

**PROPERLY SHREDDED GARBAGE.** Wastes from the preparation, cooking, and dispensing of foods that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1/2") (1.27 centimeters) in any dimension.

**PUBLIC SEWER.** A sewer in which all owners of abutting properties have equal rights, and the sewer system is controlled by public authority.

**SANITARY SEWER.** A sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

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**SEWAGE.** A combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and storm waters as may be present.

**SEWAGE TREATMENT PLANT.** Any arrangement of devices and structures used for treating sewage.

**SEWAGE WORKS.** All facilities for collecting, pumping, treating and disposing of sewage.

**SEWER.** A pipe or conduit for carrying sewage.

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

**STORM SEWER.** A sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

**SUPERINTENDENT.** Utilities Superintendent of the City of Hartington, or his authorized deputy, agent, or representative.

**SUSPENDED SOLIDS.** Solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and are removable by laboratory filtering.

**WATERCOURSE.** A channel in which a flow of water occurs, either continuously or intermittently.

### § 6-306 WASTE; UNLAWFUL DEPOSIT.

It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City of Hartington, or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.

### § 6-307 UNTREATED SEWAGE; UNLAWFUL DISCHARGE.

It shall be unlawful to discharge to any natural outlet within the City of Hartington, or in any area under the jurisdiction of said City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Section.

§ 6-308 CESSPOOLS, PRIVIES AND SEPTIC TANKS; PROHIBITED.

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

§ 6-309 PUBLIC SEWER; MANDATORY HOOKUP.

The Owner of all houses, buildings, or properties used for human habitation, employment, recreation, or other purposes, whose property line is within three hundred feet (300') of a sewer line is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the public sewer in accordance with the provisions of this Chapter.

*AMENDED April 8, 2013 – ORDINANCE # 822*

§ 6-310 PRIVATE SEWAGE DISPOSAL SYSTEM; WHEN ALLOWED; REQUIREMENTS.

(1) Where a public sanitary sewer is not available under the provisions of §6-309, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this Section.

(2) Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the Superintendent. A permit and inspection fee of twenty-five dollars (\$25.00) shall be paid to the City at the time the application is filed.

(3) A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Superintendent when the work is ready for final inspection, and before any underground portions are covered.

(4) The type, capacities, location, and layout of a private residential sewage disposal system shall comply with all recommendations of the appropriate division of the Nebraska Department of Health, County Department of Health, local Health Officer and the Nebraska Department of Environmental Quality's Title 124, Rule and Regulations for the Design, Operation and Maintenance of Septic Tank Systems. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than that recommended by above mentioned agencies. No septic tank or cesspool shall be permitted to discharge to the surface of the ground or to any natural outlet.

(5) The Owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City.

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(6) At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in subsection (4) of this section, a direct connection shall be made to the public sewer in compliance with this Article, and any septic tank, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable materials.

(7) When a public sewer becomes available the building sewer shall be connected to said sewer within one hundred eighty (180) days and the private sewer disposal system shall be cleaned of sludge and filled with clean bank run gravel or dirt.

(8) No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the Health Officer.

### § 6-311 BUILDING SEWER; PERMITS REQUIRED; BOND.

No unauthorized person shall uncover, make any connection with or open into, use, alter, or disturb any public sewer or appurtenances thereof without first obtaining a written permit from the Superintendent. Before a permit may be issued for excavating for plumbing in any public street, way, or alley, the person applying for such permit shall have executed unto the City of Hartington and deposited with the Clerk a corporate surety in the sum of N / A conditioned that he will perform faithfully all work with due care and skill, and in accordance with the law, rules, and regulations established under the authority or any ordinances of the City of Hartington, pertaining to plumbing. This bond shall state that the person will indemnify and save harmless the City of Hartington and the owner of the premises against all damages, costs, expenses, outlays and claims of every nature and kind arising out of un-skillful-ness or negligence on his part in connection with plumbing or excavating for plumbing as prescribed in this Article. Such bond shall remain in force and must be executed for a period of N / A years except that on such expiration it shall remain in force as to all penalties, claims and demands that may have accrued prior to such expiration.

### § 6-312 BUILDING SEWER PERMITS; CLASSIFICATION; APPLICATION; FEE.

There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for service to establishments producing industrial wastes. In either case, the owner or his agent shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. A permit and inspection fee of two hundred fifty dollars (\$250.00) for a residential or commercial building sewer permit and two hundred fifty dollars (\$250.00) for an industrial building sewer permit shall be paid to the City at the time the application is filed.

§ 6-313 BUILDING SEWER INSTALLATION; EXPENSE.

All costs and expenses incident to the installation, connections and maintenance of the building sewer shall be borne by the Owner. The Owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation and maintenance of the building sewer.

§ 6-314 BUILDING SEWER INSTALLATION; DIRECT CONNECTIONS.

A separate independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

§ 6-315 OLD BUILDING SEWERS; USE.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet all requirements of this Section.

§ 6-316 BUILDING SEWER INSTALLATION; REQUIREMENTS.

(1) The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and the plumbing code or other applicable rules and regulations of the City. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No.9 shall apply.

(2) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(3) No person shall make connections of roof downspouts, interior and exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

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



§ 6-317 BUILDING SEWER INSTALLATION; INSPECTIONS.

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

§ 6-318 BUILDING SEWER INSTALLATION; EXCAVATIONS.

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

§ 6-319 STORM WATER AND OTHER WATERS; UNLAWFUL DISCHARGE.

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

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

§ 6-320 HAZARDOUS AND PROHIBITED SUBSTANCES; FLAMMABLE, TOXIC, CORROSIVE AND OBSTRUCTIVE SUBSTANCES; PRELIMINARY TREATMENT.

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

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

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

(c) Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.

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(d) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with proper operation of the sewer work such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, un-ground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(e) Any waters or wastes having (1) a five (5)-day BOD greater than 300 parts per million by weight, or (2) containing more than 350 parts per million by weight of suspended solids, or (3) having an average daily flow greater than 2 percent of the average sewage flow of the City, shall be subject to the review of the Superintendent. Where necessary in the opinion of the Superintendent, the owner shall provide, at his expense, such preliminary treatment as may be necessary to (1) reduce the biochemical oxygen demand to 300 parts per million by weight, or (2) reduce the suspended solids to 350 parts per million by weight, or (3) control the quantities and rates of discharge of such waters or wastes. Plans, specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Superintendent, and no construction of such facilities shall commence until said approvals are obtained in writing.

### § 6-321 HAZARDOUS AND PROHIBITED SUBSTANCES; SPECIFIC PROHIBITIONS AS DETERMINED BY SUPERINTENDENT.

No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Superintendent that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the Superintendent will give consideration of such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are:

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

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

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

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

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

(f) Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the Superintendent as necessary, after treatment of the composite sewage, to meet the requirements of State, Federal, or other public agencies of jurisdiction for such discharge to the receiving waters.

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

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

(i) Materials which exert or cause:

(1) Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or if dissolved solids (such as, but not limited to sodium chloride or sodium sulfate).

(2) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

(3) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.

(4) Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein. OJ Waters or wastes containing substances which are not amendable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

**§ 6-322 DISCHARGE OF HAZARDOUS AND PROHIBITED SUBSTANCES; REJECTION, PRETREATMENT, CONTROL OF DISCHARGE RATE OR USE FEE SURCHARGE.**

(1) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in § 6-321, and which in the judgment of the Superintendent, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life to constitute a public nuisance, the Superintendent may (a) Reject the wastes (b) Require pre-treatment to an acceptable condition for discharge to the public sewers (c) Require control over the quantities and rates of discharge, and/or (d) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of this chapter.

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

§ 6-323 GREASE, OIL AND SAND INTERCEPTORS; WHEN REQUIRED.

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

§ 6-324 PRELIMINARY TREATMENT OR FLOW EQUALIZING FACILITIES; MAINTENANCE BY OWNER.

Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the Owner at his expense.

§ 6-325 CONTROL MANHOLES/SAMPLING STATIONS; WHEN REQUIRED; INSTALLATION AND MAINTENANCE.

When required by the Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Superintendent. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

§ 6-326 CONTROL MANHOLES/SAMPLING STATIONS; METHOD.

All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this Article shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a twenty-four (24) hour composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and

suspended solids analyses are obtained from twenty-four (24) hour composites of all outfalls whereas pH's are determined from periodic grab samples.

§ 6-327 HAZARDOUS AND PROHIBITED SUBSTANCES; SPECIAL EXCEPTIONS PERMITTED.

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

§ 6-328 SEWER SYSTEM; UNLAWFUL DESTRUCTION OF PROPERTY.

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the sewage work. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct as provided by Nebraska law.

§ 6-329 INSPECTIONS; WHEN ALLOWED.

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

§ 6-330 INSPECTIONS; INJURY LIABILITY.

While performing the necessary work on private properties referred to in §6 -329 above, the Superintendent or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in §6-329.

§ 6-331 INSPECTIONS; EASEMENTS.

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

§ 6-332 VIOLATIONS; NOTICE, PENALTIES, AND LIABILITY.

(1) Any person found to be violating any provisions of this Section except section 6-328 shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(2) Any person who shall continue any violation beyond the time limit provided in subsection (1) of this section, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding \$100.00 dollars for each violation. Each twenty-four (24) hour period in which any such violation shall continue, shall be deemed a separate offense.

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

§ 6-333 CITY SEWER DEPARTMENT; SANITARY SEWER USE CHARGE.

The City has constructed and owns and operates a Sanitary Sewerage System, which system carries the liquid and solid waste sewage of such community and the residents thereof. For the purpose of paying the capital costs of improvements to the sewerage system, operation, maintenance and replacement of the sewerage facilities, principal and interest of any bonds issued for improvements, there is hereby established a sanitary sewer use charge against each lot, parcel of land or premises served by said sanitary sewerage system, or which discharges wastewater, either directly or indirectly, into such sanitary sewerage system or any part thereof.

§ 6-334 CITY SEWER DEPARTMENT; CONSUMERS; CLASSIFICATION.

The word "Consumer" is used in this Article to include all users of the City Sanitary Sewerage System of the City including all persons, firms or corporations whose premises are served thereby and all owners and tenants of real estate and buildings connected with said sanitary sewerage system or served thereby, and all users of said system who in any way use the same or discharge sanitary sewage, industrial wastewater or other liquid,

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either directly or indirectly, into the sanitary sewerage system of the City of Hartington, Nebraska. Consumers shall be classified as SINGLE FAMILY RESIDENTIAL, MULTIPLE FAMILY RESIDENTIAL, COMMERCIAL, and INDUSTRIAL.

**SINGLE FAMILY RESIDENTIAL.** Single family dwellings, including mobile and modular house where the primary purpose of the facility is for residential purposes. Single family residential consumers shall include funeral home and churches.

**MULTIPLE FAMILY RESIDENTIAL.** Multiple dwellings of apartment buildings where the primary purpose of the facility is to provide residential quarters for more than one family.

**COMMERCIAL.** All business establishments whose primary purpose is to provide a product or service to consumers. Commercial consumers do not include industrial consumers, nursing home, school or motel as further defined in this Section.

**INDUSTRIAL CONSUMERS.** All business establishments whose primary purpose is the manufacturing, processing, packaging, or assembling of a product for resale, distribution or custom ordering.

### § 6-335 CITY SEWER DEPARTMENT; FUNDS ESTABLISHED.

The rates charged to sanitary sewerage system consumers shall be collected and divided into two categories and maintained in two funds.

Category "A" shall be funds collected and maintained for debt service, administration and other miscellaneous overhead costs and shall be known as the "Sewer Administration Fund".

Category "B" shall be funds collected and maintained for operation, maintenance and replacement of the wastewater treatment facilities and shall be known as the "Sewer Operation, Maintenance and Replacement Fund", and will be kept in two primary accounts as follows:

(a) An account designated for the specific purpose of ensuring replacement needs over the useful life of the treatment works (Replacement Account). Deposits in the replacement account shall be made at least quarterly from the operation, maintenance and replacement revenue.

(b) An account designated for the specific purpose of ensuring funding for operation and maintenance costs of the treatment works. (Operation and Maintenance Account).

### § 6-336 SEWER RATES.

(1) The rates and charges for sewer services shall be established from time to time by the Mayor and City Council by resolution, and shall be on file in the office of the City Clerk.

The consumer's rate, if located outside of the corporate limits of the City, will be one and one-half times what the rate would be if the consumer was located within the corporate limits of the City.

(a) The funds collected from the Operation, Maintenance and Replacement rate shall be used only for operation, maintenance and replacement of the wastewater treatment facilities. Any amounts left in this fund at the end of a fiscal year must be carried over in this fund. The Operation, Maintenance and Replacement shall be reviewed annually for adequacy and adjustment made, if necessary. Any transfers made to or from the Operation, Maintenance and Replacement fund must be replaced to the proper fund allowing appropriate adjustment of the Operation, Maintenance and Replacement Use Rate.

(2) The City shall have the right to increase the rate when it is determined that the strength of a consumer's wastewater is significantly greater than other consumers. The City may require any consumer, at their expense, to provide flow measurement and sample analysis of their wastewater. All such surcharges shall be arrived at by establishing a base rate per pound for Biochemical Oxygen Demand and Suspended Solids and comparing the consumers' wastewater strength and volume to the base rate.

(3) Where in the judgment of the City Council, the application of the use charges would not be proportional when compared to all other consumers, the City may adjust said consumers rate provided said consumer provides information, satisfactory to the City, such that the consumers proportional use of the sewerage system can be determined. It shall be the consumers' responsibility to provide to the City a satisfactory means of measuring wastewater flows and obtaining representative samples of wastewater from the consumer.

(4) Consumers of the sanitary sewerage system having a private water supply which is discharged into the sanitary sewerage system shall be charged at the same rate as all other consumers.

(5) If for any reason, any of the rates of any user should be invalid or unenforceable the City shall be entitled to receive and collect from such user a reasonable rate or charge for the use of its sanitary sewerage system, the same to be collected in an action of law.

(6) The Mayor and the City Council find and determine that the sewer use charges established by this section are just and equitable rates and charges to be paid to the City for the use of such sanitary sewerage system by each person, firm or corporation whose premises are served thereby.

***AMENDED August 22, 2016 – ORDINANCE # 843***



§ 6-337 CITY SEWER DEPARTMENT; LIEN.

All sewer use charges shall be lien upon the premises and real estate for which the sewer service is supplied and used, and if not paid when due such charge shall be certified to the City Treasurer and may be recovered by the City in an action at law from the owner or the person, firm or corporation requesting the service or it may be certified to the tax assessor and assessed against the premises served and collected or returned in the same manner as other municipal taxes are certified, assessed, collected and returned. Bills for the sewer use charges made shall be rendered in advance of the first day of each billing period and all sewer use charges levied which are not paid within 20 days, shall be deemed to be delinquent and the water service of such consumer may be discontinued.

**WASTE TRANSFER STATION AND RECYCLING CENTER; GARBAGE SERVICE**

**§ 6-401 WASTE TRANSFER STATION AND RECYCLING CENTER: OPERATION AND FUNDING.**

The City owns and operates the City Waste Transfer Station and Recycling Center under the supervision of the Utilities Superintendent. The City Council, for the purpose of defraying the cost of the care, management, and maintenance of the Waste Transfer Station and Recycling Center may each year levy a tax not to exceed the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation, The revenue from the said tax shall be known as the Waste Transfer Fund and shall remain in the custody of the City Treasurer. The Utilities Superintendent shall have the direct management and control of the City Waste Transfer Station and shall faithfully carry out the duties of his position. The City Council shall provide by ordinance for the management and operation of the Waste Transfer Station and shall set the rates to be charged for services rendered by ordinance and file the same in the office of the City Clerk for public inspection at any reasonable time. (Neb. RS 19-2101 through 19-2106)

**§ 6-402 GARBAGE SERVICE; DEFINITIONS.**

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

**RESIDENTIAL.** A residential dwelling unit receiving service for which billing is on an individual basis.

**COMMERCIAL.** All non-residential units, and residential units which are provided service and are billed collectively with one or more other residential units.

**GARBAGE.** Kitchen refuse, decayed waste, or anything that may decompose and become offensive to the public health.

**RUBBISH or TRASH.** Discarded machinery, chips, pieces of wood, sticks, dead trees, branches, bottles, broken glass, crockery, tin cans, boxes, papers, rags, or any other litter or debris that is not an immediate hazard to the health or residents of the City.

**PROHIBITED GARBAGE or PROHIBITED ITEMS.** Items that are prohibited from being placed in City-owned dumpsters or residential containers or bags, due to their weight and/or the health risk posed by the disposal of such items, including: brick, dirt, gravel, cement, steel pipes, or rods, appliances, computers, televisions, furniture, dead animals, and construction debris.

***AMENDED March 25, 2016 – ORDINANCE # 840***

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§ 6-403 GARBAGE SERVICE: COMMERCIAL RATES.

The City shall be the only collection service for all commercial premises in the City.

The monthly rates and charges for commercial garbage collection and disposal services, excluding any applicable tax, shall be as follows:

Dumpster Size	1	2	3	4	5
1.5 yard	\$35.00	\$55.00	\$75.00	\$95.00	\$115.00
2 yard	\$40.00	\$65.00	\$90.00	\$115.00	\$140.00

***AMENDED June 25, 2018 – ORDINANCE # 856***

§ 6-404 GARBAGE SERVICE: RESIDENTIAL CONTAINERS

The City shall be the only collection service for all residential premises in the City. Each residential customer will be issued a 65 gallon garbage container for a \$70.00 fee. The City will be responsible for ordinary repair and maintenance. The residential customer will be responsible for any intentional damage or replacement if the container is lost or stolen.

Residential customers may request a waiver of the requirement of a 65 gallon garbage container if they do not produce more than two 13 gallon kitchen garbage bags per week. If there is repeated additional garbage bags the City may cancel the waiver and issue a container.

***AMENDED June 25, 2018 – ORDINANCE # 856***

§ 6-405 GARBAGE SERVICE: RESIDENTIAL RATES AND ADDITIONAL CHARGES.

The following rates and charges for residential garbage collection and disposal services, excluding any applicable tax, shall be as follows:

One 65 gallon container or two 13 gallon kitchen bags: \$12.00  
Two 65 gallon containers: \$24.00.

The following additional charges will apply:

Additional bags outside the container: \$3.00 each.  
Heavy items outside of the container: \$2.00.  
Non City issued container: \$5.00 each.

***AMENDED June 25, 2018 – ORDINANCE # 856***

§ 6-406 TRANSFER STATION AND RECYCLING CENTER RATES.

The following rates and charges for receipt and disposal services, excluding any applicable tax, shall be as follows:

Minimum charge for 0-300 pounds: \$7.50.

For each additional 100 pounds or fraction thereof: \$2.50

Exclusive of the above the following rates and charges will apply:

Appliances (refrigerators, stoves, washers, dryers, water heaters, freezers, humidifiers, dehumidifiers, televisions, computers, printers, copiers, etc.): \$10.00 per appliance

Car, SUV and pickup tires: \$2.50; with rim: \$8.00

Truck tires: \$10.00; with rim: \$15.00

Tractor or heavy equipment tires: Small - \$25.00; Large: \$50.00

***AMENDED April 22, 2019 – ORDINANCE # 860***

## **CHAPTER 7 - HEALTH AND SAFETY**

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- 7-514: Wrongful Licensing Prohibited.**
- 7-515: Removal of Tags Prohibited.**

**GENERAL PROVISIONS**

§ 7-101 HEALTH REGULATIONS.

For the purpose of promoting the health and safety of the residents of the City of Hartington, the Board of Health shall, from time to time, adopt such rules and regulations relative thereto and shall make such inspections, prescribe such penalties, and make such reports as may be necessary toward that purpose.

**Statutory reference:**

*Authority to regulate, see Neb. RS 17-121*

**Cross-reference:**

Board of Health, §5-204

§ 7-102 ENFORCEMENT OFFICIAL.

The Police Chief, as the quarantine officer, shall be the chief health officer of the City. It shall be his duty to notify the City Council and the Board of Health of health nuisances within the City and its zoning jurisdiction.

**Statutory reference:**

*Quarantine officer, see Neb. RS 17-121*

§ 7-103 COUNTY BOARD OF HEALTH.

It shall be the duty of the Board of Health to work closely with the County Health Board in protecting the health and welfare of the residents of the City.

***NUISANCES***

§ 7-201 NUISANCES DEFINED.

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

NUISANCE. Consists in doing any unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition, or thing either:

(a) Injures or endangers the comfort, repose, health, or safety of others;

(b) Offends decency;

(c) Is offensive to the senses;

(d) Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public park, parkway, square, street, or highway in the City;

(e) In any way renders other persons insecure in life or the use of property;

or

(f) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

(B) Specific definition. The maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, omissions, places, conditions, and things are hereby declared to be NUISANCES:

(1) Any odorous, putrid, unsound, or unwholesome grain, meat, hides, skins, feathers, vegetable matter, or the whole or any part of any dead animal, fish, or fowl;

(2) Privies, vaults, cesspools, dumps, pits, or like places which are not securely protected from flies or rats, or which are foul or malodorous;

(3) Filthy, littered, or trash-covered cellars, house yards, barnyards, stable yards, factory yards, mill yards, vacant areas in rear of stores, granaries, vacant lots, houses, buildings, or premises;

(4) Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any ordinance of the City;



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(5) Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish, or any waste vegetable or animal matter in any quantity; provided, that nothing herein contained shall prevent the temporary retention of waste in receptacles in a manner provided by the health officer of the City, nor the dumping of non-putrefying waste in a place and manner approved by the health officer;

(6) Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, and all trash or abandoned material, unless the same be kept in covered bins or galvanized iron receptacles;

(7) Trash, litter, rags, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw, or other packing material, lumber not neatly piled, scrap iron, tin, or other metal not neatly piled, old automobiles or parts thereof, or any other waste materials when any of the articles or materials create a condition in which flies or rats may breed or multiply, or which may be a fire danger, or which are so unsightly as to depreciate property values in the vicinity thereof;

(8) Any unsightly building, billboard, or other structure, or any old, abandoned, or partially destroyed building or structure or any building or structure commenced and left unfinished, which buildings, billboards, or other structures are either a fire hazard, a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity thereof;

(9) All places used or maintained as junk yards, or dumping grounds, or for the wrecking and disassembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked, unlicensed or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof;

(10) Stagnant water permitted or maintained on any lot or piece of ground;

(11) Stockyards, granaries, mills, pig pens, cattle pens, chicken pens, or any other place, building, or enclosure, in which animals or fowl of any kind are confined or on which is stored tankage or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when the places in which the animals are confined, or the premises on which the vegetable or animal matter is located, are maintained and kept in such a manner that foul and noxious odors are permitted to emanate therefrom to the annoyance of inhabitants of the City or are maintained and kept in such a manner as to be injurious to the public health; or

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(12) All other things specifically designated as nuisances elsewhere in this code.

***Statutory reference:***

*Authority to regulate and abate nuisances, see Neb. RS 18-1720*

### § 7-202 ABATEMENT PROCEDURE.

(A) It shall be the duty of every owner or occupant of real estate in the City to keep that real estate free of public nuisances. Upon determination by the Board of Health that the owner or occupant has failed to keep the real estate free of public nuisances, notice to abate and remove the nuisance and notice of the right to a hearing before the City Council and the manner in which it may be requested shall be given to the owner or occupant, or the owner's or occupant's duly authorized agent, by personal service or certified mail. This notice shall describe the condition as found by the Board of Health and state that the condition has been declared a public nuisance and that the condition must be remedied at once. Within ten (10) days after the receipt of the notice, if the owner or occupant of the real estate does not request a hearing or fails to comply with the order to abate and remove the nuisance, the City shall have the work done and may levy and assess the costs and expenses of the work upon the real estate so benefited in the same manner as other special taxes for improvements are levied and assessed.

(B) If the owner or occupant requests in writing a hearing with the City Council, the City Council shall fix a time and place at which a hearing will be held. Notice of the hearing shall be given by personal service or certified mail and require the owner or occupant to appear before the City Council to show cause why the condition should not be found to be a public nuisance and remedied. This notice shall be given not less than seven (7) nor more than fourteen (14) days before the time of the hearing. Upon the date fixed for the hearing and pursuant to the notice, the City Council shall hear all objections made by the owner or occupant and shall hear evidence submitted by the Board of Health. If, after consideration of all the evidence, the City Council finds that the condition is a public nuisance, it shall, by resolution, order and direct the owner or occupant to remedy the public nuisance at once. If the owner or occupant refuses or neglects to promptly comply with the order of the City Council, the City Council shall proceed to cause the abatement of the described public nuisance and may levy and assess the costs and expenses of the work upon the real estate so benefited in the same manner as other special taxes for improvements are levied and assessed.

***Statutory reference:***

*Authority to regulate and abate nuisances, see Neb. RS 18-1720*

### § 7-203 JURISDICTION.

The Mayor and Police Department are directed to enforce this City code against all nuisances. The jurisdiction of the Mayor, Police Department, and court shall extend to

and the territorial application of this chapter shall include all territory adjacent to the limits of the City within one mile thereof and all territory within the corporate limits.

***Statutory reference:***

*Authority to regulate and abate nuisances, see Neb. RS 18-1720*

§ 7-204 ADJOINING LAND OWNERS; INTERVENTION BEFORE TRIAL.

In cases of appeal from an action of the City Council condemning real property as a nuisance or as dangerous under the police powers of the City, the owners of the adjoining property may intervene in the action at any time before trial.

***Statutory reference:***

*Intervention of adjoining land owners, Neb. RS 19-710*

§ 7-205 DEAD OR DISEASED TREES.

(A) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the City.

(B) Notice to abate and remove such a nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. Within thirty (30) days after the receipt of this notice, if the owner or occupant of the lot or piece of ground does not request a hearing or fails to comply with the order to abate and remove the nuisance, the City may have the work done and may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied or assessed. (Neb. RS 17-555)

***Statutory reference:***

*Authority, see Neb. RS 17-555*

§ 7-206 ABANDONED, UNLICENSED OR INOPERABLE VEHICLES.

(A) It shall be unlawful to abandon any automobile on the City streets, highways, alleys, parks or other property. An automobile shall be deemed to be "abandoned" if left unattended for more than six (6) hours on any public property without current license plates; or for more than twenty-four (24) hours on any public property, except where public parking is permitted. Where public parking is permitted, a vehicle is deemed "abandoned" if left unattended for more than forty-eight (48) hours after the parking of such vehicle shall have become illegal.

(B) Any abandoned automobile shall immediately become the property of the City if the automobile is unlicensed and, in the estimation of City Police, worth \$250 or less.

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(C) If the abandoned automobile is licensed or has an estimated value of more than \$250, the City Police shall make reasonable efforts to contact the owner and notify him/her that the vehicle has been determined to be abandoned and that, if unclaimed, either (a) it will be sold after five (5) days from the date such notice was mailed or (b) title will vest in the City thirty (30) days after the date such notice was mailed. Any person claiming such vehicle shall be required to pay the cost of removal and storage of such vehicle.

(D) No owner, tenant, occupant, lessee, or other person in control of any property within the City shall allow any partially dismantled, non-operating, unlicensed, wrecked, junked, or discarded vehicle to remain on such property longer than thirty (30) days.

(E) This section does not apply to a vehicle in an enclosed building; or to a vehicle on the premise of a business enterprise operated in a lawful place and manner where the vehicle is necessary to the operation of that business; or to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the City.

(F) Any vehicle allowed to remain on public or private property in violation of this section shall constitute a nuisance and shall be abated, and any person violating this section shall be guilty of a misdemeanor and subject to a fine of \$100 upon conviction. (Neb. RS 16-1901 et seq)

**Cross-reference:**

General penalty, Hartington Code of Ordinances § 1-201

### § 7-207 TIRES; STORAGE PROHIBITION.

(1) It shall be unlawful for any person to store or keep outside about any dwelling, lot, building or premise, tires exceeding twelve (12) in quantity, at any one time, except for purposes of temporary placement for removal, which shall not exceed twenty-four (24) hours. This prohibition shall extend to all tires stored or kept outside of a lawful building or motor vehicle within the City of Hartington.

(2) Tires may be stored in any lawfully existing building. A building or other enclosure for the purpose of storage of tires shall be allowable when a building permit is obtained from the City for such structure and it is properly constructed.

(3) Any person who shall violate this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, be subject to a fine of not more than one hundred dollars (\$100.00) for each such offense. A new violation shall be deemed committed every twenty-four (24) hours of such failure to comply.

***FIRE PREVENTION***

§ 7-301 OPEN BURNING BAN; WAIVER.

(A) There shall be an open burning ban on all bonfires, outdoor rubbish fires, and fires for the purpose of clearing land.

(B) The Fire Chief of the City Fire Department or his or her designee may waive an open burning ban under division (A) of this section for an area under his jurisdiction by issuing an open burning permit to a person requesting permission to conduct open burning. The permit issued by the Fire Chief or his designee to a person desiring to conduct open burning shall be in writing, signed by the Fire Chief or his designee, and on a form provided by the State Fire Marshal.

(C) The City Fire Chief or his designee may waive the open burning ban in his jurisdiction when conditions are acceptable to the Chief or his designee. Anyone burning in that jurisdiction when the open burning ban has been waived shall notify the Fire Department of his intention to burn.

(D) The City Fire Chief may adopt and promulgate rules and regulations listing the conditions acceptable for issuing a permit to conduct open burning under division (B) of this section.

(E) The City Fire Department may charge a fee not to exceed \$10.00 for each such permit issued. This fee shall be remitted to the City Council for inclusion in the general funds allocated to the Fire Department. These funds shall not reduce the tax requirements for the Fire Department. No such fee shall be collected from any state or political subdivision to which such a permit is issued to conduct open burning under division (B) of this section in the course of that state's or political subdivision's official duties.

***Statutory reference:***

*Statewide ban; exemptions, see Neb. RS 81-520.01*

§ 7-302 LIFE SAFETY CODE.

Incorporated by reference into this Code are the standards recommended by the National Fire Protection Association, known as the Life Safety Code, 2000 Edition. This Code shall have the same force and effect as if set out verbatim herein. Three (3) copies of the Life Safety Code are on file with the City Clerk and shall be available for public inspection at any reasonable time.

***Statutory reference:***

*Authority to adopt standard codes, see Neb. RS § 18-132*

*Building zones, see Neb. RS § 19-902*

*State Fire Marshal, see Neb. RS §81-502*

§ 7-303 FIRE CODE ENFORCEMENT.

It shall be the duty of all City officials to enforce the incorporated fire code provisions and all infractions shall be brought to the attention of the Fire Chief.

§ 7-304 FIRE LIMITS DEFINED.

The following described territory in the City shall be and constitute the fire limits:

All of Blocks 25, 30, 29, 44, and the west one-half (1/2) of Block 43: all of Block 26 except the northwest one quarter (1/4): and all of Block 31 except the southeast one-quarter (1/4): all in the Original Town of Hartington, Nebraska.

***Statutory reference:***

*Authority, see Neb. RS § 17-550*

§ 7-305 FIRE LIMITS MATERIALS.

Within the aforesaid fire limits, no structure shall be built, altered, moved, or enlarged unless such structure will be enclosed with walls constructed wholly of stone, well-burned brick, terra cotta, concrete, or other such noncombustible materials as will satisfy the Fire Chief that the said structure will be reasonably fireproof.

***Statutory reference:***

*Authority, see Neb. RS § 17-549*

§ 7-306 IRONCLADS PROHIBITED.

All buildings, sheds, or structures known as ironclads, that is, buildings, sheds or structures constructed of wood and covered with sheet iron or tin, or constructed of sheet iron or tin attached to a frame work or posts or any skeleton support constructed of wood or other combustible material shall be considered and deemed for all purposes within every section of this Chapter to be constructed of combustible materials and the erection of such buildings, sheds or structures is hereby prohibited; Provided, coal sheds, warehouses and buildings of limited dimensions, under permit in writing from the City Council, may be built and constructed with metallic covering on wooden frames not closer than twenty feet (20') to any building in said fire limits upon written application therefore.

§ 7-307 REMOVAL OF NONCONFORMING STRUCTURE REQUIRED.

In the event that any wooden or combustible building or structure which stands within the fire limits is damaged to the extent of fifty percent (50%) or more of its value, exclusive

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of the foundation, it shall not be repaired or rebuilt, but shall be taken down and removed within sixty (60) days from the date of such fire or other casualty.

### § 7-308 FIRE PROHIBITED.

It shall be unlawful for any person to set out a fire on the pavement, or near any curb, now built or hereafter to be built, within the City.

### § 7-309 FIRES REGULATED.

It shall be unlawful for any person or persons to build or cause intentionally to be built or set out any fire in the open air within the City, except for the following purposes:

(A) Fires set solely for recreational purposes or for outdoor cooking of food for human consumption on other than commercial premises and where no nuisance or hazard is created.

(B) Fires set for the purpose of training public or industrial fire fighting personnel. Provided, if any person shall require a fire in the open in the course of his trade, such fire shall be built and maintained in a manner prescribed by the City Council, during such hours prescribed by the City Council, and shall be built only after obtaining a permit therefore from the City Council. Any other burning in the open will be allowed only after obtaining a permit from the City Council. All fires so allowed shall be attended at all times by the person setting the fire.

### § 7-310 EXPLOSIVES; STORAGE REGISTRATION.

(A) Any person, firm, or corporation storing or keeping for any period of time dynamite, gunpowder, nitroglycerine, or other high explosives within the City shall register such information with the City Clerk within five (5) days after such explosives are brought into the City. The Clerk shall provide such information to the City Fire Chief and to the City Council. Transfer of explosives to another individual within the City shall require the individual receiving the explosives to register the transfer and the new location of the explosives with the City Clerk. Also, moving explosives to a new location by the owner shall require registration of that fact to the City Clerk.

(B) All high explosives, including dynamite, gunpowder and nitroglycerine shall be stored in a proper receptacle which shall be closed at all times, except when actually in use. Such cement, metal, or stone receptacle shall not be located in any room where there is a flame or flammable materials. The area surrounding storage facilities shall be kept clear of rubbish, brush, dry grass, or trees for not less than twenty-five (25) feet in all directions. Any other combustible materials shall be kept a distance of not less than fifty (50) feet from outdoor storage facilities.

§ 7-311 EXPLOSIVES; BLASTING PERMITS.

Any person wishing to discharge high explosives within the City must secure a permit from the City Council and shall discharge such explosives in conformance with their direction and under their supervision, and in no case shall any person perform blasting operations unless operating under the direct supervision of a person in possession of a valid user's permit issued by the State Fire Marshal.

§ 7-312 EXPLOSIVES; TRANSPORTATION.

Any person wishing to transport high explosives in the City shall first acquire a permit from the City Police and shall take such precautions and use such route as he may prescribe. Nothing herein shall be construed to apply to the City Police, or any of the Armed Services of the United States. No vehicle transporting explosives shall make an unscheduled stop for longer than five (5) minutes within the City and in the event of mechanical failure, immediate notice of such breakdown shall be given the Police Chief who shall then prescribe such precautions as may be necessary to protect the residents of the City and a reasonable time for removal of the vehicle from the City.

§ 7-313 FIREWORKS; DEFINITIONS.

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

**FIREWORKS.** Any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of common or special fireworks set forth by the United States Department of Transportation in CFR Title 49. (Neb. RS § 28-1241(5))

**PERMISSIBLE FIREWORKS.** Only sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, lady fingers, not to exceed seven-eighths (7/8) of an inch in length or 1/8 inch in diameter, total explosive composition not to exceed fifty (50) milligrams in weight, color wheels and any other permissible fireworks approved by the State Fire Marshal. (Neb. RS § 28-1241(7))

§ 7-314 FIREWORKS; GENERALLY PROHIBITED; RESTRICTED USE OR IGNITION OF PERMISSIBLE FIREWORKS.

(A) It shall be unlawful for any person to ignite or cause to be exploded fireworks of any kind or description, except permissible fireworks, at any time.



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(B) The use, or ignition of permissible fireworks shall be allowed only between June 24th and July 5th, between the hours of 8:00 A.M. and 11:00 P.M., except for July 4th, when the allowable hours shall be 8:00 A.M. until 12:00 Midnight.

(C) The provisions of this section shall not apply to fireworks to be used for the purpose of public exhibitions or display under authorization of the Mayor and the City Council or to fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal.

(D) This section shall not apply to toy cap pistols or toy caps, each of which does not contain more than twenty-five hundredths of a grain of explosive powder. (Neb. RS § 28-1245(5))

### § 7-315 FIREWORKS; SALE OF PERMISSIBLE FIREWORKS.

Permissible fireworks may be sold at retail between June 24th and July 5th, provided that any vendor shall secure a license prior to such sales. Application for a vendor's license shall be filed with the City Clerk upon forms supplied by the City, requesting such information and documents, as the City Council may deem necessary. All applications must be filed on or before May 1 of each year and shall be accompanied a \$1,000.00 cash bond. Upon receipt of an application the City Clerk shall submit the application to the City Fire Chief, who shall inspect the proposed site for the potential of fire hazard and to assure public health and safety. The Fire Chief shall make a recommendation to either approve or deny the application to the City Council who shall then act upon the application and direct the City Clerk to either grant or deny the license. No license shall be transferable.

### § 7-316 FIREWORKS; PENALTY FOR VIOLATION.

Any violation of this section shall be punishable by a fine not exceeding five hundred dollars (\$500.00).

### § 7-317 POISONOUS AND FLAMMABLE GASES.

Any person, firm, or corporation desiring to store or keep in the City for any period of time any form of poisonous or flammable gas or liquefied petroleum gas in excess of sixty (60) gallons or add to, enlarge, or replace any facility used for the storage of such gases, must first get permission from the City Council. The City Council shall require the name of the gas, the place of storage, and the amount of gas stored, If permission is granted, the City Council shall prescribe such rules, regulations, and precautionary actions as they may deem necessary. Any such present use that is discontinued for a period of sixty (60) days shall not be revived without a permit. (Neb. RS § 17-549)

§ 7-318 LIQUEFIED PETROLEUM GASES; DEFINITION.

As used in this Chapter, “Liquefied Petroleum Gases” (L.P.G.) means material composed predominantly of any of the following hydrocarbons or mixtures of them: propane, propylene butanes (normal butane or isobutene), or any butelytes.

§ 7-319 ABOVEGROUND STORAGE OF LIQUEFIED PETROLEUM GASES PROHIBITED; EXCEPTIONS.

Storage of liquefied petroleum gases in aboveground storage tanks is generally prohibited within the residential areas as established by the City zoning ordinances, except as specifically provided under this Code and NFPA 58; provided, however, that above ground storage tanks legally existing prior to the effective date of this section shall be allowed to exist until such time as any storage tank is moved, removed, or significantly altered, provided such existing tanks or tank installations do not constitute a fire hazard. The Fire Chief shall periodically inspect the existing installation for safety and if the Fire Chief determines the installation or operation is no longer conducted or maintained in a safe manner, the same shall be removed from service. Any such existing use that is discontinued for a period of sixty (60) days shall not be revived without a permit.

§ 7-320 PERMITTED ABOVEGROUND STORAGE IN RESIDENTIAL AREAS; CONDITIONS.

Capacity. Aboveground L.P.G. tanks within residential districts as set forth in the City’s zoning ordinances shall be permitted if tank contains 125 gallon or less water capacity.

Minimum Distances. Aboveground L.P.G. tanks permitted under this section shall be placed at a minimum distance of not less than twenty-five (25) feet from any building or the line of adjoining property that can be built upon. Aboveground L.P.G. tanks permitted under this section must be placed at a minimum distance of not less than twenty-five (25) feet from any other L.P.G. tank.

Storage Permit. Any person desiring to store liquefied petroleum gas or any other poisonous and flammable gases shall first obtain a permit to do so from the City Council. Before any permit for storage of poisonous and flammable gases shall be issued, the applicant therefore shall pay a fee of \$100.00. The Building Permit fee is not required to be paid in addition to the Storage Permit fee.

Approval by Fire Chief. All plans and drawings showing tank installation for the storage of liquefied petroleum gas for which a permit is required by this ordinance shall be approved by the Fire Chief in accordance with this Code and all applicable Laws of Nebraska.

§ 7-321 VIOLATIONS OF STORAGE OF LIQUEFIED PETROLEUM GASES;  
PENALTY.

Persons who shall violate a provision of this Code, §§ 7-318 through 7-320, inclusive, or who shall fail to comply with any of the requirements of those sections or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the Fire Chief or of a permit issued under the provisions of this code shall be guilty of an offense punishable by a fine of not more than \$200.00.

**WELLS AND OTHER FACILITIES**

**§7-401 DRILLING AND OPERATION OF WELLS. AND OTHER UNDERGROUND FACILITIES OR CONTAMINATING FACILITIES WITHOUT PERMIT UNLAWFUL.**

It is unlawful for any person, corporation or other legal entity to drill and/or operate any of the following facilities within the corporate limits of the City of Hartington, Nebraska, without first having obtained the proper permit from the City Council of the City of Hartington, Nebraska:

- |                                         |                                     |
|-----------------------------------------|-------------------------------------|
| Potable water well;                     | Chemical product storage facility;  |
| Any other well;                         | Petroleum product storage facility; |
| Sewage lagoon;                          | Pit toilet;                         |
| Absorption or disposal field for water; | Sanitary landfill;                  |
| Cesspool;                               | Septic tank;                        |
| Dumping grounds;                        | Sewage treatment plan;              |
| Feedlot;                                | Sewage wet well                     |
| Livestock pasture or corral             |                                     |

**§7-402 PROCEDURE TO OBTAIN PERMIT.**

In order to obtain a permit to drill and/or operate any of the facilities listed in §7-401, the owner of property on which the proposed facility is to be located, must make application on the proper form provided by the City Council of the City of Hartington, Nebraska. Such application must be presented to the City council at any regular or special meeting. After reviewing the application of any person desiring to drill or operate any of the above described facilities, then the City council must approve or deny said permit.

**§7-403 DRILLING OR INSTALLATION OF OTHER FACILITIES WITHIN DESIGNATED DISTANCES OF CITY WATER SOURCES: PROHIBITED.**

Under no circumstances shall the City Council approve any permit to drill or operate any of the below described facility within the indicated number of feet from the City of Hartington, Nebraska City water wells:

- Potable water well - within 1,000 feet;
- Any other well - within 1,000 feet;
- Sewage lagoon - within 1,000 feet;
- Absorption or disposal field for water - within 500 feet;
- Cesspool - within 500 feet;
- Dumping grounds - within 500 feet;
- Feedlot or feedlot runoff - within 500 feet;

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Livestock pasture or corral - within 500 feet;  
Chemical product storage facility - within 500 feet;  
Petroleum product storage facility - within 500 feet;  
Pit toilet - within 500 feet;  
Sanitary landfill - within 500 feet;  
Septic tank - within 500 feet;  
Sewage treatment plant - within 500 feet;  
Sewage wet well - within 500 feet.

### §7-404 PENALTIES AND ABATEMENT PROCEDURE.

In the event any of the above described facilities are installed or operated without first having obtained a permit from the City of Hartington, Nebraska, and/or within a designated number of feet from the City water supply, then such facilities shall be deemed a nuisance and the City Council shall abate such facility as a public nuisance pursuant to Section 7-202 of this code.

***ANIMALS WITHIN CITY LIMITS***

§ 7-501 RUNNING AT LARGE.

(A) It shall be unlawful for the owner, keeper, or harbinger of any animal, or any person having the charge, custody, or control thereof, to permit such animal to be driven or run at large on any of the public ways and property, or upon the property of another, or to be tethered or staked out in a manner so as to allow the animal to reach or pass into any public way or the property of another.

(B) It shall be unlawful for the owner of any dog to allow that dog to run at large at any time within the corporate limits of the City. It shall be the duty of the Police Department or designated animal control officer to cause any dog found to be running at large within the City to be taken up and impounded. For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning. Any dog found off the premises of the owner and not under control of the owner or a responsible person, either by leash, cord, chain, wire, rope, cage, or other suitable means of physical restraint.

(C) The owner of any animal found running at large in violation of this section is subject to the General Penalty in addition to any impounding fee as described in this Code.

***Statutory reference:***

*Authority, see Neb. RS 17-547*

***Cross-reference:***

Impounding, §7-511

§ 7-502 PROHIBITED ANIMALS AND FOWL.

(A) It shall be unlawful for any person to keep or maintain within the corporate limits any horse, mule, sheep, cow, goat, swine, or other livestock.

(B) It shall be unlawful for any person to keep or maintain within the corporate limits any poultry, chickens, turkeys, geese, or any other fowl.

(C) No wild animals may be kept within the corporate limits except those animals kept for exhibition purposes by circuses and educational institutions. "Wild animals" means any animal that is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States, its territories, or possessions. The term includes, but is not limited to, animals such as deer, skunk, raccoon, mink, armadillo, coyote, squirrel, fox, and/or wolf.

***Statutory reference:***

*Authority, see Neb. RS 17-547*

*Definition of "wild animals," see Animal Welfare Act, 7 U.S.C. §§ 2131 et. seq.*

§ 7-503 KILLING AND INJURING.

No person shall kill or injure any animal by the use of firearms, stones, clubs, poisons, or any other manner unless the animal is vicious or dangerous and cannot be captured without danger to the persons attempting to capture such animal.

§ 7-504 ENCLOSURES.

All pens, cages, sheds, yards, or any other area or enclosure for the confinement or animals not specifically barred within the corporate limits shall be kept in a clean and orderly manner so as not to become a menace or nuisance to the neighborhood in which the enclosure is located.

§ 7-505 ABANDONMENT, NEGLIGENCE, AND CRUELTY.

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

**ABANDON.** To leave any animal for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health.

**ANIMAL.** Any vertebrate member of the animal kingdom except humans. The term shall not include an uncaptured wild creature.

**CRUELLY MISTREAT.** To knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise set upon any animal.

**CRUELLY NEGLIGENCE.** To fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health.

**HUMANE KILLING.** The destruction of an animal by a method which causes the animal a minimum of pain and suffering.

**LAW ENFORCEMENT OFFICER.** Any member of the State Patrol, any county or deputy sheriff, any member of the police force of the City, or any other public official authorized by the City to enforce state or local animal control laws, rules, regulations, or ordinances. Law enforcement officer also includes any inspector under the Commercial Dog and Cat Operator Inspection Act.

(B) Enforcement powers; immunity.

(1) Any law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a

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warrant authorizing entry upon private property to inspect, care for, or impound the animal.

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

(3) Any law enforcement officer acting under this section shall not be liable for damage to property if that damage is not the result of the officer's negligence.

(C) Violation. A person commits cruelty to animals if he or she abandons, cruelly mistreats, or cruelly neglects an animal.

***Statutory reference:***

*Commercial Dog and Cat Operator Inspection Act, Neb. RS 28-1008*

*Cruelty to Animals, Neb. RS 28-1009*

*Damage to Property, liability of law enforcement, Neb. RS 28-1012*

### § 7-506 OWNER DEFINED.

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

OWNER. Any person who shall harbor or permit any dog or other domestic animal to be for ten (10) days or more in or about her house, store, or enclosure, or to remain to be fed, shall be deemed the Owner and possessor of that animal and shall be deemed to be liable for all penalties herein prescribed.

***Statutory reference:***

*Authority, Neb. RS 54-606*

### § 7-507 RABIES THREAT; PROCLAMATION; INSPECTION.

(A) It shall be the duty of the City Council, whenever in its opinion the danger to the public safety from rabid dogs is great or imminent, to issue a proclamation ordering all persons owning, keeping, or harboring any dog to muzzle the same, or to confine it for a period of not less than thirty (30) days or more than ninety (90) days from the date of the proclamation, or until the danger is passed. The dogs may be harbored by any good and sufficient means in a house, garage, or enclosed kennel on the premises wherein the owner may reside. Upon issuing the proclamation it shall be the duty of all persons owning, keeping, or harboring any dog to confine the same as herein provided.

(B) Any dog suspected of being afflicted with rabies, or any dog not vaccinated in accordance with the provisions of this chapter which has bitten any person and caused an abrasion of the skin, shall be seized and impounded under the supervision of the Board of Health for a period of not less than ten (10) days.



(C) If upon examination by a veterinarian, the dog has no clinical signs of rabies at the end of the impoundment, it may be released to the owner, or, in the case of an unlicensed dog, it shall be disposed of in accordance with the provisions herein. If the owner of the dog has proof of vaccination, it shall be confined by the owner or some other responsible person for a period of at least ten (10) days, at which time the dog shall be examined by a licensed veterinarian at the owner's expense. If no signs of rabies are observed, the dog may be released from confinement.

**Statutory reference:**

*Similar provisions, see Neb. RS 71-4406*

§ 7-508 CAPTURE IMPOSSIBLE.

The Police Department or designated animal control officer shall have the authority to kill any animals showing vicious tendencies, or characteristics of rabies which make capture impossible because of the danger involved.

§ 7-509 DANGEROUS DOGS

**(A) DEFINITIONS**

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

**Animal Control Authority.** An entity authorized to enforce the animal control laws of a county, city or village or this state and includes any local law enforcement agency or other agency designated by a county, city or village to enforce the animal control laws of such county, city or village.

**Animal Control Officer.** Any individual employed, appointed, or authorized by the City Council for the purpose of aiding in the enforcement of this section or any other law or ordinance relating to the licensing of animals, control of animals, or seizure and impoundment of animals, and shall include any state or local law enforcement or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

**Dangerous Dog.**

- (a) A dog that, according to the records of an animal control authority:
  - (i) Has killed a human being;
  - (ii) Has inflicted injury on a human being that requires medical treatment;
  - (iii) Has killed a domestic animal without provocation;

(iv) Has been previously determined to be a potentially dangerous dog by an animal control authority, the owner has received notice of such determination, and the dog inflicts an injury on a human being that does not require medical treatment, injures a domestic animal, or threatens the safety of humans or domestic animals.

(b) (i) A dog shall not be defined as a dangerous dog under subdivision (a)(ii) of this section if the individual was tormenting, abusing, or assaulting the dog at the time of the injury or has, in the past, been observed or reported to have tormented, abused or assaulted the dog.

(ii) A dog shall not be defined as a dangerous dog under subdivision (a)(iv) of this section if the injury, damage, or threat was sustained by an individual who, at the time, was committing a willful trespass as defined in Nebraska law, was committing any other tort upon the property of the owner of the dog, was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime;

**Domestic Animal.** A cat, a dog, or livestock.

**Medical Treatment.** Treatment administered by a physician or other licensed healthcare professional.

**Owner.** Any person, firm, corporation, organization, political subdivision, or department possessing, harboring, keeping, or having control or custody of a dog.

**Potentially Dangerous Dog.**

(a) Any dog that when unprovoked:

(i) inflicts an injury on a human being that does not require medical treatment, (ii) injures a domestic animal; or (iii) chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack; or

(b) Any specific dog with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals.

**Statutory Reference:**

Dangerous Dogs, Neb. Rev. Stat. §54-617.

**AMENDED October 27, 2008 – ORDINANCE # 798**

**(B) DANGEROUS DOG REQUIREMENTS**

(1) A dangerous dog that has been declared as such shall be spayed or neutered and implanted with a microchip identification number by a licensed veterinarian within thirty (30) days after such declaration. The cost of both procedures is the responsibility of the owner of the dangerous dog. Written proof of both procedures and the microchip identification number shall be provided to the animal control authority

after the procedures are completed.

(2) No owner of a dangerous dog shall permit the dog to go beyond the property of the owner unless the dog is restrained securely by a chain or leash.

***Statutory Reference:***

Dangerous Dogs, Neb. Rev. Stat. §54-618.  
***AMENDED October 27, 2008 – ORDINANCE # 798***

**(C) CONFINEMENT**

(1) No person, firm, partnership, limited liability company, or corporation shall own, keep, or harbor or allow to be in or on any premises occupied by him, her, or it or under his, her, or its charge or control any dangerous dog without such dog being confined so as to protect the public from injury.

(2) While unattended on the owner's property, a dangerous dog shall be securely confined, in a humane manner, indoors or in a securely enclosed and locked pen or structure suitably designed to prevent the injury of young children and to prevent the dog from escaping. The pen or structure shall have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground at a depth of at least one foot. The pen or structure shall also protect the dog from the elements. The pen or structure shall be at least ten (10) feet from any property line of the owner. The owner of a dangerous dog shall post warning signs on the property where the dog is kept that are clearly visible from all areas of public access and that inform persons that a dangerous dog is on the property. Each warning sign shall be no less than ten (10) inches by twelve (12) inches and shall contain the words "Warning" and "Dangerous Animal" in high-contrast lettering at least three (3) inches high on a black background.

***Statutory Reference:***

Dangerous Dogs, Neb. Rev. Stat. §54-619.  
***AMENDED October 27, 2008 – ORDINANCE # 798***

**(D) FAILURE TO COMPLY**

(1) Any dangerous dog may be immediately confiscated by an animal control officer if the owner is in violation of this section. The owner shall be responsible for the reasonable costs incurred by the City for the care of the dangerous dog confiscated by an animal control officer or for the destruction of any dangerous dog if the action by the animal control authority is pursuant to law and if the owner violated this section.

***Statutory Reference:***

Dangerous Dogs, Neb. Rev. Stat. §54-620.  
***AMENDED October 27, 2008 – ORDINANCE # 798***

§ 7-510 LIABILITY OF OWNER.

It shall be unlawful for any person to allow a dog owned, kept, or harbored by the owner, or under his or her charge or control, to injure or destroy any real or personal property of any description belonging to another person. The owner or possessor of any such dog, in addition to the usual judgment upon conviction, may be made to be liable to the persons so injured in an amount equal to the value of the damage so sustained.

**Statutory reference:**

*Joint liability for dogs owned by different persons, see Neb. RS 54-602*

*Statutory liability, see Neb. RS 54-601*

§ 7-511 IMPOUNDING.

(A) It shall be the duty of any animal control official designated by resolution of the City Council to capture, secure, and remove in a humane manner to the City-appointed animal shelter any dog violating any of the provisions of this chapter. The dogs so impounded shall be treated in a humane manner and shall be provided with a sufficient supply of food and fresh water each day. Each impounded dog shall be kept and maintained at the shelter for a period of not less than five (5) days after public notice has been given unless reclaimed earlier by the owner.

(B) Notice of impoundment of all animals, including any significant marks or identifications, shall be posted at the office of the City Clerk and at the shelter within twenty-four (24) hours after impoundment as public notification of the impoundment. Notice of the impoundment of any licensed dog shall be mailed to the owner listed on the license application of the dog, by regular U.S. mail, at the address of the applicant. Any dog may be reclaimed by its owner during the period of impoundment by payment of a general impoundment fee as follows:

1st impoundment - \$25.00;

2nd impoundment - \$50.00;

3rd impoundment-\$100.00;

4th and subsequent impoundments - \$200.00 per offense.

(C) The owner shall be required to comply with the licensing and rabies vaccination before release. If the dog is not claimed at the end of the required waiting period after public notice has been given, any designated animal control official may dispose of the dog in accordance with the applicable rules and regulations pertaining to the same, provided that if, in the judgment of any designated animal control official, a suitable home can be found for any such dog within the City, the dog shall be turned over to that person, and the new owner shall then be required to pay all fees and meet all licensing and vaccinating requirements provided in this chapter. The City shall acquire legal title to any unlicensed dog impounded in the animal shelter for a period longer than the required waiting period after giving notice. All dogs shall be destroyed and buried in

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the summary and humane manner as prescribed by the Board of Health unless a suitable home can be found for the dog.

***Statutory reference:***

*Pounds authorized, see Neb. RS 17-548*

*Pounds created by rabies control authorities, see Neb. RS 71-4408*

### § 7-512 ANIMAL SHELTER.

The City animal shelter shall be safe, suitable, and conveniently located for the impounding, keeping, and destruction of dogs. The shelter shall be sanitary, ventilated, and lighted. The City Council may designate any animal hospital, veterinary office, or other place offering kenneling or boarding services as part of its regularly conducted business to serve as the City Animal Shelter.

### § 7-513 LICENSE REQUIRED; LICENSE TAX; EXEMPTION TO LICENSE TAX; LICENSE TAGS

(A) Any person who shall own, keep, or harbor a dog or cat over the age of six (6) months within the City shall within thirty (30) days after acquisition of the dog or cat acquire a license for each such dog annually by or before May 1 of each year. The tax shall be delinquent from and after May 10; provided that the possessor of any dog brought into or harbored within the corporate limits subsequent to May 1 of any year shall be liable for the payment of the dog tax levied herein, and the tax shall be delinquent if not paid within ten (10) days thereafter. Licenses shall be issued by the City Clerk upon the payment of a license fee in such amount as established by the City Council. The license shall not be transferable, and no refund will be allowed in case of death, sale, or other disposition of the licensed dog or cat. The owner shall state at the time the application is made and upon printed forms provided for the purpose his or her name and address and the name, breed, color, and sex of each dog or cat owned and kept by the owner. A certificate that the dog has had a rabies shot, effective for the ensuing year of the license, shall be presented when the license is applied for, and no license or tag shall be issued until the certificate is shown.

(B) Every dog guide for a blind or visually impaired person, hearing aid dog for a deaf or hearing impaired person, and service dog for a physically limited person shall be licensed as required by this City code, but no license tax shall be charged upon a showing by the owner that the dog is a graduate of a recognized training school for dog guides, hearing aid dogs, or service dogs. Upon the retirement or discontinuance of the dog as a dog guide, hearing aid dog, or service dog, the owner of the dog shall be liable for the payment of the required license tax.

(C) Upon the payment of the license fee in the amount of \$2.00, the person designated by the licensing authority shall issue to the owner of the dog or cat a license certificate and a metallic tag for each animal so licensed. The metallic tags shall be

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properly attached to the collar or harness of all animal so licensed and shall entitle the owner to keep or harbor that dog until April 30 following that licensing.

(D) In the event that a license tag is lost and upon satisfactory evidence that the original tag was issued in accordance with the provisions herein, the person designated by the licensing authority shall issue a duplicate or new tag for the balance of the year for which the license tax has been paid and shall charge and collect a fee set by resolution of the City Council for each duplicate or new tag so issued. All license fees and collections shall be immediately credited to the general fund. It shall be the duty of the person designated by the licensing authority to issue tags of a suitable design that are different in appearance each year.

***Statutory reference:***

*Authority, see Neb. RS 17-526 and 54-603*

§ 7-514 WRONGFUL LICENSING PROHIBITED.

It shall be unlawful for the owner, keeper, or harbinger of any dog or cat to permit or allow the dog to wear any license, metallic tag, or other City identification than that issued by the City Clerk for dogs or cats.

§ 7-515 REMOVAL OF TAGS PROHIBITED.

It shall be unlawful for any person to remove, or cause to be removed, the collar, harness, or metallic tag from any licensed dog without the consent of the owner, keeper, or possessor thereof.

## **CHAPTER 8 – PUBLIC WAYS AND PROPERTY**

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- 8-102: Maintenance and Control.**
- 8-103: Obstructions.**
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### **Sidewalks**

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#### **Trees**

- 8-401: Street Trees; Definition.**
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#### **Violations and Penalty**

- 8-501: Penalty.**
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***CITY PROPERTY***

§ 8-101 DEFINITION.

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

**SIDEWALK SPACE.** The portion of a street between curb lines and adjacent property lines.

§ 8-102 MAINTENANCE AND CONTROL.

The City Council shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the City and shall cause the same to be kept open and in repair and free from nuisances. (Neb. RS 17-567(1))

§ 8-103 OBSTRUCTIONS.

(A) Trees and shrubs and their roots growing upon public property, or interfering with the use or construction of any public improvements shall be deemed an obstruction under this chapter and may be removed by the City at the expense of the owner of the property upon which they are located should the owner fail or neglect, after notice, to do so. It shall be unlawful for any person, persons, firm, or corporation to obstruct or encumber, by fences, gates, buildings, structures, or otherwise, any of the streets, alleys, or sidewalks. The public ways and property shall be considered to be obstructed when any tree, shrub, or similar growth is within two (2) feet adjacent to the lot line whether there is a sidewalk abutting or adjoining the premises or not. Whenever any such growth is allowed to grow within two (2) feet of the lot line contrary to the provisions of this chapter, the City Council may pass a resolution ordering the owner or occupant to remove those obstructions within five (5) days after having been served with a copy of the resolution by the City stating that the City will do so and will charge the costs thereof to the owner or occupant(s) as a special assessment for improvements as herein provided, or shall collect the same by civil suit brought in the name of the City against the owner or occupant(s).

(B) It shall be the duty of an owner or occupant engaged in construction of any building or improvement upon or near the public ways and property to have all excavations or exposures of any kind protected and guarded by suitable guards or barricades by day and by warning lights at night. In the event of failure, neglect, or refusal to comply with the provisions of this subchapter, the City may stop all work upon the buildings and improvements until suitable guards are erected and kept in the manner stated above. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property,

send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time the required notice was first published.

(C) Persons engaged in the erection, construction, reconstruction, wrecking, or repairing of any building, or the construction or repair of a sidewalk along any street, may occupy the public street space with the building material and equipment if those persons shall make application to and receive a permit in writing from the City official in charge of City streets to do so, provided that no permit for the occupancy of the sidewalk space and more than one-third (1/3) of the roadway of the public space adjacent to the real estate on which the building is to be constructed, erected, reconstructed, wrecked, or repaired shall be granted, and provided further that a suitable passageway for pedestrians shall be maintained within the public space included in the permit which shall be protected and lighted in the manner required by the official issuing the permit.

***Statutory reference:***

*Authority to regulate and abate obstructions, see Neb. RS 17-557 and 17-557.01*

*Authority to remove obstructions, see Neb. RS 17-555*

***Cross-reference:***

Penalty, §8-501

§ 8-104 WEEDS.

It is hereby the duty of the Utilities Superintendent or his duly authorized agent to view and inspect the sidewalk space within the corporate limits for growing weeds during the growing season, and if rank and noxious weeds are found growing thereon, he shall notify the owner or occupant thereof to cut down the weeds as close to the ground as can be practicably done and keep the weeds cut thereon in like manner during the growing season for weeds, provided that any weeds growing in excess of twelve (12) inches on any sidewalk space shall be considered a violation of this section. In the event that the owner of the lot or parcel of land abutting that sidewalk space within the City is a nonresident of the City or cannot be found therein, the notice may be given to any person having the care, custody, or control of that lot or parcel of land. In the event that there can be found no one within the City to whom notice can be given, it shall be the duty of the Utilities Superintendent or his agent to post a copy of the notice on the premises and then to cut or cause the weeds thereon to be cut as therein provided and report the cost thereof in writing to the City Council. The cost shall then be audited and paid by the City, and the amount thereof shall be assessed against the lot or parcel of land as a special tax thereon and shall be collected as are other taxes of the City or may be recovered by civil suit brought by the City against the owner of the parcel of land. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time the required notice was first published.

***Statutory reference:***

*Authority, see Neb. RS 17-563*

**Cross-reference:**

Penalty, §8-501

§ 8-105 SIGNS AND CANOPIES.

No person, firm, or corporation shall erect, or maintain, any sign, signboard, poster, or rigid canopy over any street, sidewalk, alley, or on other public property without having first obtained a permit. Permits for signs, canopies, posters, and signboards shall be issued by the City Clerk, subject to the approval of the Utilities Superintendent. All signs and canopies extending over any public sidewalk, street, alley, or other public place must be securely fastened and constructed so that there will be no danger of the same being dislodged by ordinary winds, or falling from other causes. No sign or canopy shall be erected or maintained which extends over any public sidewalk, street, alley, or other public place in such a location as to obstruct the view of any traffic light, sign, or signal. Upon the written order of the City Council, any person owning or occupying the premises where such a sign, canopy, poster, or signboard is located, shall cause the same to be removed within the time limit specified on the notice.

**Cross-reference:**

Penalty, §8-501

§ 8-106 OVERHANGING BRANCHES.

The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any street or sidewalk over which there extend the branches of trees shall at all times keep the branches or limbs thereof trimmed to the height of at least eight feet (8') above the surface of the walk and at least fourteen feet (14') above the surface of the street.

Whenever the limbs or branches of any tree or trees extend over streets or sidewalks contrary to the provisions herein so as to interfere with the lighting of the street from street lights or with the convenience of the public using the street or sidewalk, the City Council at any regular or special meeting may pass a resolution ordering the owner or occupant to cut or remove the obstructions within five (5) days after having received a copy thereof from the Utilities Superintendent stating that the City will remove the branches and charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided, if the resolution is not complied with. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time the required notice was first published.

**Statutory reference:**

*Authority to regulate, see Neb. RS 17-557 and 17-557.01*

**Cross-reference:**

Penalty, §8-501

§ 8-107 SALE AND CONVEYANCE; REAL PROPERTY.

(A) Except as provided in division (G) of this section, the power of the City to convey any real property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution, directing the sale at public auction or by sealed bid of the property and the manner and terms thereof, except that such property shall not be sold at public auction or by sealed bid when:

(1) The property is being sold in compliance with the requirements of federal or state grants or programs;

(2) The property is being conveyed to another public agency; or

(3) The property consists of streets and alleys.

(B) The City Council may establish a minimum price for real property at which bidding shall begin or shall serve as a minimum for a sealed bid.

(C) After the passage of the resolution directing the sale, notice of all proposed sales of property described in division (A) of this section and the terms thereof shall be published once each week for three (3) consecutive weeks in a legal newspaper published in or of general circulation in the City.

(D) (1) If within thirty (30) days after the third publication of the notice a remonstrance petition against the sale is signed by registered voters of the City equal in number to thirty percent (30 %) of the registered voters of the City voting at the last regular City election held therein and is filed with the City Clerk, that property shall not then, nor within one year thereafter, be sold. If the date for filing the remonstrance petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty (30) day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

(2) Upon the receipt of the remonstrance, the City Clerk, with the aid and assistance of the County Clerk, shall determine the validity and sufficiency of signatures on the remonstrance petition. The City Council shall deliver the remonstrance to the County Clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested.

(3) Upon receipt of the remonstrance, the County Clerk shall issue to the City Council a written receipt that the remonstrance petition is in the custody of the County Clerk. The County Clerk shall compare the signature of each person signing the remonstrance with the voter registration records to determine if each signer was a registered voter on or before the date on which the remonstrance petition was filed with the City Council. The County Clerk shall also compare the signer's printed name, street

and number or voting precinct, and City or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the County Clerk determines that the printed name, street and number or voting precinct, and City or post office address match the registration records and that the registration was received on or before the date on which the remonstrance was filed with the City Clerk. The determinations of the County Clerk may be rebutted by any credible evidence which the City Council finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity and sufficiency of the remonstrance petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the remonstrance process. Not more than twenty (20) signatures on one signature page shall be counted.

(4) Upon completion of the comparison of names and addresses with the voter registration records, the County Clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the non-registration of the signer, the County Clerk shall set forth the reason for the invalidity of the signature. If the County Clerk determines that a signer has affixed his or her signature more than once to the remonstrance petition and that only one person is registered by that name, the County Clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature.

(5) The County Clerk shall certify to the City Council the number of valid signatures necessary to constitute a valid remonstrance petition. The County Clerk shall deliver the remonstrance and the certifications to the City Council within forty (40) days after the receipt of the remonstrance petition from the City Council. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested.

(6) The City Council shall, within thirty (30) days after the receipt of the remonstrance petition and certifications from the County Clerk, hold a public hearing to review the remonstrance petition and certifications and receive testimony regarding them. The City Council shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

(E) Real estate now owned or hereafter owned by the City may be conveyed without consideration to the state for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of Neb. RS 18-1001 through 18-1006.

(F) Following passage of the resolution directing the sale, publishing of the notice of the proposed sale, and passing of the thirty (30)-day right-of-remonstrance period, the property shall then be sold. The sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale.

(Neb. RS 17-503)

(G) Divisions (A) through (F) of this section shall not apply to the sale of real property if the authorizing resolution directs the sale of real property, the total fair market value of which is less than \$5,000. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three (3) prominent places within the City for a period of not less than seven (7) days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. (Neb. RS 17-503.01)

§ 8-108 SALE AND CONVEYANCE; PERSONAL PROPERTY.

The power of the City to convey any personal property owned by it shall be exercised by resolution directing the sale and the manner and terms thereof. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three (3) prominent places within the City for a period of not less than seven (7) days prior to the sale of the property. If the fair market value of the property is greater than \$5,000, notice of the sale shall also be published once in a legal newspaper published in or of general circulation in the City at least seven (7) days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. (Neb. RS 17-503.02)

§ 8-109 CITY PROPERTY; SALE BY BID, APPLICATION FEE.

When the City of Hartington is requested to pass a resolution directing the sale of City property, at a public auction or by sealed bids, and the City property has a value greater than one thousand dollars (\$1,000.00), each applicant shall be required to complete an application requesting the sale and describing the property that is to be the subject of the sale. At the time the application is submitted to the City Clerk, the applicant shall pay a fee in the sum of fifty dollars (\$50.00) to the City, to help defray the cost of regulating and publishing the required notices. Under no circumstances shall the fee be waived or refunded in the whole or in part, nor shall the City Council be under any obligation to approve the said resolution for sale of City owned property.

§ 8-110 ACQUISITION OF PROPERTY; CONSTRUCTION; ELECTIONS, WHEN REQUIRED.

(A) The City is authorized and empowered to purchase, or accept by gift or devise, real estate upon which to erect, and erect a building or buildings for an auditorium, fire station, City building, or community house for housing City enterprises and social and recreation purposes, and other public buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of the City.

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(B) Except as provided in division (C) of this section, before any such purchase can be made or building erected, the question shall be submitted to the electors of the City at a general City election or at an election duly called for that purpose, and be adopted by a majority of the electors voting on the question. (Neb. RS 17-953 and 17-954)

(C) If the funds to be used to finance the purchase of real estate or construction of a building pursuant to this section are available other than through a bond issue, then either:

(1) Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the City, and no election shall be required to approve the purchase or construction unless, within thirty (30) days after the publication of the notice, a remonstrance petition against the purchase or construction is signed by registered voters of the City equal in number to fifteen percent (15 %) of the registered voters of the City voting at the last regular City election held therein and is filed with the City Council.

If the date for filing the remonstrance petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be considered timely if filed or postmarked on or before the next business day. If a remonstrance petition with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the City at a general City election or a special election duly called for that purpose. If the purchase or construction is not approved, the property involved shall not then, nor within one year following the election, be purchased or constructed; or

(2) The City Council may proceed without providing the notice and right of remonstrance required in division (C)(1) of this section if the property can be purchased below the fair market value as determined by an appraisal, there is a willing seller, and the purchase price is less than \$25,000. The purchase shall be approved by the City Council after notice and public hearing. (Neb. RS 17-953.01 and 18-1755)

**Cross-reference:**

Remonstrance procedure, §8-107

§ 8-111 ACQUISITION OF REAL PROPERTY; APPRAISAL.

The City shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value of \$100,000 or more unless an appraisal of the property has been performed by a certified real estate appraiser. (Neb. RS 13-403)

§ 8-112 ACQUISITION OF REAL PROPERTY; PUBLIC MEETING.

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

§ 8-113 PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS.

(A) Except as provided in division (B) of this section, the City shall not engage in the construction of any public works involving architecture or engineering unless the plans, specifications, and estimates have been prepared and the construction has been observed by an architect, a professional engineer, or a person under the direct supervision of an architect, professional engineer, or those under the direct supervision of an architect or professional engineer.

(B) Division (A) of this section shall not apply to the following activities:

(1) Any public works project with contemplated expenditures for the completed project that do not exceed \$86,000;

(2) Any alteration, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building;

(3) Performance by the City of professional services for itself if the City appoints a City Engineer or employs a full-time person licensed under the Engineers and Architects Regulation Act who is in responsible charge of architectural or engineering work;

(4) The practice of any other certified trade or legally recognized profession;

(5) Earthmoving and related work associated with soil and water conservation practices performed on any land owned by the City that is not subject to a permit from the Department of Natural Resources;

(6) The work of employees and agents of the City performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land use regulations, and their customary duties in utility and public works construction, operation, and maintenance;

(7) Those services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, marine operating engineers, power plant operating engineers, or manufacturers who supervise the operation of or operate machinery or equipment or who supervise construction within their own plant;



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(8) The construction of water wells, defined as any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information or extracting water from or injecting fluid into the underground reservoir; the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells, unless that construction, installation, or decommissioning is required by the City to be designed or supervised by an engineer or unless legal requirements are imposed upon the City as a part of a public water supply; and

(9) Any other activities described in Neb. RS 81-3449 through 81-3453 (the Engineers and Architects Regulation Act). (Neb. RS 81-3423, 81-3445, 81-3449, and 81-3453)

***Statutory reference:***

*Water well definition, Neb. RS §46-1212*

***SIDEWALKS***

§ 8-201 KEPT CLEAN.

It shall be unlawful for the occupant of any lot or lots or the owner of any vacant lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substance to accumulate on the sidewalks or to permit any snow, sleet, ice, mud, or other substance to remain upon the sidewalk. All sidewalks within the business district shall be cleaned within five (5) hours after the cessation of a storm, unless the storm or snowfall shall have taken place during the night, in which case the sidewalk shall be cleaned before 9:00 a.m. the following day, provided that sidewalks within the residential areas of the City shall be cleaned within twenty-four (24) hours after the cessation of the storm.

***Statutory reference:***

*Authority to regulate, see Neb. RS 17-557*

**Cross-reference:**

Penalty, §8-501

§ 8-202 MAINTENANCE BY PROPERTY OWNER.

Every owner of any lot, lots, or property within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to said lot, lots, or property in good and proper repair, and in a condition reasonably safe for travel for all travelers thereon. In the event that the owner or owners of any lot, lots, or lands, abutting on any street, avenue, or part thereof shall fail to construct or repair any sidewalk in front of his, her, or their lot, lots, or property, within the time and in the manner as directed and required herein after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the City Council shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (Neb. RS 17-557.01)

§ 8-203 SPECIFICATIONS.

Every owner of any lot, lots, or piece of land within the corporate limits shall at all times keep and maintain a sidewalk, to be four feet (4') wide, along each lot in accordance with City specifications.

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§ 8-204 REPAIR BY CITY; NOTICE TO PROPERTY OWNERS.

(A) The Mayor and City Council may repair sidewalks, or cause the repair of sidewalks in such manner as the Mayor and City Council deems necessary and assess the expense thereof on the property in front of which such construction or repairs are made, after having given notice:

(1) By publication in one issue of a legal newspaper of general circulation in the City; and

(2) By either causing a written notice to be served upon the occupant in possession of the property involved or to be posted upon the premises ten (10) days prior to the commencement of the repair or construction. (Neb. RS 17-522)

(B) The notice shall:

(1) State that the City Council has ordered repair of the sidewalk;

(2) Contain the City's estimate of the cost of the repair;

(3) Notify the property owner that he or she may, within ten (10) days after the date of publication of the notice, notify the City that he or she will repair the sidewalk within thirty (30) days after the date of publication; and

(4) Notify the property owner that if he or she fails to so notify the City within the ten (10) days, or, having so notified the City, fails to repair the sidewalk within the thirty (30) days, the City will cause the sidewalk to be repaired and the expense thereof to be assessed against the property.

(C) (1) Before the City imposes any special assessments for sidewalk repair, a copy of the notice that is required to be published shall be mailed to the last known address of all nonresident property owners as shown on the current tax rolls at the time the notice is first published. (Neb. RS 13-310)

(2) The City Clerk shall mail the notice by certified mail with return receipt requested. (Neb. RS 13-312)

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

**NONRESIDENT PROPERTY OWNER.** Any person or corporation whose residence and mailing address as shown on the current tax rolls is outside the boundaries of the county in which the property subject to assessment is located and who is a record owner of the property. (Neb. RS 13-314)

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(D) All sidewalks shall be repaired in conformity with such plans and specifications as may be approved by the City Council.

(E) Assessments made under this section shall be made and assessed in the following manner:

(1) Such assessment shall be made by the City Council at a special meeting, by a resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements, and the amount charged against the same, which, with the vote thereon by yeas and nays, shall be spread at length upon the minutes; and notice of the time of holding such meeting and the purpose for which it is to be held, shall be published in some newspaper published or of general circulation in the City at least four (4) weeks before the same shall be held or, in lieu thereof, personal service may be had upon persons owning or occupying property to be assessed;

(2) All such assessments shall be known as special assessments for improvements, and shall be levied and collected as a separate tax, in addition to the taxes for general revenue purposes, and shall be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other City taxes. (Neb.RS 17-524)

**Cross-reference:**

Penalty, §8-501

§ 8-205 USE OF SPACE BENEATH SIDEWALKS.

No person shall be allowed to keep or use the space beneath the sidewalk lying between lot line and curb line unless a use permit shall have been obtained from the City Council. Before any permit shall be granted, the applicant for the permit shall submit plans and specifications of any present or proposed construction to the City Engineer. Should the plans or specifications be disapproved by the Engineer, no permit shall be granted. All permits granted shall continue only upon the condition that the party receiving the same shall build, maintain, and keep in repair a sidewalk over the space used or constructed to be used and pay all damages that may be sustained by any person by reason of that use or by reason of that sidewalk being defective or in a dangerous condition. As a condition precedent to the issuance or continuance of any permit for the use of any space underneath the City sidewalks, the City Council may require applicant to furnish a bond to the City for the benefit of any person or persons who may suffer any damage or damages by reason of that use. The bond shall be in such sum as the City Council, in its discretion, may designate.

**Cross-reference:**

Penalty, §8-501

§ 8-206 CONSTRUCTION AT OWNER'S INITIATIVE.

(A) Any person desiring to construct or cause to be constructed any sidewalk shall do so only as herein provided. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit.

(B) The owner shall make application in writing for a permit and file the application in the office of the City Clerk. The permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed. The official in charge of sidewalks shall issue the desired permit unless good cause shall appear why the permit should be denied, provided that if it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, or elevation, the City official in charge of sidewalks shall submit the application to the City Council who shall determine whether the permit should be granted or denied. It shall be unlawful for any person to construct or cause to be constructed the sidewalk at any other location, grade, or elevation than so designated by the City. All sidewalks shall be built and constructed on the established grade or elevation, and if there is no established grade, then on the grade or elevation indicated by the City official in charge of sidewalks.

**Cross-reference:**

Penalty, §8-501

§ 8-207 DANGEROUS STAIRWAY.

It shall be unlawful for any person to construct or maintain any stairway, open cellar-way, open basement way, or open entrance thereto in or adjacent to any sidewalk, pavement, or street, and any such entrance is hereby declared to be a public nuisance, provided that all existing stairways, open cellar-ways, open basement ways, or open entrances thereto in sidewalks, pavements, or streets may be permitted to remain from and after the passage, approval, and publication of this code if the person owning or using the opening in the sidewalk, or street, shall satisfy the Utilities Superintendent that the same is properly protected by a balustrade or coping of durable material and shall furnish the City with a bond in that amount as the City Council may set, for the benefit of any person who might suffer an injury or damage by reason of the use of the stairway, cellar-way, or open basement way.

**Cross-reference:**

Penalty, §8-501

§ 8-208 CONSTRUCTION AT CITY'S DIRECTION.

(A) The City Council may, by resolution, order the construction of a sidewalk on any lot or piece of ground within the City. Notice of the City Council's intention to construct the sidewalk shall be given by the City Clerk by publication of notice one time in a legal newspaper of general circulation in the City.

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(B) A copy of the notice shall be personally served upon the occupant in possession of the property, or, when personal service is not possible, the notice shall be posted upon the premises ten (10) days prior to the commencement of construction. The notice required in this section shall be prepared by the City Attorney in accordance with the provisions of this section. Service shall include a form of return evidencing personal service or posting as herein required.

(C) The notice shall notify the owner of the premises of the passage of the resolution ordering the owner to construct or cause to be constructed a sidewalk within thirty (30) days after the date of publication, and further, that if the owner fails to construct the sidewalk or cause the same to be done within the time allowed, the City will cause the sidewalk to be constructed, and the cost thereof shall be levied and assessed as a special tax against the premises, provided that the notice shall contain the official estimate of the cost of construction, and no special assessment in excess of this estimate shall be assessed against the property. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time the required notice was first published.

***Statutory reference:***

*Authority to construct and repair, see Neb. RS 17-522 through 17-524*

*Authority to improve through sidewalk district, see Neb. RS 19-2417 through 19-2419*

***STREETS***

§ 8-301 NAMES AND NUMBERS.

The City Council may at any time, by ordinance, rename any street or provide a name for any new street. Buildings used for residence or business purposes and located along those streets shall retain those numbers as the City Council may require. It shall be the duty of the City official in charge of streets, upon the erection of any new building or buildings, to assign the proper numbers to the building or buildings and give notice to the owner or owners and occupant or occupants of the same.

***Statutory reference:***

*Authority, see Neb. RS 17-509*

**Cross-reference:**

Penalty, §8-501

§ 8-302 OPENING, WIDENING, IMPROVING, OR VACATING.

(A) (1) The City shall have power to open, widen, or otherwise improve or vacate any street, avenue, alley, or lane within the limits of the City and also to create, open, and improve any new street, avenue, alley, or lane. All damages sustained by the citizens of the City, or by the owners of the property therein, shall be assessed as provided in this Code.

(2) Whenever any street or alley is vacated, the same shall revert to the owners of the abutting real estate, one-half (1/2) on each side thereof, and become a part of that property, unless the City reserves title in the ordinance vacating such street or alley. If title is retained by the City, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the City.

(3) When a portion of a street, avenue, alley, or lane is vacated only on one side of the center thereof, the title to the land shall vest in the owner of the abutting property and become a part of that property, unless the City reserves title in the ordinance vacating such street or alley. If title is retained by the City, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the City.

(4) When the City vacates all or any portion of a street, avenue, alley, or lane, the City shall, within thirty (30) days after the effective date of the vacation, file a certified copy of the vacating ordinance with the Register of Deeds for the county in which the vacated property is located to be indexed against all affected lots.

(5) The title to property vacated pursuant to this section shall be subject to the following:

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(a) There is reserved to the City the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

(b) There is reserved to the City, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times. (Neb. RS 17-558)

(B) The City shall have power to create, open, widen, or extend any street, avenue, alley, off-street parking area, or other public way, or annul, vacate, or discontinue the same. (Neb. RS 17-559)

**Statutory Reference:**

*Condemnation procedure, Neb. RS §76-704 through 76-724*

**Cross-reference:**

Procedure for assessing damages, §8-305

§ 8-303 GRADING, PAVING, AND OTHER IMPROVEMENTS.

(A) The City has the power to provide for the grading and repair of any street, avenue, or alley. No street, avenue, or alley shall be graded unless the grading is ordered to be done by the affirmative vote of two-thirds (2/3) of the City Council. (Neb. RS 17-508)

(B) The City Council may grade or change grade, curb, or gutter, and may widen or narrow streets or roadways, may resurface or re-lay existing pavement, or otherwise improve any streets, alleys, public grounds, public ways, entirely or partially, and streets which divide the City corporate area and the area adjoining the City. These projects may be funded at public cost or by the levy of special assessments on the property especially benefited in proportion to the benefits, except as provided in Neb. RS 19-2428 through 19-2431. The City Council may by ordinance create improvement districts, to be consecutively numbered, which may include two (2) or more connecting or intersecting streets, alleys, or public ways, and may include two (2) or more of the improvements in one proceeding. (Neb. RS 17-509)

(C) Whenever the City Council deems it necessary to make the improvements which are to be funded by a levy of special assessment on the property especially benefited, the City Council shall by ordinance create an improvement district. (Neb. RS 17-511)

**Cross-reference:**

Special Assessments, §8-317



§ 8-304 IMPROVEMENTS WITHOUT PETITION OR CREATION OF DISTRICT.

(A) The City may, without petition or creating a street improvement district, grade, curb, gutter, and pave:

(1) Any portion of a street otherwise paved so as to make one continuous paved street, but the portion to be so improved shall not exceed two (2) blocks, including intersections, or 1,325 feet, whichever is the lesser;

(2) Any unpaved street or alley which intersects a paved street for a distance not to exceed one block on either side of that paved street; and

(3) Any side street or alley within its corporate limits connecting with a major traffic street for a distance not to exceed one block from that major traffic street.

(B) These improvements may be performed upon any portion of a street or any unpaved street or alley not previously improved to meet or exceed the minimum standards for pavement set by the City for its paved streets.

(C) In order to defray the costs and expenses of these improvements, the City may levy and collect special taxes and assessments or issue paving bonds as provided in Neb. RS 18-2003. (Neb. RS 18-2001 through 18-2004)

**Cross-reference:**

Special Assessments, §8-317

§ 8-305 VACATING PUBLIC WAYS.

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

**SPECIAL DAMAGES.** Only those losses or damages or injuries which a property owner suffers that are peculiar or special or unique to his or her property and which result from the City Council vacating a street, avenue, alley, lane, or similar public way.

**SPECIAL DAMAGES** shall not mean those losses or damages or injuries that a property owner suffers that are in common with the rest of the City or public at large, even though those losses or damages or injuries suffered by the property owner are greater in degree than the rest of the City or public at large.

(B) Whenever the City Council decides that it would be in the best interests of the City to vacate a street, avenue, alley, lane, or similar public way, the City Council shall comply with the following procedure.

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(1) Notice. Notice shall be given to all abutting property owners either by first class mail to their last known address or if there is no known address then by publishing the notice in a newspaper that is of general circulation in the City. The content of the notice shall advise the abutting property owners that the City Council will consider vacating the street, avenue, alley, lane, or similar public way at its next regular meeting, or, if a special meeting is scheduled for the discussion, then the date, time, and place of that meeting.

(2) Consent; waiver. The City Council may have all the abutting property owners sign a form stating that they consent to the action being taken by the City Council and waive their right of access. The signing of this form shall have no effect on claims for special damages by the abutting property owners but shall create the presumption that the City Council's action was proper. If the abutting property owners do not sign the consent/waiver form, the City Council may still proceed with vacating the street, avenue, alley, lane, or similar public way under the authority granted by Neb. RS 17-558 and 17-559.

(3) Ordinance. The City Council shall pass an ordinance that includes essentially the following provisions:

(a) A declaration that the action is expedient for the public good or in the best interests of the City;

(b) A statement that the City will have an easement for maintaining all utilities; and

(c) A method or procedure for ascertaining special damages to abutting property owners.

(C) The Mayor shall appoint three (3) disinterested residents of the City to a special commission to ascertain the amount of special damages that the abutting property owners are entitled to receive and which resulted from the City Council vacating the street, avenue, alley, lane, or similar public way. The appointees of the special commission shall be approved by the City Council. Only special damages shall be awarded to the abutting property owners.

(D) In determining the amount of compensation to award the abutting property owners as special damages, the commission shall use the following rule:

An abutting property owner is entitled to recover as compensation the difference between the value of the property immediately before and immediately after the vacating of the street, avenue, alley, lane, or similar public way. If no difference in value exists, the abutting property owner is entitled to no compensation. (Neb. RS 17-558)

§ 8-306 CROSSINGS.

The City Council may order and cause to be constructed, under the supervision of the City official in charge of streets, such street, avenue, and alley crossings as the City Council shall deem necessary. When a petition for the construction of any such crossings is filed by an interested resident in the office of the City Clerk, the City Clerk shall refer the application to the Utilities Superintendent, who shall investigate and make a recommendation to the City Council. Action by the City Council on the application, whether the application is approved or rejected, shall be considered final.

**Statutory reference:**

*Authority, see Neb. RS 17-509*

§ 8-307 CUTTING INTO PAVING, CURB, OR SIDEWALK.

It shall be unlawful for any person to cut into any paving, curb, or sidewalk for the purpose of constructing a driveway or any other purpose whatsoever without first having obtained a written permit from the City Council. Before any person shall obtain a permit, the person shall inform the City Clerk of the place where the cutting is to be done, and it shall be the Utilities Superintendent's duty to inspect the place of entry into the paving, sidewalk, or curb, before the same is cut. When cutting into any paving, it shall be the duty of the party to cut the paving under such rules and regulations as may be prescribed by the City Council or the City Engineer. When the applicant is ready to close the opening made, the applicant shall inform the Utilities Superintendent, who shall supervise and inspect the materials used and the work done in closing the opening. It shall be discretionary with the City Council to order the Utilities Superintendent, under the supervision and inspection of the City Engineer or the committee of the City Council on the streets and alleys, to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained the permit. The City Council may consent to the work of cutting and closing the paving to be done by the party holding the permit. Before any permit is issued by the City Council, the applicant for that permit shall deposit with the City Treasurer a sum set by resolution of the City Council for all paving, curb, or sidewalk to be cut. This sum shall be set on a per square foot cost of construction basis. The deposit shall be retained by the City for the purpose of replacing the paving, curb, or sidewalk, in the event that the work is done by the City. In the event that the City elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the City until the work is completed to the satisfaction of the Utilities Superintendent or the committee of the City Council on streets and alleys. In addition to making the deposit above set forth, the applicant shall, before any permit is issued, execute a bond to the City with a good and sufficient surety or sureties to be approved by the City Council in a sum set by resolution.

**Statutory reference:**

*Authority, see Neb. RS 17-567*

**Cross-reference:**

Penalty, §8-501

§ 8-308 DRIVEWAY APPROACHES.

(A) The Utilities Superintendent may require the owner of property served by a driveway approach constructed or maintained upon the street right-of-way to repair or replace any such driveway approach which is cracked, broken, or otherwise deteriorated to the extent that it is causing or is likely to cause damage to or interfere with any street structure, including pavement or sidewalks.

(B) The City Clerk shall give the property owner notice by registered letter or certified mail, directed to the last known address of the owner or the agent of the owner, directing the repair or replacement of the driveway approach. If within thirty (30) days of mailing the notice the property owner fails or neglects to cause the repairs or replacements to be made, the Utilities Superintendent may cause the work to be done and assess the cost upon the property served by the approach. (Neb. RS 18-1748)

**Cross-reference:**

Penalty, §8-501

§ 8-309 EXCAVATION.

It shall be unlawful for any person to make an excavation in any street or streets for any purpose whatsoever unless a written permit is issued by the Utilities Superintendent authorizing the excavations.

**Statutory reference:**

*Authority, see Neb. RS 17-557*

**Cross-reference:**

Penalty, §8-501

§ 8-310 DRIVING STAKES.

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

**Statutory reference:**

*Authority, see Neb. RS 17-557*

**Cross-reference:**

Penalty, §8-501

§ 8-311 MIXING CONCRETE.

It shall be unlawful for any person to mix any concrete or plastering material directly on the street pavement for any reason whatsoever.

**Statutory reference:**

*Authority, see Neb. RS 17-557*

**Cross-reference:**

Penalty, §8-501

§ 8-312 HARMFUL LIQUIDS.

It shall be unlawful for any person to place or permit to leak in the gutter of any street any waste gasoline, kerosene, or high lubricating oils, which damage or act as a solvent upon the streets.

**Statutory reference:**

*Authority, see Neb. RS 17-557*

**Cross-reference:**

Penalty, §8-501

§ 8-313 HEAVY EQUIPMENT; SPECIAL TIRES.

It shall be unlawful for any person or persons to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing on any unpaved street without first having protected that curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing with heavy plank sufficient in strength to warrant against the breaking or damaging of the curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing. Hereafter, it shall be unlawful to run, drive, move, operate, or convey over or across any paved street a vehicle, machine, or implement with sharp discs or sharp wheels that bear upon the pavement, with wheels having cutting edges, with wheels having lugs, any protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent, or otherwise injure or damage any pavement, gutter, or curb; provided that, where heavy vehicles, structures, and machines move along paved or unpaved streets, the Police Department is hereby authorized and empowered to choose the route over which the moving of those vehicles, structures, or machines will be permitted and allowed. Nothing in this section shall be construed to apply to pneumatic tires with metal or metal-type studs not exceeding 5/16 of an inch in diameter inclusive of the stud-casting with an average protrusion beyond the tread surface of not more than 7/64 of an inch between November and April, provided that school buses, mail carrier vehicles, and emergency vehicles shall be permitted to use metal or metal-type studs all year and it shall be permissible to use farm machinery with tires having protuberances which will not injure the streets. It shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide or skid. It shall be permissible to use a rubber tired crane with a fixed load when that vehicle will be transported on a state highway or on any road within the corporate limits of the City, the City in which the crane is intended to be transported has authorized a permit for the transportation of the crane and specified the route to be used and the hours during which the crane can be transported, the vehicle is escorted by another vehicle or vehicles assigned by the City, and the vehicle's gross weight does not exceed the limits set out in Neb. RS 60-6,288. NEW from League

**Statutory reference:**

*Rubber-tired cranes, see Neb. RS 60-6,288(2) (j)*

*Tire requirements, see Neb. RS 60-6,250*

**Cross-reference:**

Penalty, §8-501

§ 8-314 PIPE LINES AND WIRES.

Poles, wires, gas mains, pipelines, and other appurtenances of public service companies may be located or erected over, upon, or under the streets, alleys, and common grounds of the City. Application for location of the above shall be made to the City Council in writing. Approval by that body shall be issued in writing. Any public service company granted a right-of-way for the erection and maintenance of poles, conduits, gas mains, pipe lines, and wires shall at all times erect and locate their poles, wires, gas mains, pipe lines, and other appurtenances at those places and in that manner as shall be designated by the City Council. The poles, wires, gas mains, pipelines, and other appurtenances shall be removed or relocated by the companies at their own expense when requested to do so by the City Council. Any such relocation shall be ordered by resolution of the City Council, and the City Clerk shall notify any and all companies affected. The companies shall, within twenty-four (24) hours after receiving notice, at their own expense, cause the poles, wires, gas mains, pipelines, or other appurtenances to be removed. The City Council shall designate another location as close as possible where the poles, wires, gas mains, pipelines, or other appurtenances may be reset or placed. All poles, wires, gas mains, pipe lines, or other appurtenances shall be reset, placed, or erected in such a manner that they will not interfere with the water system, sewerage system, poles, wires, and mains of any public utility, adjacent buildings, or with travel on the public ways and property. Whenever possible, all pole lines, wires, gas mains, pipelines, or appurtenances shall be confined to the alleys of the City.

**Cross-reference:**

Penalty, §8-501

§ 8-315 SNOW, DEBRIS, AND THE LIKE ON STREET PROHIBITED.

It shall be unlawful to place, push, or deposit snow, sleet, ice, water, or mud, or any debris, including leaves, grass, and branches, from private property onto the streets of the City.

**Statutory reference:**

*Authority to regulate, see Neb. RS 17-557*

**Cross-reference:**

Penalty, §8-501

§ 8-316 CONSTRUCTION ASSESSMENTS.

To defray the costs and expenses of street improvements, as may be authorized by law, the City Council shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, abutting upon, or especially benefiting from, the street, avenue, alley, or sidewalk in whole or in part opened, widened, curbed, curbed and guttered, graded, paved, repaired, graveled, macadamized, parked, extended, constructed, or otherwise improved or repaired. The City Council

sitting as the Board of Equalization shall review all such improvements in accordance with the procedure provided by law. All special assessments shall be made by the City Council at a regular or special meeting by resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements and the amount charged against same. The vote shall be recorded in the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in some legal newspaper published, or of general circulation, in the City at least four (4) weeks before the same shall be held. In lieu of such aforementioned notice, personal service may be had upon the persons owning or occupying the "special assessments for improvements" and with the cost of notice shall be levied and collected as a special tax in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other City taxes and shall be certified to the County Clerk by the City Clerk forthwith after the date of levy, for collection by the Treasurer of said County unless otherwise specified. After it shall become delinquent said assessment shall draw interest at the legal interest rate per annum. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of said notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (Neb. RS 17-511, 17-524)

§ 8-317 IMPROVEMENT DISTRICTS; OBJECTIONS.

Whenever the City Council deems it necessary to make any improvements allowed by statute which are to be funded by a levy of special assessment on the property especially benefited, the City Council shall by ordinance create a paving, graveling, or other improvement district and, after the passage, approval, and publication or posting of such ordinance, shall publish notice of the creation of any such district for six (6) days in a legal newspaper of the City, if a daily newspaper, or for two (2) consecutive weeks if it is a weekly newspaper. If no legal newspaper is published in the City, the publication shall be in a legal newspaper of general circulation in the City. If the owners of the record title representing more than fifty percent (50%) of the front footage of the property directly abutting on the street or alley to be improved file with the City Clerk within twenty (20) days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If objections are not filed against the district in the time and manner prescribed in this section, the City Council shall immediately cause such work to be done or such improvement to be made, shall contract for the work or improvement, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street or alley especially benefited in such district in proportion to such benefits to pay the cost of such improvement.

§ 8-318 OBSTRUCTING WATER FLOW.

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

**Statutory reference:**

*Authority to abate nuisances, Neb. RS §17-555*

*Authority to prevent water obstruction, Neb. RS §17-920*

**Cross-reference:**

Penalty, § 8-501

§ 8-319 STREET GAMES PROHIBITED.

It shall be unlawful for any person to play catch, bat a ball, or kick or throw a football or to engage in any similar sport or games upon the City streets or sidewalks. Nothing herein shall be construed to prohibit or prevent the City Council from ordering from time to time certain streets and public places be blocked off for the purpose of providing a safe area to engage in such sport or games.

**Statutory reference:**

*Additional authority, see Neb. RS §17-555 and 17-557*

*Authority to regulate obstruction of streets, Neb. RS §17-142*

**Cross-reference:**

Penalty, § 8-501

§ 8-320 POLICY.

It is hereby declared to be in the best interest of the public policy and public safety of the city to regulate and restrict the parking of vehicles on public streets during snow emergencies.

**AMENDED December 9, 2013 – ORDINANCE # 828**

§ 8-321 PENALTIES.

Any vehicle in violation of this article is hereby declared to be an abandoned vehicle and may be removed as provided in this article.

**AMENDED December 9, 2013 – ORDINANCE # 828**

§ 8-322 DESIGNATION OF SNOW EMERGENCY ROUTES.

The following streets and avenues or portions thereof within the City of Hartington are designated as snow emergency routes:

1. Main Street from Robinson Avenue to Capitol Avenue



2. Broadway Avenue from Franklin Street to Elm Street

***AMENDED December 9, 2013 – ORDINANCE # 828***

§ 8-323 PARKING OF VEHICLES.

- a. It shall be unlawful for any reason to stop, stand, park or leave unattended any motor vehicle upon any emergency snow routes between the hours of 2 a.m. and 7 a.m. after two (2) inches of snow has accumulated, and until the snow has been cleared to the curblineline of the entire block.
- b. Nothing in this section shall be construed to modify or change any regulation of the state highway department for state highways included as snow emergency routes or any provisions of chapter 9 regulating parking for any purpose.

***AMENDED December 9, 2013 – ORDINANCE # 828***

§ 8-324 OBSTRUCTIONS AND ENCROACHMENTS.

Authorized law enforcement personnel or city employees are hereby authorized to have a vehicle removed from a street to the nearest garage or other place of safety (including another place on a street), or to a location designated or maintained by the city, when:

1. The vehicle is parked on a part of a snow emergency route on which a parking prohibition is in effect.
2. The vehicle is stalled on a part of a snow emergency route on which there is a covering of snow, sleet or ice or on which there is a parking prohibition in effect and the person who was operating such vehicle does not appear to be removing it in accordance with the provisions of this article.
3. The vehicle is parked in violation of any parking ordinance or provision of law and is interfering or about to interfere with snow removal operations.
4. Vehicles parked on non-snow emergency routes in excess of twenty-four (24) hours after a snow emergency has been declared shall be ticketed for violation. Any such vehicle so ticketed remaining on a street forty-eight (48) hours after a snow emergency has been declared shall be subject to towing.

***AMENDED December 9, 2013 – ORDINANCE # 828***

§ 8-325 NOTICE TO OWNER AND RECOVERY.

Whenever a vehicle has been removed from a street as authorized herein the city shall send notice of removal by mail to the record title holder.

The record title holder may recover a vehicle that has been removed upon payment of all costs of removing and storing the vehicle.

***AMENDED December 9, 2013 – ORDINANCE # 828***

§ 8-326 RECORD.

The city shall keep a record of each vehicle removed in accord with section 8-324. The record shall include a description of the vehicle, its license number, the date and time of its removal, where it was removed from, its location, the name and address of its owner and last operator, if known, its final disposition and the parking violation involved.

***AMENDED December 9, 2013 – ORDINANCE # 828***

§ 8-327 SIGNS.

The city shall cause all snow emergency routes to be clearly signposted to give notice that this article is in effect.

***AMENDED December 9, 2013 – ORDINANCE # 828***

***TREES***

§ 8-401 STREET TREES; DEFINITION.

STREET TREES. Trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets and avenues within the City.

§ 8-402 STREET TREES TO BE PLANTED.

The City of Hartington, Nebraska shall maintain an extensive list of recommended trees for planting in public areas. The purpose of this listing will be to maintain diversity in the total tree population. This list shall be available to residents of the City upon request to aid in the selection of trees for private and public properties. The list of recommended trees shall be updated periodically to reflect new developments or species that will affect the population of the community forest.

§ 8-403 DISTANCES AND CLEARANCES FOR PLANTING.

Street trees may be planted in the tree lawn where there is more than ten feet (10') between the edge of the sidewalk and the curb of the street. Street trees shall be planted no closer than three feet (3') from a sidewalk, driveway, or seven feet (7') from a street. A clearance of eight feet (8') must be maintained over walkways and a clearance of fifteen feet (15') must be maintained over streets and alleys. No tree or shrub shall be planted closer than fifty feet (50') from any street corner, measured from the point of the nearest intersection of curbs or curb lines. No street tree shall be planted closer than ten feet (10') from any fireplug. Special permission must be obtained from the Tree Board Chairman when planting street trees within ten feet (10') of any point on a line on the ground immediately below any overhead utility wire or directly over underground lines of any utility. Dwarf trees or bushes or shrubs are an exception to planting beneath overhead wires or lines. Property owners are responsible for trees on their own property as well as trees on the public way that abuts their property.

§ 8-404 PUBLIC TREE CARE.

The City shall have the right to plant, prune, maintain, and remove trees, plants and shrubs within the right-of-way or bounds of all streets, alleys, lanes, squares, and public grounds, as may be necessary to insure the public safety. The City may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to electric power lines or other public improvements, or is seriously affected with any fatal disease. No compensation is necessary or will be paid for tree removal or damage to street trees.

§ 8-405 PERMITS REQUIRED.

No person shall plant a street tree without first obtaining a permit which has been signed by the Zoning Official and the Tree Board Chairman. There will be no fee for such permit. Applications are to be dispensed by the City Clerk's office.

**Cross-reference:**

Penalty, §8-501

§ 8-406 TOPPING PROHIBITED.

It shall be unlawful as a normal practice for any person, firm, or City department to top any street tree, park tree or other tree on public property. Topping, rounding off or pollarding is defined as the systematic cutting back of limbs within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practice are impractical may be exempted from this section at the determination of the Tree Board or Tree Board Chairman.

**Cross-reference:**

Penalty, §8-501

§ 8-407 DEAD OR HAZARD TREE REMOVAL.

The City shall have the right to cause to be removed any tree within the City limits that is dead or has been declared a hazard. Hazard trees are defined as trees with severe structural defects or splits. The City will notify in writing the owners of such trees. Removal is the responsibility of the owners of such trees and shall be accomplished within time limits set by the Tree Board Chairman.

**Cross-reference:**

Penalty, §8-501

Nuisance, §7-201 et seq., and §8-502

§ 8-408 INTERFERENCE WITH TREE BOARD.

It shall be unlawful for any person to prevent, delay or interfere with the Tree Board or any of its representatives or agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any trees within the public community forest.

**Cross-reference:**

Penalty, §8-501

City of Hartington Code of Ordinances

§ 8-409 ACCESS.

It shall be unlawful for any person to prevent, delay or interfere with access to private property by the City or its representative in the legal performance of any section of this Section.

**Cross-reference:**

Penalty, §8-501

***VIOLATION AND PENALTY***

§ 8-501 PENALTY.

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five hundred dollars (\$500.00) for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

§ 8-502 ABATEMENT OF NUISANCE.

Whenever a nuisance exists as defined in this Chapter, the City may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law. Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (Neb. RS18-1720, 18-1722)

**Cross-reference:**

Nuisances, §§7-201 et. seq.

## **CHAPTER 9 – TRAFFIC CODE**

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**GENERAL PROVISIONS**

§ 9-101 DEFINITIONS.

The words and phrases used in this Chapter, pertaining to motor vehicles and traffic regulations, shall be construed as defined below, or, if not defined herein, the word or phrase shall have its common meaning.

**ALLEY.** A highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.

**ARTERIAL STREET.** A street designated as such by resolution of the City Council.

**AUTHORIZED EMERGENCY VEHICLE.** Vehicles of the Fire Department and of the Police Department of the City and ambulances.

**BUSINESS DISTRICT.** Shall include that portion of the City designated as such on the official zoning map of the City.

**CURB.** The lateral boundaries of that portion of a street designated for the use of vehicles whether marked by curb stones or not so marked.

**DRIVE.** To ride, lead, pull, push, propel, or operate a vehicle.

**DRIVER.** Every person who drives or is in the actual physical control of a vehicle.

§ 9-102 EMERGENCY REGULATIONS.

The Chief of Police is hereby empowered to make and enforce temporary traffic regulations to cover emergencies.

§ 9-103 POLICE ENFORCEMENT.

The Police Department is hereby authorized, empowered, and ordered to exercise all powers and duties with relation to the management of street traffic and to direct, control, stop, restrict, regulate, and, when necessary, temporarily divert or exclude in the interest of public safety, health, and convenience the movement of pedestrian, animal, and vehicular traffic of every kind in streets, in parks, and on bridges.

**Cross-reference:**

Penalty, §9-705

§ 9-104 REFUSAL TO OBEY.

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

**Cross-reference:**

Penalty, §9-705

§ 9-105 TRAFFIC OFFICERS.

The City Council or the Chief of Police may at any time detail officers, to be known as "traffic officers," at street intersections. All traffic officers shall be vested with the authority to regulate and control traffic at the intersections to which they are assigned. It shall be their duty to direct the movement of traffic and prevent congestion and accidents. It shall be unlawful for any person to violate any order or signal of any such traffic officer, notwithstanding the directive of a stop sign, or signal device, which may have been placed at any such intersection.

**Cross-reference:**

Penalty, §9-705

§ 9-106 FORM AND RECORDS.

(A) The City Clerk shall provide, in appropriate form, traffic citations containing notices to appear. The City Clerk shall be responsible for the issuance of these books and shall maintain a record of every such book, and each citation number therein, issued to the Chief of Police. The Clerk shall require and retain a receipt for every book so issued. The City Clerk shall require the return of all copies of every traffic citation which has been spoiled, or upon which any entry has been made and not issued to an alleged violator.

(B) All records of traffic citations required herein shall be audited at least biennially by a member of the City Council.

§ 9-107 DISPOSITION AND RECORDS.

(A) The Police Department, upon issuing a traffic citation to an alleged violator of any provision of this chapter, shall deposit a copy of the traffic citation with the City Attorney, unless the citation is just a warning.

(B) Upon the deposit of the traffic citation with the City Attorney, the citation may be disposed of only by trial in the court of appropriate jurisdiction, or other official action by the judge of the court, including a forfeiture of bail, or by the deposit of sufficient bail with, or payment of a fine to the court by the person to whom the traffic citation has been issued.

(C) It shall be unlawful for the Police Department to dispose of a traffic citation, or copies thereof, or of the record of the issuance of the same in a manner other than as required herein.

**Statutory reference:**

*Citation contents; procedure, see Neb. RS 29-424*

*Citations authorized, see Neb. RS 29-422*

**Cross-reference:**

Penalty, §9-705

§ 9-108 ILLEGAL CANCELLATION.

Any person who cancels, destroys, or solicits the cancellation of any traffic citation in any manner other than as provided in this chapter shall be guilty of a misdemeanor.

**Cross-reference:**

Penalty, §9-705

§ 9-109 TRUCK ROUTES.

The City Council may, by resolution, designate certain streets in the municipality that trucks shall travel upon, and it shall be unlawful for persons operating trucks to travel on other streets than those designated for trucks, unless to pick up or deliver goods, wares, or merchandise, and in that event, the operator of the truck shall return to the truck routes as soon as possible in traveling through or about the municipality. The City Council shall cause notices to be posted or shall erect signs indicating the streets so designated as truck routes.

**Statutory reference:**

*Truck routes authorized, see Neb. RS 60-681*

**Cross-reference:**

Penalty, §9-705

§ 9-110 ONE-WAY TRAFFIC.

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

§ 9-111 DESIGNATION OF TRAFFIC LANES.

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

§ 9-112 CROSSWALKS.

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

§ 9-113 JAYWALKING.

No pedestrian shall cross any street at a place other than a crosswalk, or cross any street intersection diagonally.

**Cross-reference:**

Penalty, §9-705

§ 9-114 SIGNS; SIGNALS.

The City Council may, by resolution, provide for the placing of stop signs or other signs, signals, standards, or mechanical devices in any street or alley under the municipality's jurisdiction for the purpose of regulating or prohibiting traffic thereon. The resolution shall describe the portion of the street or alley wherein traffic is to be regulated or prohibited, the regulation or prohibition, the location where the sign, signal, standard, or mechanical device shall be placed, and the hours when the regulation or prohibition shall be effective. It shall be unlawful for any person to fail, neglect, or refuse to comply with such a regulation or prohibition.

**Statutory reference:**

*Traffic-control devices, see Neb. RS 60-6,119 through 60-6,121*

**Cross-reference:**

Penalty, §9-705

§ 9-115 STOP SIGNS.

Every person operating any vehicle shall, upon approaching any stop sign erected in accordance with the resolution prescribed heretofore, cause the vehicle to come to a complete stop before entering or crossing any street, highway, or railroad crossing. The vehicle operator shall stop at a marked stop line, or, if there is no stop line, before entering the crosswalk; but if neither is indicated, then as near the right-of-way line of the intersecting roadway as possible.

**Cross-reference:**

Penalty, §9-705

§ 9-116 DEFACING OR INTERFERING WITH SIGNS.

It shall be unlawful for any person to willfully deface, injure, remove, obstruct or interfere with any official traffic sign or signal.

**Cross-reference:**

Penalty, §9-705

§ 9-117 UNAUTHORIZED DISPLAY.

It shall be unlawful for any person to maintain or display upon, or in view of any street, any unofficial sign, signal, or device which purports to be, is an imitation of, or resembles an official traffic sign or signal which attempts to direct the movement of traffic, or which hides from view, or interferes with the effectiveness of any official sign or signal. Every such prohibited sign, signal, or device is hereby declared to be a public nuisance, and any police officer is hereby empowered to remove the same, or cause it to be removed, without notice.

§ 9-118 SCHOOL CROSSING ZONES; DESIGNATION.

The City Council may, by resolution, designate to the public any area of a roadway as a school crossing zone through the use of a sign or traffic-control device as specified by the City Council in conformity with the Manual on Uniform Traffic Control Devices. Any school crossing zone so designated starts at the location of the first sign or traffic-control device identifying the school crossing zone and continues until a sign or traffic-control device indicates that the school crossing zone has ended.

**Statutory reference:**

*School crossing zone, see Neb. RS 60-658.01*

*State violations, see Neb. RS 60-682.01 and 60-6,134.01*

**Cross-reference:**

Penalty, §9-705

§ 9-119 LITTERING.

(A) It shall be unlawful for any person to drop, or cause to be left, upon any City highway, street, or alley, except at places designated by the City Council, any rubbish, debris, or waste.(Neb. RS 39-683)

(B) It shall be unlawful for any person to throw, cast, lay, or place upon any street any thorns, nails, tacks, glass, bottles, window glass, or other articles made of or containing glass, and in case of an accident causing the breaking of any glass upon any street, the owner or person in charge of such glass, or the person responsible for such breakage, shall at once remove, or cause the same to be removed, from the street. (Neb. RS 39-683)

**Statutory reference:**

*Similar provisions, Neb. RS 39-311*

**Cross-reference:**

Penalty, §9-705

***SPEED LIMITS***

§ 9-201 GENERAL SPEED LIMIT.

No person shall operate a motor vehicle on any street, alley, or other place within the corporate limits at a rate of speed greater than twenty-five (25) miles per hour within the residential district, and twenty (20) miles per hour within the business district, unless a different rate of speed is specifically permitted by ordinance. Where a different maximum speed is set by ordinance, appropriate signs shall be posted. In no instance shall a person drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions.

***Statutory reference:***

*Basic speed rule, see Neb. RS 60-6,185*

*General speed limit, see Neb. RS 60-6,186*

*State, county, and local authority, see Neb. RS 60-6,190*

***Cross-reference:***

Penalty, §9-705

§ 9-202 POSTED SPEED LIMITS.

Speed limits have been set by ordinance on the following streets and have been appropriately posted. No person shall operate a motor vehicle on these streets at a speed greater than the following speed limits:

State Highway No. 84/Franklin Street from the east City limits (200 feet east of Portland Avenue) to 100 feet east of Oak Avenue: Thirty-five (35) miles per hour.

State Highway No. 84/Franklin Street from 100 feet east of Oak Avenue to Robinson Avenue: Thirty (30) miles per hour.

State Highway No. 84 from 900 feet west of Robinson Avenue to Robinson Avenue: Forty-five (45) miles per hour.

State Highway No. 57/No. 84 (Robinson Avenue) from 400 feet south of South Street to 375 feet south of Bow Street: Forty (40) miles per hour.

State Highway No. 57/No. 84 (Robinson Avenue) from 375 feet south of Bow Street to Felber Street: Thirty-five (35) miles per hour.

State Highway No. 57 (Robinson Avenue) from Felber Street to 1050 feet north of Goetz Street: Forty (40) miles per hour.

***AMENDED January 8, 2018 – Ordinance # 849***



§ 9-203 NEAR SCHOOLS.

It shall be unlawful for the driver of any vehicle, when passing premises on which school buildings are located, and which are used for school purposes, during school recess, or while children are going to or leaving school during the opening or closing hours, to drive the vehicle at a rate of speed in excess of fifteen (15) miles per hour past those premises; and the driver shall stop at all stop signs located at or near the school premises; and it shall be unlawful for the driver to make a “U-turn” at any intersection where stop signs are located at or near the school premises.

***Statutory reference:***

*Authority, Neb. RS §60-6,190(4)*

**Cross-reference:**

Penalty, §9-705

***MOVING VEHICLE VIOLATIONS***

§ 9-301 BACKING.

It shall be unlawful for any person to back a motor vehicle on the City streets except to park in or to remove the vehicle from a permitted parking position, to move the vehicle from a driveway, or to back to the curb for unloading where such unloading is permitted; Provided, a vehicle shall be backed only when such movement can be made in safety and in no case shall the distance of the backing exceed one and one half (1-1/2) lengths of the vehicle.

**Cross-reference:**

Penalty, §9-705

§ 9-302 UNNECESSARY STOPPING.

It shall be unlawful for any person to stop any vehicle on any public street or alley, other than in permitted parking areas, except when such a stop is necessary for emergency situations, to comply with traffic control devices and regulations, or to yield the right-of-way to pedestrians or to other vehicles.

**Cross-reference:**

Penalty, §9-705

§ 9-303 PASSING; INTERSECTIONS.

The driver of a vehicle shall not overtake and pass another vehicle proceeding in the same direction, while traversing a street intersection, if such passing requires such overtaking vehicle to drive to the left of the center of the street. (Neb. RS § 60-6,136)

**Cross-reference:**

Penalty, §9-705

§ 9-304 DRIVING ABREAST.

Two (2) or more vehicles shall not be driven abreast except when passing, or when traversing a multi-lane or one-way street; Provided, motorcycles may be driven no more than two (2) abreast in a single lane. (Neb. RS §§60-6,139 and 60-6,308)

**Cross-reference:**

Penalty, §9-705

§ 9-305 FOLLOWING FIRE APPARATUS.

The driver of any vehicle shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet (500'), or drive into, or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm. (Neb. RS §60-6,183)

**Cross-reference:**

Penalty, §9-705

§ 9-306 CROWDING FRONT SEAT.

No person shall drive a motor vehicle when it is so loaded, or when there are in the front seat more than three (3) persons, so as to obstruct the view of the driver to the front or sides of the vehicle or to interfere with the driver's control over the driving mechanism of such vehicle. (Neb. RS §60-6,179)

**Cross-reference:**

Penalty, §9-705

§ 9-307 RIDING OUTSIDE VEHICLE.

No person shall permit any other person to ride on the running board, hood, top, or fenders of any motor vehicle. Nor shall any person ride on the running board, hood, top, or fenders of any motor vehicle.

**Cross-reference:**

Penalty, §9-705

§ 9-308 DRIVING IN SIDEWALK SPACE.

No motor vehicle shall be driven or ridden within any sidewalk space, except a permanent or temporary driveway. (Neb. RS §60-6,178)

**Cross-reference:**

Penalty, §9-705

§ 9-309 MUFFLERS.

Every motor vehicle operated within this City shall be provided with a muffler in good working order to prevent excessive or unusual noise or smoke. No person shall modify or change the exhaust muffler, intake muffler or any other noise abatement device of a motor vehicle in a manner such that the noise emitted by the motor vehicle is increased above that emitted by the vehicle as originally manufactured. It shall be unlawful to use a "muffler cutout" on any motor vehicle upon any streets: Provided, the provisions of this section shall not apply to authorized emergency vehicles. (Neb. RS §60-6,286)

**Cross-reference:**

Penalty, §9-705

§ 9-310 UNMUFFLED COMPRESSION BRAKING PROHIBITED.

No person shall use motor vehicle brakes within the City limits that are in any way activated or operated by the un-muffled compression of the engine of that motor vehicle or any unit or part thereof. It shall be an affirmative defense to prosecution under this section that the un-muffled compression brakes were applied in an emergency and were necessary for the protection of persons and/or property. This section shall not apply to City emergency vehicles, whether or not responding to an emergency. As used in this section, the term “compression brakes” means the use of the engine to retard the forward motion of a motor vehicle by compression of the engine. “Compression brakes” are also referred to as “exhaust brakes” and/or “jake brakes.” The Street Superintendent shall have authority to post appropriate signs consistent with these provisions.

**Cross-reference:**

Penalty, §9-705

§ 9-311 PROJECTING LOADS.

When any vehicle shall be loaded in such a manner that any portion of the load extends more than four feet (4') beyond the rear of the bed or the body of such vehicle, a red flag of not less than twelve inches (12") both in length and width shall be carried by day, and red light after sunset at the extreme rear end of such load. (Neb. RS §60-6,243)

**Cross-reference:**

Penalty, §9-705

§ 9-312 SPILLING LOADS.

All vehicles used for carrying coal, earth, cinders, sand, gravel, rock, asphalt, tar, grain, or any similar substance shall be so constructed as to prevent the sifting or spilling of any of the contents. (Neb. RS §60-6,304)

**Cross-reference:**

Penalty, §9-705

***BICYCLES AND NON-MOTORIZED VEHICLES***

§ 9-401 OPERATION.

(A) No person shall ride or propel a bicycle on a street or other public highway with another person on the handlebars or in any position in front of the operator.

(B) No bicycle shall be ridden faster than is reasonable and proper, but every bicycle shall be operated with reasonable regard to the safety of the operator and any other persons upon the streets and public highways.

(C) Persons riding bicycles shall observe all traffic signs and stop at all stop signs.

(D) No bicycle shall be permitted on any street or other public highway from one half (1/2) hour after sunset and one half (1/2) hour before sunrise without a headlight, visible under normal atmospheric conditions, from the front thereof for not less than five hundred (500) feet indicating the approach or presence of the bicycle, firmly attached to such bicycle, and properly lighted, or without a yellow, or red light reflector attached to, and visible five hundred (500) feet from the rear thereof. The said headlight shall give a clear, white light.

(E) No person shall ride or propel a bicycle upon any street or other public highway abreast of more than one other person riding or propelling a bicycle.

(F) Every person riding or propelling a bicycle upon any street or other public highway shall observe all traffic rules and regulations applicable thereto, and shall turn only at intersections, signal for all turns, ride at the right-hand side of the street or highway, pass to the left when passing overtaken vehicles and individuals that are slower moving, and shall pass vehicles to the right when meeting.

(G) No person shall park a bicycle on any sidewalk unless a bicycle stand is located on said sidewalk.

(H) No person shall ride a bicycle on the sidewalks within the Business District.

(I) No person riding upon any bicycle or roller skates shall attach the same or himself to any moving vehicle upon any roadway, and it shall be unlawful for the driver of any vehicle to suffer or permit any person traveling upon any bicycle or roller skates or the like to cling to or attach himself or his bicycle, or roller skates, to such vehicle so driven and operated by him.

***Statutory reference:***

*Similar provisions, Neb. RS 60-6,315 et seq*

***SNOWMOBILES***

§ 9-501 UNLAWFUL ACTS.

It shall be deemed a misdemeanor for any person to allow a snowmobile, either owned or operated by him, to be operated:

(1) Within the congested area of the City unless weather conditions are such that it provides the only practicable method of safe vehicular travel, or said snowmobile is engaged in responding to an emergency.

(2) At a rate of speed greater than reasonable or proper under the surrounding circumstances.

(3) In a careless, reckless or negligent manner so as to endanger person or property.

(4) Without a lighted headlight and taillight when such would be required by conditions.

(5) In any tree nursery or planting in a manner which damages or destroys growing stock.

(6) Upon any private lands without first having obtained permission of the owner, lessee or operator of such lands. (Neb. RS §§ 60-6,335 and 60-6,337)

§ 9-502 SNOWMOBILES PERMITTED ON PUBLIC LANDS.

Snowmobiles may be operated upon public lands owned by the City; Provided, such operation is done in a manner which does not endanger others using the lands, and the snow covering the land is of such depth and consistency so as to make reasonably certain vegetation will not be destroyed or damaged by such operation. (Neb. RS § 60-6,338)

***PARKING REGULATIONS***

§ 9-601 COASTING IN NEUTRAL PROHIBITED.

The driver of a motor vehicle, when traveling upon a downgrade upon any street, shall not coast with the gears of the vehicle in neutral. (Neb. RS § 60-6,168)

**Cross-reference:**

Penalty, §9-705

§ 9-602 BRAKES AND TURNED WHEELS REQUIRED.

No person having control or charge of a motor vehicle shall allow that vehicle to stand unattended without first effectively setting the brakes thereon and, when standing upon any grade, without turning the front wheels of the vehicle to the curb or side of the street.

**Cross-reference:**

Penalty, §9-705

§ 9-603 PARALLEL PARKING REQUIRED; EXCEPTIONS.

No person shall park any vehicle or approach the curb with a vehicle, except when headed in the direction of the traffic. Vehicles, when parked, shall stand parallel with and adjacent to the curb or edge of the roadway in a manner so as to have both right wheels within twelve (12) inches of the curb or edge of the roadway and so as to leave at least four (4) feet between the vehicle so parked and any other parked vehicles, except where the City Council designates that vehicles shall be parked at an angle so as to have the front right wheel at the curb or edge of the roadway. Where stalls are designated either on the curb or pavement, vehicles shall be parked within the stalls. No vehicle shall be parked upon a roadway when there is a shoulder adjacent to the roadway which is available for parking.

**Cross-reference:**

Penalty, §9-705

§ 9-604 DESIGNATION OF TYPE OF PARKING.

The City Council may, by resolution, designate any street, or portion thereof, where vehicles shall be parked parallel with and adjacent to the curb or at an angle so as to have the right front wheel at the curb.

**Cross-reference:**

Penalty, §9-705

§ 9-605 AREAS OF PROHIBITED PARKING.

The City Council may, by resolution, set aside any street, alley, public way, or portion thereof where the parking of a particular kind or class of vehicle shall be prohibited, or where the parking of any vehicle shall be prohibited. No vehicle prohibited from parking thereon shall stand or be parked adjacent to the curb of the street, alley, public way, or portion thereof, longer than a period of time necessary to load and unload freight or passengers.

**Cross-reference:**

Penalty, §9-705

§ 9-606 ALLEYS; RESTRICTIONS.

(A) No vehicle, while parked, shall have any portion thereof projecting into any alley entrance.

(B) No vehicle shall be parked in any alley, except for the purpose of loading or unloading during the time necessary to load or unload, which shall not exceed the maximum limit of one-half (1/2) hour. Every vehicle while loading or unloading in any alley shall be parked in a manner as will cause the least obstruction possible to traffic in the alley.

**Cross-reference:**

Penalty, §9-705

§ 9-607 UNLOADING; FREIGHT VEHICLES.

(A) It shall be unlawful for the operator of any truck with an overall length of more than twenty (20) feet to stop or park any such vehicle on a street which the City Council has designated to be within the business district, except to load or unload, and then only when loading or unloading in an alley is impossible. Vehicles may stop or stand for a period of time not to exceed what is reasonably necessary to load or unload.

(B) It shall be unlawful for the operator of any truck, regardless of length, to park the vehicle within a street intersection, on a crosswalk, in front of a private driveway, or on a sidewalk.

(C) The Council may, by resolution, provide truck parking areas adjoining or adjacent to the business district, and when such parking areas are provided, it shall be the duty of all truck operators to use those parking areas for all parking purposes.

(D) No truck, including oil tankers, shall park, or stop for any period of time, within the limits of any street outside the business district except for the purpose of loading or unloading the cargo thereof in the ordinary course of business, except in the area or areas provided for by the Council by resolution.

**Cross-reference:**

Penalty, §9-705



§ 9-608 FIRE HYDRANTS AND STATIONS.

No vehicle shall be parked within fifteen (15) feet in either direction of any fire hydrant or within twenty (20) feet of the driveway entrance to any fire station. The curb space within the area of fifteen (15) feet in either direction of the fire hydrant shall be painted yellow to indicate this prohibition.

**Statutory reference:**

*Similar state law, see Neb. RS 60-6,166*

**Cross-reference:**

Penalty, §9-705

§ 9-609 STREET INTERSECTIONS.

Except in compliance with traffic-control devices, no vehicle shall be parked or left standing for any purpose, except momentarily to load or discharge passengers, within twenty-five (25) feet of the intersection or curb lines or, if none, then within fifteen (15) feet of the intersection of property lines, nor where the curb lines are painted yellow to indicate this prohibition.

**Statutory reference:**

*Authority, see Neb. RS 60-6,166*

**Cross-reference:**

Penalty, §9-705

§ 9-610 OBSTRUCTING TRAFFIC.

No person shall, except in case of an accident or emergency, stop any vehicle in any location where stopping will obstruct any street, intersection, or entrance to an alley or public or private drive.

**Cross-reference:**

Penalty, §9-705

§ 9-611 CURB PARKING; PAINTING OF CURBS.

(A) No vehicle shall park on any street with its left side to the curb, unless the street has been designated to be a one-way street by the City Council. Vehicles must not be parked at any curb in such a position as to prevent another vehicle already parked at the curb from moving away.

(B) It shall be the duty of the City Council or its agent to cause the curb space to be painted and keep the same painted as provided in this chapter. No person, firm, or corporation shall paint the curb of any street or in any manner set aside or attempt to prevent the parking of vehicles in any street, or part thereof, except at places where the

parking of vehicles is prohibited by the provisions of this chapter. The marking or designating of portions of streets or alleys where the parking of vehicles is prohibited or limited shall be done only by the municipality through its proper officers, at the direction of the City Council.

**Cross-reference:**

Penalty, §9-705

§ 9-612 DISPLAY OR REPAIR.

It shall be unlawful for any person to park upon any street, alley, or public place within this municipality any vehicle displayed for sale. No person shall adjust or repair any automobile or motorcycle, or race the motor of same, while standing on the public streets or alleys of this municipality, except in case of breakdown or other emergency requiring same. No person or employee connected with a garage or repair shop shall use sidewalks, streets, or alleys in the vicinity of the garage or shop for the purpose of working on automobiles or vehicles of any description.

**Cross-reference:**

Penalty, §9-705

§ 9-613 CURRENT REGISTRATION.

It shall be unlawful to park or place on the streets, alleys, or other public property any vehicle without first securing a current registration as provided by law.

**Cross-reference:**

Nuisances and abatement, §§7-201

et seq.

Abandoned vehicles, §7-206

Penalty, §9-705

§ 9-614 TIME LIMIT.

(A) The City Council may, by resolution, entirely prohibit or fix a time limit for the parking and stopping of vehicles on any street, streets, or district designated by the resolution, and the parking or stopping of any vehicle in any such street, streets, or district, for a period of time longer than fixed in the resolution shall constitute a violation of this chapter.

(B) The parking of a motor vehicle on a public street for over forty-eight (48) consecutive hours is unlawful, except where a different maximum time limit is posted.

**Cross-reference:**

Nuisances and abatement, §§7-201

et seq.

Abandoned vehicles, §7-206

Penalty, §9-705

§ 9-615 SNOW REMOVAL AND MAINTENANCE.

(A) It shall be unlawful to park or stand any vehicle on any street or alley in the municipality at any time within twelve (12) hours after a snowfall of three (3) inches or more has occurred within a twenty-four (24)-hour period unless the snow has been removed within that time.

(B) The City Council or the Chief of Police may order any street or alley, or portion thereof, vacated for weather emergencies or street maintenance. Notice shall be given by personally notifying the owner or operator of a vehicle parked on that street or alley or by posting appropriate signs along those streets or alleys. These signs shall be posted not less than four (4) hours prior to the time that the vacation order is to be effective. Any person parking a vehicle in violation of this section shall be subject to the penalties provided for violation in this chapter, and the vehicle may be removed and parked, under the supervision of the Chief of Police, to a suitable nearby location without further notice to the owner or operator of the vehicle.

***Statutory reference:***

*Authority to regulate during snow emergencies, see Neb. RS 17-557*

**Cross-reference:**

Penalty, §9-705

§ 9-616 EMERGENCY VEHICLES.

The provisions of this chapter regulating the movement, parking, and standing of vehicles shall not apply to authorized emergency vehicles, as defined in this title, while the driver of the vehicle is operating the same in an emergency in the necessary performance of public duties.

***Statutory reference:***

*Privileges of and conditions on authorized emergency vehicles, see Neb. RS 60-6,114*

***PARKING ADMINISTRATION AND ENFORCEMENT***

§ 9-701 TICKETS.

All tickets issued for violations of nonmoving traffic regulations contained in this chapter shall, in addition to information normally stated on such tickets, carry the following information:

- (A) The amount of the fine if paid within thirty (30) days;
- (B) The amount of the fine if not paid within thirty (30) days;
- (C) The location where payment may be made; and
- (D) The fact that a complaint will be filed after thirty (30) days if the fine is not paid in that time.

§ 9-702 REMOVAL OF ILLEGALLY PARKED VEHICLES.

(A) Whenever any police officer shall find a vehicle standing upon a street or alley in violation of any of the provisions of this chapter, that individual may remove the vehicle, have the vehicle removed, or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway of that street or alley or from that street or alley.

(B) The owner or other person lawfully entitled to the possession of any vehicle towed or stored shall be charged with the reasonable cost of towing and storage fees. Any such towing or storage fee shall be a lien upon the vehicle prior to all other claims. Any person towing or storing a vehicle shall be entitled to retain possession of that vehicle until these charges are paid. The lien provided for in this section shall not apply to the contents of any vehicles. (Neb. RS 60-6,165)

§ 9-703 CITATIONS; PARKING FINES.

A copy of each citation issued for non-moving traffic violations shall be deposited with the City Clerk, whose duty it shall be to collect all fines and to maintain appropriate and accurate records of all such fines paid to her. Fines shall be payable at the office of the Clerk. Such fines shall be in the amount of ten (\$10.00) dollars for each violation if paid within thirty (30) days from the date of issuance. Should any such fine not be paid within the thirty (30) day period, the Clerk shall ask the City Attorney to file a complaint in the appropriate court. The fine for any such violation after thirty (30) days or after judgment is entered against the violator shall be twenty (\$20.00) dollars plus costs. All money collected by the City Clerk under this Section shall be transferred to the school district in

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which the City lies. A complaint against the violator will be filed after thirty (30) days if the fine is not paid in that time. (Neb. RS §18-1729)

### § 9-704 SUMMONS; DESTRUCTION.

It shall be unlawful for any person to tear up, or destroy, a parking tag placed upon any vehicle by the City Police, or to disregard the summons contained on such tag, and fail to appear in court as directed by said tag.

### § 9-705 VIOLATION; PENALTY.

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred (\$500.00) dollars for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

***ALL-TERRAIN VEHICLES***

§ 9-801 ALL-TERRAIN VEHICLES; DEFINED

All-terrain vehicle shall mean any motorized off-highway vehicle which (1) is fifty inches or less in width, (2) has a dry weight of nine hundred pounds or less, (3) travels on three or more low-pressure tires, (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger, (5) has a seat or saddle designed to be straddled by the operator, and (6) has handlebars or any other steering assembly for steering control.

***AMENDED November 9, 2009 – ORDINANCE # 802***

§ 9-802 RESTRICTIONS ON OPERATION

Within the corporate limits of the City of Hartington, an all-terrain vehicle may only be operated between the hours of sunrise and sunset. Any person operating an all-terrain vehicle within the City of Hartington, shall have a valid Class O operator's license as provided by Nebraska Law, shall have liability insurance coverage for the all-terrain vehicle while operating an all-terrain vehicle on a highway or street, and shall not operate such vehicle at a speed in excess of the posted speed limit, but in no event in excess of 30 mph. The person operating the all-terrain vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within 5 days of such a request. The headlight and taillight of the vehicle shall be on and the vehicle shall be equipped with a bicycle safety flag which extends not less than 5 feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than 30 square inches and shall be day-glow in color.

***AMENDED November 9, 2009 – ORDINANCE # 802***

§ 9-803 EXCEPTION

All-terrain vehicles may be operated within the City of Hartington without complying with 9-802 in parades which have been authorized by the City Council of Hartington, Nebraska.

***AMENDED November 9, 2009 – ORDINANCE # 802***

***GOLF CAR VEHICLES***

§ 9-901 OPERATION OF GOLF CARS.

Golf car vehicles may be operated on streets within the corporate limits of the City of Hartington if the operation is (i) between sunrise and sunset and (ii) on streets with a posted speed limit of thirty-five miles per hour or less. When operating a golf car vehicle as authorized under this subsection, the operator shall not operate such a vehicle at a speed in excess of twenty miles per hour. A golf car vehicle shall not be operated at any time on any state or federal highway but may be operated upon such a highway in order to cross a portion of the highway system which intersects a street as directed in Section 9-903.

***NEW August 13, 2018 – ORDINANCE # 857***

§ 9-902 PENALTY FOR UNAUTHORIZED OPERATION.

Any person operating a golf car vehicle as authorized under this subsection shall have a valid Class O operator's license, and the owner of the golf car vehicle shall have liability insurance coverage for the golf car vehicle. The person operating the golf car vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days after such a request. The liability insurance coverage shall be subject to limits, exclusive of interest and costs, as follows: Twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.

***NEW August 13, 2018 – ORDINANCE # 857***

§ 9-903 CROSSING OF HIGHWAYS.

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

- (a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
- (b) The golf car vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;
- (c) The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and
- (d) In crossing a divided highway, the crossing is made only at the intersection of such highway with a street or road, as applicable.

***NEW August 13, 2018 – ORDINANCE # 857***

§ 9-904 DEFINITION OF STREET

For purpose of this section, street means a public way for the purposes of vehicular travel in a city or village and includes the entire area within the right-of-way.

*NEW August 13, 2018 – ORDINANCE # 857*



**CHAPTER 10 – GENERAL OFFENSES**

**Property Offenses**

- 10-101: Prohibited Fences.**
- 10-102: Littering on Public and Private Property.**
- 10-103: Injury to Trees.**
- 10-104: Removing Dirt from Public Grounds.**
- 10-105: Radio Interference.**

**Offenses Against Public Order, Justice, and Administration**

- 10-201: Disorderly Conduct.**
- 10-202: Disturbing the Peace.**
- 10-203: Curfew for Minors.**
- 10-204: False Reporting.**
- 10-205: Sale or Gift of Alcohol to Minor or Mentally Incompetent Person Prohibited; Exception.**
- 10-206: Consumption of Alcoholic Beverages in Public Places or Places Open to the Public; Restrictions.**
- 10-207: Removal of Intoxicated Persons from Public or Quasi-Public Property.**
- 10-208: Posting and Interference with Posting.**
- 10-209: Damage, Removal, and Possession of Street or Highway Signs, Markers, or Notices.**
- 10-210: Sex Offender Residency Restrictions; Duty of Landlords; Penalty.**

**Offenses Against Public Health, Safety, and Morals**

- 10-301: Maintaining a Nuisance.**
- 10-302: Appliances in Yard Prohibited.**
- 10-303: Discharge of Firearms.**
- 10-304: Use of Dangerous Weapons Prohibited.**
- 10-305: Slingshots, Air Guns, BB Guns Prohibited.**
- 10-306: Acquisition and Possession of Alcoholic Liquor; Restrictions.**

***PROPERTY OFFENSES***

§ 10-101 PROHIBITED FENCES.

It is unlawful for any person to erect, or cause to be erected, and/or maintain any barbed wire or electric fence within the City limits.

***Statutory reference:***

*Fences, see Neb. RS §§ 18-1720, 28-1321, and 39-705*

§ 10-102 LITTERING ON PUBLIC OR PRIVATE PROPERTY.

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

The property is an area designated by law for the disposal of that type of material and the person is authorized by the proper public authority to so use the property; or

The litter is placed in a receptacle or container installed on the property for that purpose.

For the purpose of this section the following definitions shall apply:

**LITTER.** Includes all waste material susceptible of being dropped, deposited, discarded, or otherwise disposed of by any person upon any property in the state, but does not include wastes of primary processes of farming or manufacturing.

**WASTE MATERIAL.** Any material appearing in a place or in a context not associated with that material's function or origin.

**Cross-reference:**

Littering, §9-119

§ 10-103 INJURY TO TREES.

It is unlawful for any person purposefully or carelessly and without lawful authority to cut down, carry away, injure, break down, or destroy any fruit, ornamental, shade, or other tree on any land belonging to another person or on any public land located within the City limits. Any public service company desiring to trim or cut down any tree, except on property owned or controlled by the company, shall make an application to the City Council or its designated official(s), and the written permit of the City Council is the only lawful authority of the company to do so.

**Cross-reference:**

Tree Board, §5-206

Trees, generally, §§8-401 et seq.

§ 10-104 REMOVING DIRT FROM PUBLIC GROUNDS.

It is unlawful for any person to remove, disturb, or take away from any street, alley, or public grounds any dirt, earth, stones, or other materials forming a part of such street, alley, or public grounds without first having obtained written permission to do so from the City Council.

§ 10-105 RADIO INTERFERENCE.

Any person operating or causing to be operated any electrical apparatus that is connected with the light and power system shall equip the apparatus with proper filtering attachments to eliminate interference, provided that this provision shall not apply to necessary medical equipment or apparatus where electrical interference cannot be reasonably and safely eliminated. Any person who so operates or causes to be operated any other electrical apparatus that interferes habitually with radio and television is deemed a nuisance.

***Statutory reference:***

*Provisions on nuisances, see Neb. RS §18-720 and 28-1321*

**Cross-reference:**

Nuisances, §7-201 et. seq.

***OFFENSES AGAINST PUBLIC ORDER, JUSTICE, AND ADMINISTRATION***

§ 10-201 DISORDERLY CONDUCT.

It is unlawful for any person to engage in conduct or behavior which disturbs the peace and good order of the City by clamor or noise, intoxication, use of illegal substances, drunkenness, fighting, or using obscene or profane language in the streets or public places or otherwise violating the public peace by indecent or lewd or lascivious behavior.

***Statutory reference:***

*Authority to prevent intoxication, see Neb. RS §17-129*

*Authority to regulate noise, riots, and routs, see Neb. RS §17-556*

§ 10-202 DISTURBING THE PEACE.

It is unlawful for any person intentionally to disturb the peace and quiet of any person, family, or neighborhood. (Neb. RS 28-1322)

**Cross-reference:**

Penalty, §1-201

§ 10-203 CURFEW FOR MINORS.

(A) It is unlawful for any person under the age of nineteen (19) years to loiter, idle, wander, stroll, or play in or upon the public streets, sidewalks, highways, roads, alleys, parks, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places, or to ride in or upon, drive, or otherwise operate any automobile, bicycle, or other vehicle upon the streets, alleys, or other public places of the City, between the hours of twelve o'clock (12:00) Midnight and five o'clock (5:00) A.M. except on Friday and Saturday, when the curfew hours is from one o'clock (1:00) A.M. to five o'clock (5:00) A.M..

(B) Curfew hours are not applicable if such minor person is accompanied by an adult parent, guardian, or legal custodian of the minor person, or said minor person is upon an emergency errand or legitimate business directed by his or her parent, guardian or legal custodian.

(C) It is unlawful for the parent, guardian, or legal custodian of a minor person under the age of nineteen (19) years to allow or permit such minor person to do any of the acts prohibited by this section.

(D) No minor person arrested under the provisions of this section shall be confined in jail unless his or her parent, guardian, or legal custodian has been notified and the arresting officer has ascertained that said minor cannot be controlled by his or her parent, guardian, or legal custodian.

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(E) If such parent, guardian, or legal custodian shall state that said minor cannot be controlled by him or her, then the minor shall be charged with the violation; otherwise, the parent, guardian, or custodian shall be charged with the violation.

(F) Each violation of any provision of this section shall constitute a separate offense.

**Cross-reference:**

Penalty, §1-201

§ 10-204 FALSE REPORTING.

(A) It is unlawful for any person to furnish information she knows to be false:

(1) To any peace officer or other official with the intent to instigate an investigation of an alleged criminal matter or impede the investigation of an alleged criminal matter; or

(2) Alleging the need for emergency medical or other assistance to any hospital, emergency medical service, or other person or governmental agency; or

(3) Concerning the need for assistance of a fire department or any personnel or equipment of the fire department; or

(4) Concerning the location of any explosive in any building or other property to any person; or

(5) With the intent to instigate or impede an ongoing non-criminal investigation of any governmental department or agency and which actually results in instigating or impeding the investigation.

(B) A person who violates this section commits the offense of false reporting. Each violation of this section shall constitute a separate offense. (Neb. RS 28-907)

**Cross-reference:**

Penalty, §1-201

§ 10-205 SALE OR GIFT OF ALCOHOL TO MINOR OR MENTALLY INCOMPETENT PERSON PROHIBITED; EXCEPTION.

A) No person shall sell, give away, dispose of, exchange, or deliver, or permit the sale, gift, or procuring of any alcoholic beverage, to or for any minor or to any person who is mentally incompetent. (Neb. RS 53-180)

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B) For purposes of this section, “alcoholic beverages” shall mean any liquid or solid containing alcohol, spirits, wine, or beer and capable of being consumed as a beverage by a human being, including confections or candy containing more than one-half of one percent alcohol.

C) Nothing in this provision shall apply to wine intended for use by any church or religious organization for sacramental purposes.

**Statutory reference:**

*Authority, see Neb. RS 17-135*

**Cross-reference:**

Penalty, §1-201

§ 10-206 CONSUMPTION OF ALCOHOL IN PUBLIC PLACES OR PLACES OPEN TO THE PUBLIC; RESTRICTIONS.

(A) Except as provided in Neb. RS 53-186(2), it shall be unlawful for any person to consume alcoholic liquor:

(1) In the public streets, alleys, parking areas, roads, or highways;

(2) Inside vehicles while upon the public streets, alleys, parking areas, roads, or highways; or

(3) Upon property owned or controlled by the City unless specifically authorized by the City Council. (Neb. RS 53-186(1))

(B) It shall be unlawful for any person owning, operating, managing, or conducting any dance hall, restaurant, cafe, or club, or any place open to the general public, to permit or allow any person to consume alcoholic liquor upon the premises except as permitted by a license issued for the premises pursuant to the State Liquor Control Act. It shall be unlawful for any person to consume alcoholic liquor in any dance hall, restaurant, cafe, or club, or any place open to the general public, except as permitted by a license issued for the premises pursuant to the Act. This division shall not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages. (Neb. RS 53-186.01)

**Statutory reference:**

*Statutory restrictions and exceptions, see Neb. RS 53-186 and 53-186.01*

**Cross-reference:**

Penalty, §1-201

§ 10-207 REMOVAL OF INTOXICATED PERSONS FROM PUBLIC OR QUASI-PUBLIC PROPERTY.

(A) Any law enforcement officer with the power to arrest for traffic violations may take a person who is intoxicated and in the judgment of the officer dangerous to himself, herself, or others, or who is otherwise incapacitated, from any public or quasi-public property. An officer removing an intoxicated person from public or quasi-public property shall make a reasonable effort to take the intoxicated person to his or her home or to place the person in any hospital, clinic, alcoholism center, or with a medical doctor as may be necessary to preserve life or to prevent injury. The effort at placement shall be deemed reasonable if the officer contacts such facilities or doctor which have previously represented a willingness to accept and treat such individuals and which regularly do accept such individuals. If these efforts are unsuccessful or are not feasible, the officer may then place the intoxicated person in civil protective custody, except that civil protective custody shall be used only as long as is necessary to preserve life or to prevent injury, and under no circumstances longer than twenty-four (24) hours.

(B) The placement of the person in civil protective custody shall be recorded at the facility or jail at which he or she is delivered and communicated to his or her family or next of kin, if they can be located, or to the person designated by the person taken into civil protective custody.

(C) The law enforcement officer who acts in compliance with this section shall be deemed to be acting in the course of his or her official duty and shall not be criminally or civilly liable for these actions.

(D) The taking of an individual into civil protective custody under this section shall not be considered an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

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

**PUBLIC PROPERTY.** Any public right-of-way, street, highway, alley, park, or other state, county, or City-owned property.

**QUASI-PUBLIC PROPERTY.** Private or publicly owned property utilized for proprietary or business uses which invites patronage by the public or which invites public ingress and egress. (Neb. RS 53-1,121)

***Statutory reference:***

*Liquor licensing law, Neb. RS §53-186*

**Cross-reference:**

Penalty, §1-201

§ 10-208 POSTING AND INTERFERENCE WITH POSTING.

It is unlawful for any person, firm, or corporation to use the streets, sidewalks, or public grounds of the City for signs, signposts, or the posting of handbills or advertisements without written permission of the City Council. It is also unlawful for any person to damage, cover, or tear down any signs, signposts, handbills or advertisements that have been permissibly posted pursuant to this ordinance.

**Statutory reference:**

*Authority, see Neb. RS § 17-140*

§ 10-209 DAMAGE, REMOVAL, AND POSSESSION OF STREET OR HIGHWAY SIGNS, MARKERS, OR NOTICES.

It is unlawful for any person, other than those authorized to do so, to damage or remove any sign, marker, notice, traffic control or traffic surveillance device placed along a public street, road, or highway. It shall also be unlawful for any person to possess any such sign, marker, notice, or device that has been removed in violation of this section. (Neb. RS 60-6,130(3))

§ 10-210 SEX OFFENDER RESIDENCY RESTRICTIONS; DUTY OF PROPERTY OWNERS; PENALTY.

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

SEX OFFENDER means any person who is required to register under Neb. RS §29-4003.

RESIDENCE means a place where a person sleeps, lives, or dwells, which may include more than one location, and may be mobile or transitory.

CHILD CARE FACILITY means a facility licensed pursuant to the Child Care Licensing Act.

SCHOOL means a public, private, denominational, or parochial school which meets the requirements for state accreditation or approval.

(B) It is unlawful for any person who meets the definition of “Sex Offender” to establish a permanent or temporary residence within five hundred feet (500’) of any school or child care facility. For purposes of determining the minimum distance separation, the requirement is measured by following a straight line from the outer property line of the permanent or temporary residence to the nearest outer property line of a school or child care facility.



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(C) A person residing within five hundred feet (500') of any school or child care facility does not commit a violation of this section if any of the following apply:

(1) The person was a minor when he/she committed the offense and was not convicted as an adult;

(2) The person is a minor; and/or,

(3) The school or child care facility within the minimum distance was opened after the person established the residence and the person reported and registered the residence pursuant to the Sex Offender Registration Act.

(D) It is unlawful to lease or rent any place, structure, or any part thereof, with the knowledge that it will be used as a permanent or temporary residence by any person prohibited from establishing such residence under this ordinance.

(E) Any person violating this section is guilty of a misdemeanor and is punished by a fine of not more than \$500.00.

***Statutory reference:***

*Sex Offender Registration Act, Neb. RS §§29-4001 to 29-4713, inclusive*

**OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS**

§ 10-301 MAINTAINING A NUISANCE.

It is unlawful for any person to erect or continue and maintain any nuisance to the injury of any part of the citizens of the City of Hartington. (Neb. RS §28-1321(1))

**Cross-reference:**

Nuisances, definition and abatement, §§7-201 et seq.  
Power of Health Board to declare nuisances, §7-102  
Interferences with public water, §§6-320 et seq.  
Dead or diseased trees, §7-205  
Abandoned/unlicensed/inoperable vehicles, §7-206  
Explosives, §7-309  
Prohibited water storage, §7-401  
Animals, §7-504  
Obstructing public ways, §8-207  
Littering on streets, §9-119  
Unauthorized traffic signs, etc., §9-117  
Junk Dealers, §11-201 et. seq.

§ 10-302 APPLIANCES IN YARD PROHIBITED.

It is unlawful for any person to permit a refrigerator, icebox, freezer, or any other dangerous appliance to be in the open and accessible to children whether on private or public property unless the person first removes all doors.

**Statutory reference:**

*Authority to prohibit nuisances within zoning jurisdiction, Neb. RS §§ 18-1720 and 28-1321*

§ 10-303 DISCHARGE OF FIREARMS.

It is unlawful for any person, except an officer of the law in the discharge of his official duty, to fire or discharge any gun, pistol, or like instrument within the City limits, except by written permission from the City Council for the purpose of officially-sanctioned celebrations.

**Statutory reference:**

*Authority to regulate, see Neb. RS § 17-556*

§ 10-304 USE OF DANGEROUS WEAPONS PROHIBITED.

It is unlawful for any person, except for a City Police Officer, to use any knife, billy club, slingshot, metal knuckles, or other dangerous weapon of any kind within the City limits.

**Statutory reference:**

*Authority to regulate, see Neb. RS § 17-556*

§ 10-305 SLINGSHOTS, AIR GUNS, BB GUNS PROHIBITED.

It is unlawful for any person to discharge a slingshot, air gun, BB gun, or the like loaded with rock or any other missiles at any time or under any circumstances within the City limits.

**Statutory reference:**

*Authority to regulate, see Neb. RS § 17-556*

§ 10-306 ACQUISITION AND POSSESSION OF ALCOHOLIC LIQUOR;  
RESTRICTIONS.

(A) It shall be unlawful for any person to purchase, receive, acquire, accept, or possess any alcoholic liquor acquired from any other person other than one duly licensed to handle alcoholic liquor under this chapter and the State Liquor Control Act unless within specific exemptions or exceptions provided in this chapter or the Act. (Neb. RS 53-175)

(B) It shall be unlawful for any person to transport, import, bring, ship, or cause to be transported, imported, brought, or shipped into this state for the personal use of the possessor, his or her family, or guests a quantity of alcoholic liquor in excess of nine (9) liters in any one calendar month. (Neb. RS 53-194.03)

**Cross-reference:**

Alcoholic Beverages, Business regulations, this Code § 11-501

Penalty, this Code §1-201

Definition of Alcoholic Beverages, this Code §10-205

**CHAPTER 11 – BUSINESS REGULATIONS**

**Occupation Taxes**

- 11-101: Amounts.**
- 11-102: Collection Date.**
- 11-103: Occupation Tax Certificates.**
- 11-104: Failure to Pay.**
- 11-105: Hotel/Motel Occupation Tax.**

**Junk Dealers**

- 11-201: Definitions.**
- 11-202: Nuisance Declared in Fire Limits; Exceptions.**
- 11-203: License Required; Renewal; Fee.**
- 11-204: License Application.**
- 11-205: Confinement of Junk within Licensed Premises.**
- 11-206: Rodent and Fire Control.**
- 11-207: Penalty for Violation.**

**Franchises**

- 11-301: Natural Gas.**
- 11-302: Electricity.**
- 11-303: Cable Television.**

**Lottery, Keno, and Gambling**

- 11-401: Definitions.**
- 11-402: Participation Restrictions.**

**Alcoholic Beverages**

- 11-501: Retail License Applications; Public Hearing.**
- 11-502: Licenses; City Powers and Duties.**
- 11-503: Licensed Premises; Inspections.**
- 11-504: License Renewal; City Powers and Duties.**
- 11-505: Citizen Complaints.**
- 11-506: Sanitary Conditions.**
- 11-507: Hours of Sale.**

**Peddlers and Solicitors**

- 11-601: Definitions.**
- 11-602: License Required.**
- 11-603: Application Procedure.**

- 11-604: License Fee.**
- 11-605: Standards for Issuance.**
- 11-606: Revocation Procedure.**
- 11-607: Standards for Revocation.**
- 11-608: Appeal Procedure.**
- 11-609: Exhibition of Identification.**
- 11-610: Notice Regulating Soliciting.**
- 11-611: Duty of Solicitors to Ascertain Notice.**

**OCCUPATION TAXES**

§ 11-101 AMOUNTS.

For the purpose of raising revenue, an occupation tax is hereby levied on the following businesses:

Alcoholic Beverages:

Manufacturer of Alcoholic Liquors, per year.....	1,000.00
Manufacturer of Beer, per year .....	100.00
Manufacturer of Wine, per year .....	100.00
Distributor of Alcoholic Liquors, per year .....	500.00
Distributor of Beer, per year .....	250.00
Retailer of Beer, On Sale, per year .....	50.00
Retailer of Beer, Off Sale, per year .....	50.00
Retailer of Alcoholic Liquors, including Beer, On and Off Sale, (Class C), per year ...	500.00
Retailer of Alcoholic Liquors, Including Beer, Off Sale Only, (Package Sales), per year .....	150.00
Retailer of Alcoholic Liquors, including Beer, holding a Nonprofit Organization License, per year .....	400.00

Nonbeverage Users (as defined by Nebraska Liquor Control):

Class 1, per year.....	5.00
Class 2, per year .....	10.00
Class 3, per year.....	10.00
Class 4, per year .....	30.00
Class 5, per year .....	50.00

**Statutory reference:**

*Authority to set occupation tax, Neb. RS §17-525*

§ 11-102 COLLECTION DATE.

All occupation taxes shall be due, and payable on the first (1st) day of May of each year, except in the event that the said tax is levied daily, and upon the payment thereof by any person or persons to the City Clerk, the said Clerk shall give a receipt, properly dated, and specifying the person paying the said tax, and the amount paid; Provided, occupation taxes collected from Class C liquor licensees shall be due and payable on the first (1st) day of November. The revenue collected shall then be immediately deposited into the General Fund by the City Treasurer. The City Treasurer shall keep an accurate account of all revenue turned over to him. All forms, and receipts herein mentioned shall be issued in duplicate. One copy shall then be kept by each party in the transaction. In the case of

## City of Hartington Code of Ordinances

occupation taxes levied against occupations and businesses respecting alcoholic liquors, the amount of such occupation tax shall be deposited with the City Clerk at the time the application for license is made or within twenty-four (24) hours after said application has been filed with the Nebraska Liquor Control Commission. The City Clerk shall hold said occupation tax as a trust fund until the application is finally passed upon and if the application is refused and license denied, then the amount thereof shall be returned to the applicant. The City Clerk shall account to and pay said occupation tax to the City Treasurer immediately after said license is issued and the Treasurer shall credit the same to the General Fund of said City. Upon the failure of any such applicant to pay said occupation tax as herein provided, it shall be mandatory upon the City Council to pass a resolution denying the application for a license or requesting the Nebraska Liquor Control Commission to deny said application and said resolution shall state the reason therefore and shall be forwarded to the Nebraska Liquor Control Commission.

### § 11-103 OCCUPATION TAX CERTIFICATES.

The receipt issued after the payment of any occupation tax shall be the occupation tax certificate. The certificate shall specify the amount of the tax and the name of the person and business that paid the tax. The occupation tax certificate shall then be displayed in a prominent place or carried in such a way as to be easily accessible while business is being conducted.

### § 11-104 FAILURE TO PAY.

If any person, company, or corporation fails or neglects to pay the occupation taxes as provided herein on the day they become due and payable, the City shall then proceed by civil suit to collect the amount due. All delinquent taxes shall bear interest at the rate of one percent (1%) per month until paid.

### § 11-105 HOTEL/MOTEL OCCUPATION TAX.

An occupation tax shall be imposed equal to five percent (5%) of gross receipts from room rentals by any hotel or motel in the City which tax shall be paid to the City monthly and credited to the General Fund.

#### ***Statutory Reference:***

*Occupation tax; power to levy; exceptions, Neb. RS § 17-525; 18-1208.*

**AMENDED July 8, 2013 – ORDINANCE # 827**

***JUNK DEALERS***

§ 11-201 DEFINITIONS.

**JUNK.** Scrap metal, used or second-hand parts of motor vehicles or machinery, motor vehicles which are being kept for the purposes of being dismantled or discarded, second-hand materials in general, bottles, scrap rubber, rags, papers, bones, and the like.

**JUNK DEALER.** Any person who shall be engaged in the business of buying, selling, receiving, storing, collecting or dealing in any or all of the above described items, or junk in general.

In interpreting this Section as applied to used cars and second-hand parts of cars, the same shall not be deemed to apply to bona fide second-hand automobile dealers, but the mere fact that the owner or operator of said establishment reconditions or sells some second-hand cars, shall not eliminate his establishment from the effect of the provisions of this Section.

§ 11-202 NUISANCE DECLARED IN FIRE LIMITS; EXCEPTION.

(A) It is hereby declared to be a nuisance and unlawful for any person, firm or corporation to store, or deposit on, or cause to be stored or to be deposited any junk on any premises located within the fire limits of the City, as defined in this Code, except as is hereinafter provided, or on any premises outside the fire limits of said City, located within three hundred (300) feet of any building used either for business or residential purposes, or both such purposes, except when said premises are operated and maintained by a licensed junk dealer, licensed under the terms and conditions hereinafter set forth.

(B) The City Council may by resolution, upon the recommendation of the Chief of the Fire Department, permit the storage of junk within the fire limits, when the same is stored in buildings or behind such enclosures as will prevent the storage of said junk from becoming a menace to the safety of any property in the City or the health of the inhabitants thereof. Such a permit as may be granted by the Council shall be subject at all times to revocation by the Council when in its opinion either the conduct of the party maintaining such storage yard or the changed circumstances of the surrounding property are such as to warrant such revocation. The revocation shall be made by resolution and a copy thereof served upon the owner and occupant of the premises so operated under a permit, by having the Chief of Police serve a copy of said resolution personally on said parties, and if such parties, or any of them, cannot be served personally, then by mailing a copy of said resolution to the owner and occupant at his last known address.

**Cross-reference:**

Fire limits, §7-304

Nuisance, §§7-201 et seq.



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§ 11-203 LICENSE REQUIRED; RENEWAL; FEE.

(A) Every person, firm or corporation now or hereafter engaged in business as a Junk Dealer within the corporate limits of the City, shall obtain a license to engage in said business.

(B) All licenses so issued shall continue in force, unless sooner revoked or suspended, to December thirty-first (31st), after the date of issuance thereof.

(C) Licenses may be renewed by the Mayor and Council upon application made for renewal with the City Clerk for a period beginning January first (1st) of each year, and ending December thirty-first (31st) of that year.

(D) The license fee of one hundred (\$100.00) dollars shall be paid to the City for said annual renewal which shall be paid at the time of making application therefore; Provided, however, that no permit shall be issued which would authorize the use of any premises in violation of the provisions of the City Zoning Regulations.

**Cross-reference:**

Penalty, §11-307

§ 11-204 LICENSE APPLICATION.

All applicants for original license under this Section shall file a written application for such license with the City Clerk and with said application pay to the City the sum of one hundred (\$100.00) dollars the fee for said license. Said application shall state the name of the owner and operator of said business and the location of the proposed business. The City Clerk shall submit said application to the Mayor and Council who shall make such investigation as may be necessary of the proposed location set forth in said application, and shall grant such license only if they deem the operation of the business in said location will not be injurious to the public health, safety and welfare, and that they are reasonably satisfied that the premises proposed meet the requirements of this Section. If the application is granted, the City Clerk shall forthwith issue license authorizing the applicant to engage in the business as a junk dealer.

§ 11-205 CONFINEMENT OF JUNK WITHIN LICENSED PREMISES.

Every junk dealer shall keep and confine the goods and materials received or held by him within the limits of the premises for which license is granted and none of the same shall be placed or be allowed to remain upon any adjoining property, sidewalk, street or alley, only except as may be necessary in the loading or unloading of the same, and in any event the same shall be promptly removed therefrom.

**Cross-reference:**

Penalty, §11-307

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Nuisances, §§7-201 et. seq.  
Obstructing public ways prohibited, §8-103

§ 11-206 RODENT AND FIRE CONTROL.

(A) All junk shall be kept or stored in such a manner as to make possible control, and eradication of rats and vermin, and to minimize the danger of fire. The owners and operators of junk yards shall use reasonable measures to the end the junk yard shall not become or be infested with rats and vermin to the extent public health, safety and welfare are endangered.

(B) No open fire shall be started or permitted in any junk yard for the purpose of burning junk or waste material.

**Cross-reference:**

Fire Safety and Prevention, §7-301 et seq  
Nuisance, §§7-201 et seq.  
Penalty, §11-307

§ 11-207 PENALTY FOR VIOLATION.

Any person, firm or corporation violating any of the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one (\$1.00) dollar and not more than five hundred (\$500.00) dollars and shall pay the costs of prosecution, and in the event of the failure to pay the same, shall be confined in the Cedar County jail until said fine and costs of prosecution are paid, or otherwise discharged according to law. Each day of said violation shall be deemed to be a separate and distinct offense. In addition to the foregoing penalties, the Mayor and Council, after giving three (3) days notice to said licensee either in person or by registered mail addressed to the last known address of such licensee, may revoke and cancel or suspend said license to operate a junk yard upon the conviction of any such junk dealer of a violation of this Section, or in the event that such junk dealer originally or persistently fails, refuses or neglects to comply with this Article. Any such revocation or suspension of license shall remain in effect until said junk dealer brings his junk yard and the operation thereof in compliance with this Section.

**FRANCHISES**

§ 11-301 NATURAL GAS.

The City of Hartington has granted to the Kansas-Nebraska Natural Gas Company, Inc. the authority to construct, maintain, and operate a gas transmission, and distribution system within the City. Details of the agreement, and the present gas rates, charges, and fees are available at the City Clerk's office.

**Statutory reference:**

*Authority, Neb. RS §17-528.02*

§ 11-302 ELECTRICITY.

(A) The City of Hartington has granted to the Nebraska Public Power District, its successors and assigns, the non-exclusive right and franchise to erect, operate and maintain within said City an electric light and power system; and the right to construct, operate and maintain poles, conduits, wires and other necessary equipment, in, over, across or under the streets, alleys and public places in said City for the purpose of supplying electric energy to said City and its inhabitants, or to other cities, villages and communities and their inhabitants, or to others connected or to be connected to said system.

(B) Nebraska Public Power District shall have the authority to trim trees upon and overhanging the streets, alleys and public places of the City so as to prevent the branches of such trees from coming in contact with or endangering said electric light and power system.

(C) Nebraska Public Power District is hereby authorized to charge, collect and receive a reasonable compensation for electricity furnished to the City and its inhabitants, however, said District shall at no time during the existence of this franchise charge a greater sum for electric energy for light and power purposes than is charged by said District in other communities of a like size and under similar conditions.

**Statutory reference:**

*Authority, Neb. RS §17-528 et seq.*

§ 11-303 CABLE TELEVISION.

The City Council has granted to Cedar Vision, Inc. the right, privilege and franchise to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all such extensions thereto and additions thereto in the City of Hartington, such poles, wires, cables, underground conduits, manholes and other television conductors and fixtures

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necessary for the maintenance and operation of a CATV system. Actual details of the agreement, and the present rates are available at the City Clerk's office.

***LOTTERY, KENO AND GAMBLING***

§ 11-401 DEFINITIONS.

LOTTERY. A game in which players buy (or are given) chances and prizes are distributed by casting lots.

KENO. A lotto game in which several numbers are drawn from a large field of numbers. Players select a set of numbers from the main field and are awarded prizes based on how many of their numbers match those in the drawn set.

§ 11-402 PARTICIPATION RESTRICTIONS.

(A) No person under nineteen (19) years of age shall play or participate in any way in any lottery conducted pursuant to the Nebraska County and City Lottery Act, within the City Limits of Hartington, Cedar County, Nebraska.

(B) No owner or officer of a lottery operator, or any of the employees of the operator, when the employees are working, with whom the City of Hartington contracts to conduct its lottery, shall play or participate in any way in the lottery they operate or are employed by, which is conducted pursuant to the Nebraska County and City Lottery Act, within the City Limits of Hartington, Cedar County, Nebraska

***ALCOHOLIC BEVERAGES***

**Cross-reference:**

Penalty, §1-201

Sale or Gift to Minor or Mentally Incompetent Person Prohibited, §10-203

Consumption of Alcohol in Public Places or Places Open to the Public, § 10-206

Removal of Intoxicated Persons from Public or Quasi-Public Property, §10-207

§ 11-501 RETAIL LICENSE APPLICATIONS; PUBLIC HEARING.

(A) Any person desiring to obtain a new license to sell alcoholic liquor at retail or a craft brewery license shall file an application with the State Liquor Control Commission. The Commission shall then notify by registered or certified mail the City Clerk. The Commission shall set for hearing before it any application for a retail license relative to which it has received, within thirty (30) days from the date of receipt of the application by the City, a recommendation of denial from the City.

(B) Upon receipt of the notice and copy of the application, the City Council shall fix a time and place at which a hearing will be held, and at which the City Council shall receive evidence, either orally or by affidavit, from the applicant or any other person, bearing upon the propriety of the issuance of the license. Notice of the time and place of the hearing shall be published in a legal newspaper in or of general circulation in the City one time, not less than seven (7) or more than fourteen (14) days before the time of the hearing. The notice shall include but not be limited to a statement that all persons desiring to give evidence before the City Council in support of or protest against the issuance of the license may do so at the time of the hearing. The hearing shall be held not more than twenty-one (21) days after the receipt of this notice from the Commission.

(C) In determining what recommendation to make to the Commission, the City Council shall consider:

(1) Whether the applicant is fit, willing, and able to properly provide the service proposed within the City;

(2) Whether the applicant can conform to all provisions, requirements, rules, and regulations provided for in the State Liquor Control Act;

(3) Whether the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to ensure that the licensed business can conform to all provisions, requirements, rules, and regulations provided for in the State Liquor Control Act; and

(4) Whether the issuance of the license is or will be required by the present or future public convenience and necessity.

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(D) After the hearing, the City Council shall cause to be spread at large in the minute record of its proceedings a resolution recommending either issuance or refusal of the license. The City Clerk shall thereupon mail to the Commission, by first class mail postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply herewith shall not render void any license issued by the Commission. In the event the Commission refuses to issue such a license, the cost of publication of notice as herein required shall be paid by the Commission from the security for costs.

***Statutory reference:***

*Application, hearings, see Neb. RS 53-131 through 53-134*

*Licensee Requirements, See State Liquor Control Act Neb. RS §§53-101 et seq.*

§ 11-502 LICENSES; CITY POWERS AND DUTIES.

(A) The City Council is authorized to regulate by ordinance, not inconsistent with the State Liquor Control Act, the business of all retail or craft brewery licensees carried on within the corporate limits of the City

(B) During the period of forty-five (45) days after the date of receiving from the State Liquor Control Commission notice and a copy of an application for a new license to sell alcoholic liquor at retail or a craft brewery license, the City Council may make and submit to the Commission recommendations relative to the granting or refusal to grant the license to the applicant.

(C) The City Council, with respect to licenses within the corporate limits of the City, has the following powers, functions, and duties with respect to retail and craft brewery licenses:

(1) To cancel or revoke for cause retail or craft brewery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the State Liquor Control Commission;

(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the State Liquor Control Act to determine whether any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule, or regulation adopted by the City Council has been or is being violated and at that time examine the premises of the licensee in connection with such determination;

(3) To receive a signed complaint from any citizen within its jurisdiction that any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the Act;

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(4) To receive retail license fees and craft brewery license fees and pay the same, after the license has been delivered to the applicant, to the City Treasurer;

(5) To examine or cause to be examined any applicant or any retail licensee or craft brewery licensee upon whom notice of cancellation or revocation has been served as provided in the Act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the City Council may authorize its agent or attorney to act on its behalf;

(6) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in § 11-601, it determines that the licensee has violated any of the provisions of the State Liquor Control Act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. This order of cancellation or revocation may be appealed to the Commission within thirty (30) days after the date of the order by filing a notice of appeal with the Commission.

(D) (1) When the State Liquor Control Commission mails or delivers to the City Clerk a retail or craft brewery license issued or renewed by the Commission, the Clerk shall deliver the license to the licensee upon receipt from the licensee of proof of payment of:

(a) The license fee if the fee is payable to the City Treasurer;

(b) Any fee for publication of notice of hearing before the City Council upon the application for the license;

(c) The fee for publication of notice of renewal, if applicable; and

(d) Occupation taxes imposed by the City in §11-101.

(2) Notwithstanding any ordinance or charter power to the contrary, the City shall not impose an occupation tax on the business of any person, firm, or corporation licensed under the State Liquor Control Act and doing business within the corporate limits of the City in any sum which exceeds twice the amount of the license fee required to be paid under the Act to obtain that license.

**Statutory Reference:**

*State Liquor Control Act, Neb. RS §53-131 et seq.*

*License fee, Neb. RS §53-124(5)*

**Cross-reference:**

Hearings procedure for application and appeals, §11-601



§ 11-503 LICENSED PREMISES; INSPECTIONS.

The City Council, in cooperation with the Nebraska Liquor Control Commission shall cause frequent inspection to be made on the premises of all retail licensees. If it is found that any such licensee is violating any provision of this chapter, the State Liquor Control Act, or the rules and regulations of the State Liquor Control Commission, or is failing to observe in good faith the purposes of this chapter or the Act, the license may be suspended, canceled, or revoked after the licensee is given an opportunity to be heard in his defense.

***Statutory reference:***

*Authority to inspect, Neb. RS §53-116.01*

§ 11-504 LICENSE RENEWAL; CITY POWERS AND DUTIES.

(A) A retail license issued by the State Liquor Control Commission and outstanding may be automatically renewed by the Commission in the absence of a written request by the City Council to require the licensee to submit an application for renewal. Any licensed retail premises located in an area which is annexed to the City shall file a formal application for a license, and while the application is pending, the licensee may continue all license privileges until the original license expires or is canceled or revoked. If that license expires within sixty (60) days following the annexation date of the area, the license may be renewed by order of the Commission for not more than one year.

(B) The City Clerk shall cause to be published in a legal newspaper in or of general circulation in the City, one time between January 10 and January 30 of each year, individual notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the City, except that notice of the right of automatic renewal of Class C licenses shall be published between the dates of July 10 and July 30 of each year. If written protests to the issuance of automatic renewal of a license are filed in the office of the City Clerk by three or more residents of the City on or before February 10, or August 10 for Class C licenses, the City Council shall hold a hearing to determine whether continuation of the license should be allowed. Upon the conclusion of any hearing required by this section, the City Council may request a licensee to submit an application.

***Statutory reference:***

*Application to State Liquor Control Commission, Neb. RS §§53-135 and 53-135.01*

§ 11-505 CITIZEN COMPLAINTS.

Any five (5) residents of the City shall have the right to file a complaint with the City Council stating that any retail licensee subject to the jurisdiction of the City Council has been or is violating any, provision of the State Liquor Control Act or the rules or

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regulations issued pursuant to the Act. The complaint shall be in writing in the form prescribed by the City Council and shall be signed and sworn to by the parties complaining. The complaint shall state the particular provision, rule, or regulation believed to have been violated and the facts in detail upon which belief is based. If the City Council is satisfied that the complaint substantially charges a violation and that from the facts alleged there is reasonable cause for that belief, it shall set the matter for hearing within ten (10) days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of the hearing and of the particular charge in the complaint. The complaint shall in all cases be disposed of by the City Council within thirty (30) days from the date the complaint was filed by resolution thereof, which resolution shall be deemed the final order for purposes of appeal to the State Liquor Control Commission.

**Statutory reference:**

*Complaints, Neb. RS §§53-134.04*

*Proceedings and service on parties, Neb. RS § 53-1,115*

### § 11-506 SANITARY CONDITIONS.

It shall be unlawful to open for public use any retail liquor establishment that is not in a clean and sanitary condition. Toilet facilities shall be adequate and convenient for customers and patrons. The licensed premises shall be subject to any health inspections the City Council or the City Police may make or cause to be made. All applications for liquor licenses shall be viewed in part from the standpoint of the sanitary conditions, and a report concerning the sanitary conditions shall be made at all hearings concerning the application for or renewal of a liquor license.

**Statutory reference:**

*Authority to regulate licensed premises, see Neb. RS §53-134.03*

*State sanitary rules and regulations authorized, see Neb. RS §53-118*

**Cross-reference:**

Penalty, §1-201

### § 11-507 HOURS OF SALE.

(A) Definitions:

**ON SALE.** Alcoholic beverages sold at retail by the drink for consumption on the premises of the licensed establishment.

**OFF SALE.** Alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

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

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HOURS OF SALE

Alcoholic Liquors (except beer and wine):

Monday through Saturday:

Off Sale.....6:00 A.M. to 1:00 A.M.

On Sale.....6:00 A.M. to 2:00 A.M.

Sundays:

Off Sale.....12:00 Noon to 1:00 A.M.

On Sale.....12:00 Noon to 2:00 A.M.

Beer and Wine:

Monday through Saturday:

Off Sale.....6:00 A.M. to 1:00 A.M.

On Sale.....6:00 A.M. to 2:00 A.M.

Sundays:

Off Sale.....6:00 A.M. to 1:00 A.M.

On Sale.....6:00 A.M. to 2:00 A.M.

(C) No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than fifteen (15) minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises.

(D) Nothing in this section shall be construed to prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section. (Ref. 53-179 RS Neb.)

***AMENDED December 6, 2010 – ORDINANCE # 812***

***PEDDLERS AND SOLICITORS***

§ 11-601 DEFINITIONS.

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

**BUSINESS.** The business carried.

**PEDDLER.** Any person, not an itinerant merchant, who:

(1) Travels from place to place by any means carrying goods for sale, or making sales, or making deliveries; or

(2) Without traveling from place to place, sells or offers goods for sale from any public place within the City.

**SOLICITOR.** Any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future. A person who is a solicitor is not a peddler.

Nothing herein shall be construed to apply to any person, or persons, selling produce raised within the county, or to wholesale salesmen soliciting merchants directly.

§ 11-602 LICENSE REQUIRED.

(A) Any person who is an itinerant merchant, peddler, or solicitor shall obtain a license before engaging in such activity within the City.

(B) The fee for the license required by this chapter shall be as set from time to time by the City.

(C) No license issued under this chapter shall be transferable.

(D) All licenses issued under this chapter shall expire ninety (90) days after the date of issuance thereof.

**Cross-reference:**

Penalty, §1-201

§ 11-603 APPLICATION PROCEDURE.

(A) All applicants for licenses required by this chapter shall file an application with the Clerk. This application shall be signed by the applicant if an individual, or by all

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partners if a partnership, or by the president if a corporation. The applicant may be requested to provide information concerning the following items:

(1) The name and address of the applicant;

(2) (a) The name of the individual having management authority or supervision of the applicant's business during the time that it is proposed to be carried on in the City;

(b) The local address of such individual;

(c) The permanent address of such individual;

(d) The capacity in which such individual will act;

(3) The name and address of the person, if any, for whose purpose the business will be carried on, and, if a corporation, the state of incorporation;

(4) The time period or periods during which it is proposed to carry on applicant's business;

(5) (a) The nature, character, and quality of the goods or services to be offered for sale or delivered;

(b) If goods, their invoice value and whether they are to be sold by sample as well as from stock;

(c) If goods, where and by whom such goods are manufactured or grown, and where such goods are at the time of application;

(6) The nature of the advertising proposed to be done for the business;

(7) Whether or not the applicant, or the individual identified in division (A)(2)(a) above, or the person identified in division (A)(3) has been convicted of any crime or misdemeanor and, if so, the nature of each offense and the penalty assessed for each offense.

(B) Applicants for peddler or solicitor licenses may be required to provide further information concerning the following items, in addition to that requested under division (A) above:

(1) A description of the applicant;

(2) A description of any vehicle proposed to be used in the business, including its registration number, if any.

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(C) All applicants for licenses required by this chapter shall attach to their application, if required by the City, credentials from the person, if any, for which the applicant proposes to do business, authorizing the applicant to act as such representative.

(D) Applicants who propose to handle foodstuffs shall also attach to their application, in addition to any attachments required under division (C), a statement from a licensed physician, dated not more than ten days prior to the date of application, certifying the applicant to be free of contagious or communicable disease.

**Cross-reference:**

Penalty, §1-201

§ 11-604 LICENSE FEE.

The applicant for a license under §11-603 shall pay a permit fee of fifty (\$50.00) dollars to cover the cost of processing the application and issuing the permit.

§ 11-605 STANDARDS FOR ISSUANCE.

(A) Upon receipt of an application, an investigation of the applicant's business reputation and moral character shall be made.

(B) The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. In particular, tangible evidence that the applicant:

- (1) Has been convicted of a crime of moral turpitude; or
- (2) Has made willful misstatements in the application; or
- (3) Has committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like; or
- (4) Has committed prior fraudulent acts; or
- (5) Has a record of continual breaches of solicited contracts.

will constitute valid reasons for disapproval of an application.

§ 11-606 REVOCATION PROCEDURE.

Any license or permit granted under this chapter may be revoked by the Clerk after notice and hearing, pursuant to the standards in § 11-607. Notice of hearing for revocation shall

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be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at his last known address, at least ten (10) days prior to the date set for the hearing.

§ 11-607 STANDARDS FOR REVOCATION.

A license granted under this chapter may be revoked for any of the following reasons:

- (A) Any fraud or misrepresentation contained in the license application; or
- (B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license; or
- (C) Any violation of this chapter; or
- (D) Conviction of the licensee of any felony, or conviction of the licensee of any misdemeanor involving moral turpitude; or
- (E) Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

§ 11-608 APPEAL PROCEDURE.

- (A) Any person aggrieved by a decision under §§ 11-603 or 11-606 shall have the right to appeal to the City Council. The appeal shall be taken by filing with the City Council within fourteen (14) days after notice of the decision has been mailed to such person's last known address, a written statement setting forth the grounds for appeal. The City council shall set the time and place for a hearing, and notice for such hearing shall be given to such person in the same manner as provided in § 11-606.
- (B) The order of the City council after the hearing shall be final.

§ 11-609 EXHIBITION OF IDENTIFICATION.

- (A) Any license issued to an itinerant merchant under this chapter shall be posted conspicuously in or at the place named therein. In the event more than one place within the City shall be used to conduct the business licensed, separate licenses shall be issued for each place.
- (B) The Clerk shall issue a license to each peddler or solicitor licensed under this chapter. The license shall contain the words "Licensed Peddler" or "Licensed Solicitor," the expiration date of the license, and the number of the license. The license shall be kept with the licensee during such time as he is engaged in the business licensed.

**Cross-reference:**

Penalty, §1-201

§ 11-610 NOTICE REGULATING SOLICITING.

(A) Notice of the refusal of invitation to solicitors to any residence or business within the City shall be given on a weatherproof card, approximately three inches by four inches in size, exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:  
"NO SOLICITORS"

(B) The card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence of the information contained thereon.

§ 11-611 DUTY OF SOLICITORS TO ASCERTAIN NOTICE.

(A) It shall be the duty of every solicitor upon going onto any premises in the City upon which a residence is located to first examine the notice provided for in § 11-610 if any is attached, and be governed by the statement contained on the notice. If the notice states "NO SOLICITORS," then the solicitor, whether registered or not, shall immediately and peacefully depart from the premises.

(B) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

**Statutory reference:**

*Criminal trespass, Neb. RS §§28-520 and 28-521*

**Cross-reference:**

Penalty, §1-201



## CHAPTER 12: LAND USAGE AND BUILDING REGULATIONS

### City Limits

**12-101: City Limits Defined.**

**12-102: Original Plats.**

### City Planning

**12-201: Comprehensive Plan.** *REPEALED by Ordinance 833, (April 28, 2014)*

*(12-201 – 12-204) See City of Hartington ZONING ORDINANCE, as Amended.*

**12-202: Zoning Regulations.** *REPEALED 4-28-14*

**12-203: Subdivision Regulations.** *REPEALED 4-28-14*

**12-204: Interpretation.** *REPEALED 4-28-14*

### Flood Hazard Areas

**12-301: Definitions.**

**12-302: Administration and Enforcement.**

**12-303: Designation of Current Flood Hazard Boundary Map/Flood Insurance Rate Map.**

**12-304: Flood Hazard Area Permits.**

**12-305: Applications Review by Zoning Administrator.**

**12-306: Development Permit Applications.**

**12-307: Storage of Material and Equipment.**

**12-308: Flood Carrying Capacity within any Watercourse.**

**12-309: Variance Procedures.**

**12-310: Conditions for Variances.**

**12-311: Non-conforming Use.**

### Trailer and Mobile Home Camps

**12-401: Definitions.**

**12-402: Camp Permits, Applications, Issuance, and Renewal.**

**12-403: Maintenance, Inspection, and Regulation.**

**12-404: Liability for Utilities and Safety.**

**12-405: Revocation of Camp Permit.**

**12-406: Violation and Penalty.**

### Zoning Administrator

**12-501: Power and Authority.** *REPEALED by Ordinance 833, (April 28, 2014)*

*(12-501 – 12-502) See City of Hartington ZONING ORDINANCE, as Amended.*

**12-502: Appeal from Decision.** *REPEALED 4-28-14*

### **Building Permits**

- 12-601: Permits Required.** *REPEALED by Ordinance 833, (April 28, 2014)  
(12-601 – 12-605) See City of Hartington ZONING ORDINANCE, as Amended.*
- 12-602: Permit Card.** *REPEALED 4-28-14*
- 12-603: Permit Fees.** *REPEALED 4-28-14*
- 12-604: Limitation.** *REPEALED 4-28-14*
- 12-605: Duplicate to County Assessor.** *REPEALED 4-28-14*

### **Moving of Buildings**

- 12-701: Regulations.**
- 12-702: Deposit.**

### **Unsafe Buildings**

- 12-801: Definition.**
- 12-802: Prohibitions.**
- 12-803: Determination and Notice.**
- 12-804: Hearing and Appeal.**
- 12-805: Emergency.**
- 12-806: Special Assessments.**

### **Building Regulations and Codes**

- 12-901: Building Code Adopted by Reference.**
- 12-902: Housing Code Adopted by Reference.**
- 12-903: Plumbing Code Adopted by Reference.**
- 12-904: Electrical Code Adopted by Reference.**
- 12-905: Fence Required for Private, Residential, or Family Pool.**
- 12-906: Barricades and Lights.**

### **Violations and Penalty**

- 12-1001: Violations and Penalty.**
- 12-1002: Abatement of Nuisance.**

***CITY LIMITS***

§ 12-101 CITY LIMITS DEFINED.

All additions, lots, lands, subdivisions, and parcels of ground included within the official City Map, and plat on file at the office of the County Register of Deeds, having been by act or ordinance of the City Council or by law duly annexed to or made a part of this City, or having been by the act, authority, acquiescence, consent, platting, and dedication of their respective owners, created either as the original town site or as additions to the City are hereby declared to be within the corporate limits of the City. Lawfully constituted additions or changes in said City Limits shall be indicated upon said maps and plat by the City Engineer after such addition or change has been completed in accordance with the ordinances of this City and the laws of the State of Nebraska.

§ 12-102 ORIGINAL PLATS.

Each and all plats, lots, blocks, additions, subdivisions, out lots, and parcels of ground included within the corporate limits of the City, and not vacated of record prior to the enactment of this Chapter, including the Original Plat of the City, are hereby accepted, approved, and confirmed as valid, and each and all of said lots, blocks, additions, subdivisions, and out lots as heretofore platted and recorded in the office of the County Register of Deeds, and not heretofore vacated, and all other parcels of ground included within said corporate limits, are hereby declared to be within said City and an integral part thereof.

***CITY PLANNING***

**§ 12-201 - § 12-204** Repealed by Ordinance 833, **April 4, 2014**. See City of Hartington Zoning Ordinance, as Amended.

***FLOOD HAZARD AREAS***

§ 12-301 FLOOD HAZARD AREAS: DEFINITIONS.

Unless specifically defined below, words or phrases used in this Section shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Section its most reasonable application.

**BASE FLOOD.** Line having a one percent (1%) chance of being equaled or exceeded in any given year.

**BASEMENT.** Any area of the building having its floor sub grade (below ground level) on all sides.

**DEVELOPMENT.** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by a community.

**EXPANSION OF EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FLOOD.** A general and temporary condition of partial or complete inundation of normally dry land areas from: (1) The overflow of inland or tidal waters. (2) The usual and rapid accumulation of runoff of surface waters from any source.

**FLOOD INSURANCE RATE MAP (FIRM).** An official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium applicable to the community.

**FLOODPROOFING.** Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY.** The channel of the river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**HISTORIC STRUCTURE.** Any structure that is: (a) Listed individually in the National Register of Historical Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs.

**LOWEST FLOOR.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Section.

**MANUFACTURED HOME.** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a recreational vehicle.

**MANUFACTURED HOME PARK OR SUBDIVISION.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**NEW CONSTRUCTION.** Structures for which the start of construction commenced on or after the effective date of the floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

**100-YEAR FLOOD.** The condition of flooding having a one percent (1%) chance of annual occurrence.

**PRINCIPALLY ABOVE-GROUND.** At least fifty-one percent (51%) of the actual cash value of the structure is above ground.

**RECREATIONAL VEHICLE.** A vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projection; (iii) designed to be self-propelled or permanently tow-able by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**REGULATORY FLOOD ELEVATION.** The water surface elevation of the 100-year flood.

**SPECIAL FLOOD HAZARD AREA.** The land in the floodplain within a community subject to one percent (1%) or greater chance of flooding in any given year.

**START OF CONSTRUCTION.** For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)]. Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

**STRUCTURE.** A walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

**SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT.** Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before **START OF CONSTRUCTION** of the improvement. This includes structures which have incurred **SUBSTANTIAL DAMAGE**, regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a **HISTORIC STRUCTURE**, provided that the

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alteration will not preclude the structure's continued designation as a HISTORIC STRUCTURE.

VARIANCE. Grant of relief to a person from the terms of a floodplain management ordinance.

VIOLATION. Failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

***Statutory reference:***

*Flood plain management, Neb. RS §§31-1001 to 31-1022, inclusive*

### § 12-302 ADMINISTRATION AND ENFORCEMENT.

The Zoning Administrator hereby has these added responsibilities and is authorized and directed to enforce all of the provisions of this Section and all other ordinances and/or resolutions of the City of Hartington, now in force or hereafter adopted, relating to zoning, subdivision or building codes. The Zoning Administrator shall be appointed to these additional responsibilities by resolution of the City Council and his appointment shall continue during good behavior and satisfactory service. During temporary absence or disability of the Zoning Administrator, the City Council of the City shall designate an Acting Administrator.

***Statutory reference:***

*Flood plain management, Neb. RS §§31-1001 to 31-1022, inclusive*

### § 12-303 DESIGNATION OF CURRENT FLOOD HAZARD BOUNDARY MAP AND FLOOD INSURANCE RATE MAP.

The City Council of the City of Hartington, Nebraska hereby designates the current Flood Hazard Boundary Map/Flood Insurance Rate Map, for the City of Hartington, Nebraska and amendments, as the official map to be used in determining those areas of special flood hazard.

***Statutory reference:***

*Flood plain management, Neb. RS §§31-1001 to 31-1022, inclusive*

### § 12-304 FLOOD HAZARD AREA PERMITS.

No person, firm or corporation shall initiate any floodplain development or substantial improvement or cause the same to be done without first obtaining a separate permit for development as defined in this Section.

(A) Within special flood hazard areas on the official map, separate floodplain development permits are required for all new construction, substantial improvements and other developments, including the placement of manufactured homes.



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(B) To obtain a floodplain permit, the applicant shall first file an application therefore in writing on a form furnished for that purpose. Every such application shall:

- (1) Identify and describe the development to be covered by the floodplain development permit for which application is made.
- (2) Describe the land on which the proposed development is to be done by lot, block, tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or development.
- (3) Indicate the use or occupancy for which the proposed development is intended.
- (4) Be accompanied by plans and specifications for proposed construction.
- (5) Be signed by the permit holder or his authorized agent who may be required to submit evidence to indicate such authority.
- (6) Within designated floodplain areas, be accompanied by elevations of the lowest floor, including basement, or in the case of flood proofed non-residential structures, the elevation to which it shall be flood proofed. Documentation or certification of such elevations will be maintained by the Administrative Official.
- (7) Give such other information as reasonably may be required by the Administrative Official (i.e., require a statement from the applicant that they are aware that elevating or flood proofing structures above the minimum levels will result in premium reduction, especially in the case of non-residential flood proofing when a minus one foot (-1') penalty is assessed at the time of rating the structure for the policy premium.)

***Statutory reference:***

*Flood plain management, Neb. RS §§31-1001 to 31-1022, inclusive*

### § 12-305 APPLICATIONS REVIEW BY ZONING ADMINISTRATOR.

The Zoning Administrator in reviewing all applications for new construction, substantial improvements, prefabricated buildings, placement of manufactured homes and other development(s) (as defined in § 12-301) will:

(A) Obtain, review and reasonably utilize, if available, any regulatory flood elevation data and floodway data available from Federal, State or other sources, until such other data is provided by the Federal Insurance Administration in a Flood Insurance Study; and require within special flood hazard areas on the official map that the following performance standards be met:

(1) No development or substantial improvement may be permitted within the identified floodplain unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the 100-year flood more than one foot (1') at any location.

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(2) New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at least one foot above the base flood elevation.

(3) New construction or substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities, be flood proofed so that below such a level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the local administrator.

(4) Require for all new construction and substantial improvements - That fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(B) Require the use of construction materials that are resistant to flood damage.

(C) Require the use of construction methods and practices that will minimize flood damage.

(D) Require that new structures be designed (or modified) and adequately anchored to prevent notation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(E) New structures must be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(F) Assure that all manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with State laws, local building codes and FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:

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(1) Over-the-top ties be provided at each of the four corners of the manufactured home with two additional ties per side at the intermediate locations and manufactured homes less than fifty (50) feet long requiring one additional tie per side.

(2) Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than fifty (50) feet long requiring four additional ties per side.

(3) All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.

(4) Any additions to manufactured homes shall be similarly anchored.

(G) Assure that all manufactured homes that are placed or substantially improved within special flood hazard areas on the community's official map on sites:

- (1) Outside of a manufactured home park or subdivision;
- (2) In a new manufactured home, park, or subdivision;
- (3) In an expansion to an existing manufactured home park or subdivision;

(H) Assure that existing manufactured homes, or manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within special flood hazard areas on the community's official map that are not subject to the provisions of subsection (G) of this section be elevated so that either:

(1) The lowest floor of the manufactured home is at least one foot above the base flood elevation, or

(2) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection F of this section.

(I) Require that recreational vehicles placed on sites within the identified special flood hazard areas on the community's official map either (i) be on the site for fewer than one hundred eighty (180) consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements and the elevation and anchoring requirements for "manufactured homes" of this Section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

***Statutory reference:***

*Flood plain management, Neb. RS §§31-1001 to 31-1022, inclusive*

§ 12-306 DEVELOPMENT PERMIT APPLICATIONS.

(A) The Zoning Administrator shall first review all development permit applications to determine if the site of the proposed development is reasonably safe from

flooding and that all necessary permits have been received as required by Federal or State Law.

(B) The City Council of the City shall review all subdivision applications and other proposed new developments (including manufactured home parks or subdivisions) and shall make findings of fact and assure that:

(1) All such proposed developments are consistent with the need to minimize flood damage.

(2) Subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions), greater than five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals regulatory flood elevation data in special flood hazard areas.

(C) Adequate drainage is provided so as to reduce exposure to flood hazards.

(D) All public utilities and facilities are located so as to minimize or eliminate flood damage and all on-site waste disposal systems will be designed to avoid impairment or contamination during flooding.

***Statutory reference:***

*Flood plain management, Neb. RS §§31-1001 to 31-1022, inclusive*

§ 12-307 STORAGE OF MATERIAL AND EQUIPMENT.

The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

***Statutory reference:***

*Flood plain management, Neb. RS §§31-1001 to 31-1022, inclusive*

§ 12-308 FLOOD-CARRYING CAPACITY WITHIN ANY WATERCOURSE.

The City Council of the City will ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained. The City will notify adjacent communities and the State Coordinating Office (Nebraska Natural Resources Commission) prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Federal Emergency Management Agency. Moreover, the City will work with appropriate State and Federal agencies in every way possible in complying with the National Flood Insurance Program in accordance with the National Disaster Protection Act of 1973.

***Statutory reference:***

*Flood plain management, Neb. RS §§31-1001 to 31-1022, inclusive*

§ 12-309 VARIANCE PROCEDURES.

(A) The Appeals Board as established by the City of Hartington shall hear and decide appeals and requests for variances from the requirements of this Section.

(B) The Appeals Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Administrative Official in the enforcement or administration of this Section.

(C) Any person aggrieved by the decision of the Appeals Board or any taxpayer may appeal such decision to the District Court as provided in Section 23-168, RRS. 1943 (for counties); 19-912, RRS. 1943 (for City).

(D) In passing upon such applications, the Appeals Board shall consider all technical evaluation, all relevant factors, standards specified in other sections of this Section, and;

- (1) the danger that materials may be swept onto other lands to the injury of others;
- (2) the danger to life and property due to flooding or erosion damage;
- (3) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) the importance of the services provided by the proposed facility to the community;
- (5) the necessity to the facility of a waterfront location, where applicable;
- (6) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) the compatibility of the proposed use with existing and anticipated development;
- (8) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) the safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
- (11) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

***Statutory reference:***

*Flood plain management, Neb. RS §§31-1001 to 31-1022, inclusive*

§ 12-310 CONDITIONS FOR VARIANCES.

(A) Generally variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (subsections 2 through 5 below) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(B) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(C) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(D) Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances/resolutions.

(E) The applicant shall be given a written notice over the signature of a community official that (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Section.

(F) Where a request for a permit to develop or a variance is denied by the Zoning Administrator the applicant may apply for such permit or variance directly to the City Council, sitting as the Board of Appeals.

(G) Any person aggrieved by the decision of the Appeals Board or any taxpayer may appeal such decision to the District Court as provided in Nebraska law.

(H) In passing upon such applications, the Appeals Board shall consider all technical evaluation, all relevant factors, standards specified in other sections of this Section, and;

- (1) the danger that materials may be swept onto other lands to the injury of others;
- (2) the danger to life and property due to flooding or erosion damage;

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(3) the susceptibility of proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) the importance of the services provided by the proposed facility to the community;

(5) the necessity to the facility of a waterfront location, where applicable;

(6) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) the compatibility of the proposed use with existing and anticipated development;

(8) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(9) the safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

(11) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

***Statutory reference:***

*Flood plain management, Neb. RS §§31-1001 to 31-1022, inclusive*

§ 12-311 NON-CONFORMING USE.

(A) A structure or the use of a structure or premises which was lawful before the passage or amendment of the Section, but which is not in conformity with the provisions of this Section may be continued subject to the following conditions:

(1) If such use is discontinued for six (6) consecutive months, any future use of the building premises shall conform to this Section. The Utility Department shall notify the Zoning Administrator in writing of instances of nonconforming uses where utility services have been discontinued for a period of six (6) months.

(2) Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as nonconforming uses.

(B) If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this Section. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(C) The degree of flood protection required by this Section is considered reasonable for regulatory purposes and is based on engineering and scientific methods of

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study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Section does not imply that areas outside floodplain boundaries or land uses permitted within such districts will be free from flooding or flood damage. This Section shall not create liability on the part of the City of Hartington or any officer or employee thereof for any flood damages that may result from reliance on this Section or any administrative decision lawfully made.

***Statutory reference:***

*Flood plain management, Neb. RS §§31-1001 to 31-1022, inclusive  
Warning and disclaimer of liability, §12-312*



***TRAILER AND MOBILE HOME CAMPS***

§ 12-401 DEFINITIONS.

For the purpose of this Section:

**TRAILER HOUSE.** Any moveable or temporary habitation mounted on wheels, skids, or other device, to permit movement or emplaced in such a manner to facilitate movement.

**TRAILER CAMP.** Any location, land, building, and equipment thereon, and any place where one or more trailers, cabins or places of temporary human habitation are temporarily parked, placed, or located, and either owned, leased, or operated for the foregoing purposes.

§ 12-402 CAMP PERMITS, APPLICATIONS, ISSUANCE, AND RENEWAL.

(A) No trailer camp shall be established within the corporate limits of the City or within the area one mile beyond such corporate limits, until the owner, or person in control of, such premises where such trailer camp is to be located or an authorized representative, shall have obtained a written permit for such purpose from the City, upon written application filed with the City Clerk and granted by the Mayor and City Council; nor shall any trailer house be parked in any public road, street, or alley within the corporate limits of the City or the area one mile beyond the same, between the hours of sunset and sunrise. Such permit shall be obtained by application on prescribed forms of the City, and the trailer camp shall be in strict compliance with the rules and regulations, and ordinances of the City, and the regulations of its Board of Health. Every application for such permit shall set forth the names and addresses of all persons and associates interested or to be interested in the operation and maintenance of such trailer camp, together with a statement of the nature and extent of their respective interests. Such application shall also exactly describe the premises to be used for a trailer camp; the kind of bath and toilet facilities for the use of the occupants of trailer houses; and the distance between the sites for each trailer house; and distance to the nearest building and the use to which any such building is put; and the availability of water suitable for consumption and use by the occupants of said trailer houses.

(B) Upon the filing of the application for such permit, the City Clerk shall notify the Chief of Police of the filing of the same and furnish him with a copy thereof, and the said Chief of Police shall examine said premises and sites for said trailer houses and examine as to whether or not all rules and regulations of the City and the State of Nebraska are being observed in reference to the safety of the occupants of the trailer houses in such trailer camp, and as soon as practicable after receiving such notice, he shall verify the statements of the application and forthwith submit his findings in writing to the City Clerk. Likewise, the City Clerk shall furnish the City Board of Health with a copy of such application and as soon as possible such City Board of Health shall report in writing, to the City Clerk whether or not there are any existing conditions with reference

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to the proposed trailer camp which might injuriously affect the health and welfare of the occupants of said trailer houses or the citizens of the City.

(C) To renew a trailer camp permit, the same procedure shall be followed as in the original issuance thereof; and in any and all events a permit shall not be for any period of time exceeding one year.

### § 12-403 MAINTENANCE, INSPECTION, AND REGULATION.

(A) All such trailer camps shall be maintained under the management and supervision of the owner or person in control of the premises on which the same is located, or of a duly authorized representative of such owner, who shall be personally responsible for the maintenance of trailer camps in accordance with all sanitary and fire protection rules and regulations of the City and the State.

(B) All trailer camps shall be under the supervision of the City Board of Health, which Board shall make and provide for, inspection of such trailer camps at reasonable times, and shall recommend to the City Council such additional rules and regulations as may be deemed advisable or necessary for the sanitation, safety, and proper maintenance of said trailer camps.

### § 12-404 LIABILITY FOR UTILITIES AND SAFETY.

(A) The owner and/or operator of a trailer camp shall be primarily liable for all utility service bills charged against each trailer house and shall make monthly remittances to the City for such bills.

(B) The owner and/or operator of any trailer camp shall provide proper receptacles for garbage, cans, paper, and waste, and shall be responsible for their disposal in accordance with the ordinances and rules of the City and the City Utilities Superintendent.

(C) If the sanitary sewer system of the City is available, the operator of a trailer camp shall make available, connections for each trailer house to such system, and shall be primarily responsible for such connection. If the City Sanitary Sewer System is not available to the premises, the operator of such trailer camp shall make other provisions for such plumbing facilities subject to the rules and regulations of the City Board of Health.

(D) The operator of any trailer camp shall always have readily available and accessible, a sufficient and safe water supply for all of the occupants of trailer houses located in such trailer camp.

(E) The operator of any trailer camp shall always have readily available, workable fire extinguishers and a sufficient available water supply for such fire protection.

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(F) No person shall park or occupy any trailer house on the premises of any occupied dwelling, or on any lot or parcel of land which is not a part of the premises of any dwelling, either of which is situated outside the boundaries of an existing trailer camp, except upon the written approval of the City Board of Health and the Commissioner of the City Water Department. No person shall locate a trailer camp within one block of a church or other public building.

### § 12-405 REVOCATION OF CAMP PERMIT.

A permit to establish and maintain a trailer camp may be revoked by the Mayor and City Council for cause, at any time, for a violation of the provisions of this Section or of the rules and regulations of any Department of the City, or for any other cause or conduct, reasonably deemed by the Mayor and City Council as sufficient cause of revocation of such permit. Before the revocation of such permit, the City shall cause to be served on the operator of such trailer camp, a notice to appear and show cause, if any he has, on a specified day and at a specified time, why his permit for this trailer camp should not be revoked. Such notice to show cause may be served by mailing the same in the United States Mails to the address of the operator given in his application in such permit with sufficient postage affixed thereto. The operator of the trailer camp involved shall be given reasonable opportunity to be heard at the time fixed for his appearance to show cause, and no permit for such trailer camp shall be revoked until the operator involved has been heard at the designated time if he desires to be heard.

### § 12-406 VIOLATION AND PENALTY.

Any person violating any of the provisions of this Section shall be fined in any sum not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars.

***ZONING ADMINISTRATOR***

**§ 12-501 - § 12-502 Repealed by Ordinance 833, April 4, 2014. See City of Hartington Zoning Ordinance, as Amended**

***BUILDING PERMITS***

**§ 12-601 - § 12-605 Repealed by Ordinance 833, April 28, 2014. See City of Hartington Zoning Ordinance, as Amended**

***MOVING OF BUILDINGS***

§ 12-701 REGULATIONS.

It shall be unlawful for any person, firm, or corporation to move any building or structure within the City without a written permit to do so. Application shall be made to the City Clerk and shall include the present and future location of the building to be moved, the proposed route, the equipment to be used, and such other information as the City Council may require. The application shall be accompanied by a certificate issued by the County Treasurer to the effect that all the provisions regulating the moving of buildings have been complied with on the part of the owner of the real estate upon which the building is presently located. The City Clerk shall refer the application to the City Council for approval of the proposed route over which the building is to be moved. Upon approval of the City Council, the City Clerk shall then issue the permit, provided that a good and sufficient corporate surety bond, check, or cash in an amount set by motion of the City Council and conditioned upon moving the building without doing damage to any private or City property is filed with the City Clerk prior to the granting of any permit. No moving permit shall be required to move a building that is 10 feet wide or less, and twenty (20) feet long or less, and when in a position to move, fifteen (15) feet high or less. In the event it will be necessary for any licensed building mover to interfere with the telephone or electrical poles and wires, or a gas line, the company or companies owning, using, or operating the poles, wires, or line shall upon proper notice of at least twenty-four (24) hours, be present and assist by disconnecting the poles, wires, or line relative to the building moving operation. All expense of the disconnection, removal, or related work shall be paid in advance by the licensee unless that disconnection or work is furnished on different terms as provided in the company's franchise. Whenever the moving of any building necessitates interference with a water main, sewer main, pipes, or wire belonging to the City, notice in writing of the time and route of the building moving operation shall be given to the various City officials in charge of the City utility departments, who shall proceed in behalf of the City and at the expense of the mover to make such disconnections and do such work as is necessary.

***Statutory reference:***

*Authority to regulate moving of buildings, see Neb. RS §17-142*

*Vehicle size, weight, and load regulations, see Neb. RS §§ 60-6,288 through 60-6,299*

***Cross-reference:***

General Penalty, § 1-201

§ 12-702 DEPOSIT.

At such time as the building moving has been completed, the Zoning Administrator or other designated official shall inspect the premises and report to the City Clerk as to the extent of damages, if any, resulting from the relocation and whether any City laws have been violated during the operation, and the amount of such damages shall be charged

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against the bond, cash, or check deposited by the applicant. Upon a satisfactory report from the Zoning Administrator or other designated official, the City Clerk shall return the corporate surety bond, cash, or check deposited by the applicant. In the event the basement, foundation, or portion thereof is not properly filled, covered, or in a clean and sanitary condition, the City Council may apply the money deposited for the purpose of defraying the expense of correcting the conditions. If the expense of correcting the hazardous condition is greater than the amount of the deposit set by the City Council, as required herein, the City Council may recover the excess expense by civil suit or otherwise as prescribed by law.

***UNSAFE BUILDINGS***

§ 12-801 DEFINITION.

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

**UNSAFE BUILDING.** Includes any building, shed, fence, or other human-made structure:

(a) Which is dangerous to the public health because of its condition and which may cause or aid in the spread of disease or injury to the health of the occupants of it or neighboring structures;

(b) Which because of faulty construction, age, lack of proper repair, or any other cause is especially liable to fire and constitutes or creates a fire hazard; or

(c) Which by reason of faulty construction or any other cause is liable to cause injury or damage by the collapse or fall of all or any part of that structure.

(B) Any such unsafe building in the City is hereby declared to be a nuisance.

**Cross-reference:**

General Penalty, § 1-201

Nuisances, § 7-202 et seq.

§ 12-802 PROHIBITIONS.

It shall be unlawful to maintain or permit the existence of any unsafe building in the City; and it shall be unlawful for the owner, occupant, or person in custody of any dangerous building to permit the same to remain in an unsafe condition, or to occupy the building or permit it to be occupied while it is in an unsafe condition.

***Statutory reference:***

*Authority to prevent and abate unsafe buildings, see Neb. RS 18-1720, 18-1722, and 18-1722.01*

**Cross-reference:**

General Penalty, § 1-201

§ 12-803 DETERMINATION; NOTICE.

(A) Whenever the Board of Health or designated official is of the opinion that any building or structure in the City is an unsafe building, he or she shall file a written statement to this effect with the City Clerk. The Clerk shall thereupon cause the property to be posted accordingly, shall file a copy of this determination in the office of the



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County Register of Deeds, and shall serve written notice upon the owner thereof, and upon the occupant thereof, if any, by certified mail or by personal service.

(B) This notice shall state that the building has been declared to be in an unsafe condition, that the dangerous condition must be removed or remedied by repairing or altering the building or by demolishing it, and that the condition must be remedied within sixty (60) days from the date of receipt. The notice may be in the following terms:

"To \_\_\_\_\_ (owner-occupant of premises) of the premises known and described as

\_\_\_\_\_.

"You are hereby notified that \_\_\_\_\_ (describe building) on the premises above mentioned has been determined to be an unsafe building and a nuisance after inspection by \_\_\_\_\_. The causes for this decision are \_\_\_\_\_ (here insert the facts as to the dangerous condition).

"You must remedy this condition or demolish the building within sixty (60) days from the date of receipt of this notice or the City will proceed to do so. Appeal of this determination may be made to the City Council, acting as the Board of Appeals, by filing with the City Clerk within ten (10) days from the date of receipt of this notice a request for a hearing."

(C) If the person receiving the notice has not complied therewith within sixty (60) days from the date of receipt of the notice, or taken an appeal from the determination that a dangerous building exists within 10 days from the time when this notice is served upon the person by personal service or certified mail, the Zoning Administrator or other designated official may, upon orders of the City Council, proceed to remedy the condition or demolish the unsafe building.

§ 12-804 HEARING AND APPEAL.

Upon receiving the notice to repair or demolish the building, the owner of the building, within the time stipulated, may in writing to the City Clerk request a hearing before the City Council, sitting as the Board of Appeals, to present reasons why the building should not be repaired or demolished. The City Council shall grant such hearing within ten (10) days from the date of receiving the request. A written notice of the City Council's decision following the hearing shall be sent to the property owner by certified mail. If the City Council rejects the appeal, the owner shall have sixty (60) days from the sending of the decision to begin repair or demolition and removal. If after the sixty-day period the owner has not begun work, the City Council shall proceed to cause the work to be done, provided that the property owner may appeal the decision to the appropriate court for adjudication, during which proceedings the decision of the City Council shall be stayed. Where the City has not adopted a building code, the statutes of Nebraska relating to

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bonded indebtedness and collection of delinquent taxes shall apply. The decision of the City Council may be appealed to District Court.

§ 12-805 EMERGENCY.

Where any unsafe building or structure poses an immediate danger to the health, safety, or general welfare of any person or persons and the owner fails to remedy the situation in a reasonable time after notice to do so, the City may summarily repair or demolish and remove the building or structure.

§ 12-806 SPECIAL ASSESSMENTS.

(A) If any owner of any building or structure fails, neglects, or refuses to comply with notice by or on behalf of the City to repair, rehabilitate, or demolish and remove a building or structure which is unsafe and a public nuisance, the City may proceed with the work specified in the notice to the property owner. A statement of the cost of the work shall be transmitted to the City Council.

(B) The City Council may:

(1) Levy the cost as a special assessment against the lot or real estate upon which the building or structure is located; or

(2) Collect the cost from the owner of the building or structure and enforce the collection by civil action in any court of competent jurisdiction.

(C) Any such special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments.

***BUILDING REGULATIONS AND CODES***

§ 12-901 BUILDING CODE ADOPTED BY REFERENCE.

Copies of the International Building Code, 2000 Edition, published by the International Code Council, are on file at the office of the City Clerk and are available for public inspection at any reasonable time. The provisions of the Building Code shall be controlling throughout the City and throughout its zoning jurisdiction, insofar as said code does not conflict with the Statutes of the State of Nebraska.

***Statutory reference:***

*Authority, Neb. RS 17-1001, 18-132, 19-902*

§ 12-902 HOUSING CODE ADOPTED BY REFERENCE.

Copies of the Uniform Housing Code, 1997 Edition, published by the International Conference of Building Officials, are on file at the office of the City Clerk and are available for public inspection at any reasonable time. The provisions of the Building Code shall be controlling throughout the City and throughout its zoning jurisdiction, insofar as said code does not conflict with the Statutes of the State of Nebraska.

***Statutory reference:***

*Authority, Neb. RS §§17-1001, 18-132, 19-902*

§ 12-903 PLUMBING CODE ADOPTED BY REFERENCE.

Copies of the Uniform Plumbing Code, 2003 Edition, published by the International Association of Plumbing and Mechanical Officials, are on file at the office of the City Clerk and are available for public inspection at any reasonable time. The provisions of the Building Code shall be controlling throughout the City and throughout its zoning jurisdiction, insofar as said code does not conflict with the Statutes of the State of Nebraska.

***Statutory reference:***

*Authority, Neb. RS §§17-1001, 18-132, 19-902*

§ 12-904 ELECTRICAL CODE ADOPTED BY REFERENCE.

Copies of the National Electrical Code, 2005 Edition, as recommended and published by the National Fire Protection Association, are on file at the office of the City Clerk and are available for public inspection at any reasonable time. The provisions of the Building Code shall be controlling throughout the City and throughout its zoning jurisdiction, insofar as said code does not conflict with the Statutes of the State of Nebraska.

***Statutory reference:***

*Authority, Neb. RS §§17-1001, 18-132, 19-902*

§ 12-905 FENCE REQUIRED FOR PRIVATE, RESIDENTIAL, OR FAMILY POOL.

(A) Every outdoor private, residential or family pool shall be completely surrounded by a fence or wall not less than four feet (4') in height which shall be so constructed as not to have openings, holes, or gaps larger than four inches (4") in any dimensions, except for doors and gates: and if a picket fence is erected or maintained, the horizontal dimension shall not exceed four inches (4"). A dwelling or accessory building may be used as part of such enclosure. No part of the pool shall constitute a part of the fence.

(B) All fences enclosing private, residential or family pools shall be constructed to conform to the requirements of the City Building Code regulations.

(C) All gates or doors opening through such enclosure shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times, except that the door of the dwelling which forms part of the enclosure need not be so equipped.

(D) The requirement shall be applicable to all new family pools hereinafter constructed, other than indoor pools, and shall apply to all existing pools which have a minimum depth of eighteen inches (18") of water. No person in possession of land within the City or within its zoning jurisdiction either as owner, purchaser, lessee, tenant or licensee, upon which is situated a family pool having a depth of eighteen inches (18") or more shall fail to provide and maintain such fence or wall as herein provided.

§ 12-906 BARRICADES AND LIGHTS.

It shall be the duty of the owner, tenant, or lessee causing the construction, demolition, or moving of any building or improvement within the City to have during that work all excavations, open basements, building materials, and debris protected by suitable guards or barricades by day, and by warning lights at night. The failure, neglect, or refusal of these persons to erect such guards shall constitute a violation of this section and the Chief of Police or the Zoning Administrator shall stop all work until guards are erected and maintained as required.

**Cross-reference:**

General Penalty, § 1-201

***VIOLATIONS AND PENALTY***

§ 12-1001 VIOLATION; PENALTY.

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00) for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

§ 12-1002 ABATEMENT OF NUISANCE.

Whenever a nuisance exists as defined in this Chapter, the City may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law. Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case.

***Statutory reference:***

*Nuisances, authority to abate, Neb. RS §§ 18-1720, 18-1722*