

TITLE IX: GENERAL REGULATIONS

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CHAPTER 90: LEISURE AND RECREATION

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PARKS AND RECREATIONAL FACILITIES

§ 90.01 OPERATION AND FUNDING.

(A) If the city has already acquired or hereafter acquires land for park purposes or recreational facilities or has already built or hereafter builds swimming pools, recreational facilities, or dams, the Mayor and City Council may each year make and levy a tax upon the taxable value of all the taxable property in the city. The levy shall be collected and put into the City Treasury and shall constitute the Park and Recreation Fund of the city. The funds so levied and collected shall be used for amusements, for laying out, improving, and beautifying such parks, for maintaining, improving, managing, and

beautifying such swimming pools, recreational facilities, or dams, and for the payment of salaries and wages of persons employed in the performance of such labor.

(Neb. RS 17-951)

(B) If the Mayor and City Council create a Board of Park Commissioners or Board of Park and Recreation Commissioners, when such Board has been appointed and qualified, all accounts against the Park Fund or Park and Recreation Fund shall be audited by the Board, and warrants against the fund shall be drawn by the Chairperson of the Board, and warrants so drawn shall be paid by the City Treasurer out of the fund.

(Neb. RS 17-952)

(C) (1) Whether the title to real estate for parks, public grounds, swimming pools, or dams, either for recreational or conservational purposes, shall be acquired by gift, devise, or purchase as provided in Neb. RS 17-948, the jurisdiction of the City Council or Park Board shall at once be extended over such real estate; and the City Council or Park Board shall have the power to enact bylaws, rules or ordinances for the protection and preservation of any real estate acquired, and to provide rules and regulations for the closing of the park or swimming pool, in whole or in part, to the general public, and charge admission thereto during such closing, either by the city or by any person, persons, or corporation leasing the same. They may provide suitable penalties for the violation of such bylaws, rules, or ordinances; and the police power of the city shall be at once extended over the same.

(Neb. RS 17-949)

(2) The Park Board shall not enter into a contract of any nature that 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:

Levy limits, see Neb. RS 77-3442

Parks and recreational facilities generally, see Neb. RS 17-948 through 17-952

§ 90.02 INJURY TO PROPERTY.

It shall be unlawful for any person to maliciously or willfully cut down, injure, or destroy any tree, plant, or shrub in any city park or recreational facility. It shall be unlawful for any person to injure or destroy any sodded or planted area or injure or destroy any building, structure, equipment, fence, bench, table, or any other property of any city park or recreational area. No person shall commit any waste on or litter the city parks or other public grounds.

Penalty, see § 10.99

Statutory reference:

Littering of public and private property, see Neb. RS 28-523

LIBRARY

§ 90.15 FUNDING.

(A) (1) If the City Council has established a public library free of charge for the use of the inhabitants of the city or contracted for the use of a public library already established, the Council may levy a tax of not more than \$0.105 on each \$100 upon the taxable value of all the taxable property in the city, annually to be levied and collected in like manner as other taxes in the city. The levy shall be subject to Neb. RS 77-3442 and 77-3443. The amount collected from such levy shall be known as the Library Fund.

(Neb. RS 51-201)

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

(B) All taxes levied or collected and all funds donated or in any way acquired for the erection, maintenance, or support of the public library shall be kept for the use of the library separate and apart from all other funds of the city, shall be drawn upon and paid out by the City Treasurer upon vouchers signed by the president of the Library Board and authenticated by the Secretary of the Board, and shall not be used or disbursed for any other purpose or in any other manner. The city may establish a public library sinking fund for major capital expenditures.

(Neb. RS 51-209)

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

§ 90.16 LIBRARY BOARD; GENERAL POWERS AND DUTIES.

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

(Neb. RS 51-205)

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

(Neb. RS 51-207)

(C) The Library Board may erect, lease, or occupy an appropriate building for the use of such a library, and appoint a suitable librarian and assistants, fix the compensation of such appointees, and remove such appointees at the pleasure of the Board. The governing body of the city shall approve any personnel administrative or compensation policy or procedure before the implementation of such policy or procedure by the Library Board.

(D) The Library Board may establish rules and regulations for the government of the library as may be deemed necessary for its preservation and to maintain its usefulness and efficiency. The Library Board may fix and impose, by general rules, penalties and forfeitures for trespasses upon or injury to the library grounds, rooms, books, or other property, for failure to return any book, or for violation of any bylaw, rule, or regulation. The Board shall have and exercise such power as may be necessary to carry out the spirit and intent of Neb. RS 51-201 through 51-219 in establishing and maintaining the library and reading room.

(Neb. RS 51-211)

§ 90.17 GROUNDS AND BUILDING.

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

(Neb. RS 51-210)

§ 90.18 SALE AND CONVEYANCE OF REAL ESTATE.

(A) The Library Board may, by resolution, direct the sale and conveyance of any real estate owned by the Board or by the public library which is not used for library purposes, or of any real estate so donated or devised to the Board or to the library, upon such terms as the Board may deem best.

(B) Before any such sale is made, the Library Board shall advertise the sale once each week for three consecutive weeks in a legal newspaper published or, if none is published, of general circulation in the city. The notice shall set out the time, place, terms, manner of sale, legal description of such real estate, and the right to reject any and all bids. If the bid or bids have not been rejected, then the real estate shall be sold to the highest bidder for cash, and the Chairperson of the Library Board, upon resolution of the Library Board directing him or her so to do, shall convey the real estate to the purchaser of such real estate upon his or her payment of his or her bid. If, within 30 days after the third publication of the notice, a remonstrance against the sale is signed by 30% of the registered voters of the city voting at the last regular city election and is filed with the City Council, the property shall not then, nor within one year thereafter, be sold. If the date for filing the remonstrance falls upon a

Saturday, Sunday, or legal holiday, the signatures shall be collected within the 30-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.
(Neb. RS 51-216)

§ 90.19 MORTGAGES; RELEASE OR RENEWAL.

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

§ 90.20 COST OF USE.

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

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

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

BASIC SERVICES. Include, but are not limited to, free loan of circulating print and nonprint materials from the local collection and general reference and information services.

NONBASIC SERVICES. Include, but are not limited to, the use of:

- (a) Photocopying equipment;
- (b) Telephones, facsimile equipment, and other telecommunications equipment;

(c) Media equipment;

(d) Personal computers; and

(e) Videocassette recording and playing equipment.

(Neb. RS 51-201.01)

§ 90.21 DISCRIMINATION PROHIBITED.

No library service shall be denied to any person because of race, sex, religion, age, color, national origin, ancestry, physical handicap, or marital status.

(Neb. RS 51-211)

§ 90.22 ANNUAL REPORT.

The Library Board shall, on or before the second Monday in February in each year, make a report to the City Council of the condition of its trust on the last day of the prior fiscal year. The report shall show all money received and credited or expended; the number of materials held, including books, video and audio materials, software programs, and materials in other formats; the number of periodical subscriptions on record, including newspapers; the number of materials added and the number withdrawn from the collection during the year; the number of materials circulated during the year; and other statistics, information, and suggestions as the Library Board may deem of general interest or as the City Council may require. The report shall be verified by affidavit of the President and Secretary of the Library Board.

(Neb. RS 51-213)

§ 90.23 PENALTIES; RECOVERY; DISPOSITION.

(A) Penalties imposed or accruing by any bylaw or regulation of the Library Board and any court costs and attorney fees may be recovered in a civil action before any court having jurisdiction, such action to be instituted in the name of the Library Board.

(B) (1) Money, other than any court costs and attorney fees, collected in such actions shall be placed in the Treasury of the city to the credit of the Library Fund.

(2) Attorney fees collected pursuant to this section shall be placed in the Treasury of the city and credited to the budget of the City Attorney's office.

(Neb. RS 51-214)

§ 90.24 DONATIONS.

Any person may make donations of money, lands, or other property for the benefit of the public library. The title to property so donated may be made to and shall vest in the Library Board and their successors in office, and the Board shall thereby become the owners thereof in trust to the uses of the public library.

(Neb. RS 51-215)

§ 90.25 IMPROPER BOOK REMOVAL.

It shall be unlawful for any person not authorized by the regulations made by the Library Board to take a book from the public 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 an offense.

Penalty, see § 10.99

CHAPTER 91: HEALTH AND SAFETY

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GENERAL PROVISIONS

§ 91.01 HEALTH REGULATIONS.

For the purpose of promoting the health and safety of the residents of the city, 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

§ 91.02 ENFORCEMENT OFFICIAL.

The Police Chief or other official designated by the City Council, as the Quarantine Officer, shall be the chief health officer of the city. It shall be his or her 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

§ 91.03 COUNTY BOARD OF HEALTH.

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

NUISANCES**§ 91.15 DEFINITION.**

(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 of 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, houseyards, barnyards, stableyards, factory yards, mill yards, vacant areas in the 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;

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

(9) All places used or maintained as junk yards, or dumping grounds, or for the wrecking and disassembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked, or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or

builders or by other persons, which places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof;

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

(11) Stockyards, granaries, mills, pig pens, cattle pens, chicken pens, or any other place, building, or enclosure in which animals or 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

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

Penalty, see § 10.99

§ 91.16 ABATEMENT PROCEDURE.

(A) The owner or occupant of any real estate within the corporate limits or extraterritorial zoning jurisdiction of the city shall keep such real estate free of nuisances. Except to the extent that conflicting procedures are otherwise provided, the procedures in this section shall apply to the abatement of nuisances.

(B) Upon determination by the Board of Health or designated official that the owner or occupant of any such real estate has failed to keep the real estate free of nuisances, notice to abate and remove such nuisances 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 each owner or owner's duly authorized agent and to the occupant, if any, by personal service or by certified mail. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the real estate upon which the nuisance is to be abated and removed. The notice shall describe the condition as found by the Board of Health or designated official and state that the condition has been declared a nuisance and must be remedied at once.

(C) If, within five days after receipt of such notice or publication or posting, whichever is applicable, the owner or occupant of the real estate does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance, the city may have such work done.

(D) If, within five days after receipt of such notice or publication or posting, whichever is applicable, the owner or occupant requests in writing a hearing with the City Council, the 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 Council to show cause why such condition should not be found to be a nuisance and remedied. The notice shall be given not less than seven nor more than 14 days before the time of the hearing. Upon the date fixed for the hearing and pursuant to the notice, the Council shall hear all objections made by the owner or occupant and shall hear evidence submitted by the Board of Health or designated official. If, after consideration of all the evidence, the City Council finds that the condition is a nuisance, it shall, by resolution, order and direct the owner or occupant to remedy the nuisance at once. If the owner or occupant refuses or neglects to promptly comply with the order to abate and remove the nuisance, the Council may have such work done.

(E) The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either:

(1) Levy and assess the costs and expenses of the work upon the real estate so benefitted as a special assessment in the same manner as other special assessments for improvements are levied and assessed; or

(2) Recover in a civil action the costs and expenses of the work upon the real estate and the adjoining streets and alleys.

Cross-reference:

Authority to obtain injunction against nuisance, see § 10.99

Statutory reference:

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

Nuisances prohibited, see Neb. RS 28-1321

Similar provisions, see Neb. RS 17-563

Zoning jurisdiction, Neb. RS 17-1001

§ 91.17 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.

(Neb. RS 19-710)

§ 91.18 DEAD OR DISEASED TREES.

(A) (1) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the city or within its extraterritorial zoning jurisdiction.

(2) (a) Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance.

(b) Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city to appeal the decision to abate or remove the nuisance by filing a written appeal with the office of the City Clerk. A hearing on the appeal shall be held within 14 days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance.

(c) The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city may have the work done to abate and remove the dead or diseased trees. If the owner or occupant of the lot or piece of ground does not request a hearing with the city within five days after receipt of such notice or fails to comply with the order to abate and remove the nuisance, the city may have such work done. The city may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefitted as a special assessment.

(Neb. RS 17-555)

(B) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees on private property within the corporate limits of the city or within its extraterritorial zoning jurisdiction. The provisions in division (A)(2) above shall apply to such nuisances. For the purpose of carrying out the provisions of this section, the city police shall have the authority to enter upon private property to inspect the trees thereon.

Penalty, see § 10.99

§ 91.19 WEEDS; LITTER; STAGNANT WATER.

(A) Lots or pieces of ground within the city or within its extraterritorial zoning jurisdiction shall be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon.

(B) The owner or occupant of any lot or piece of ground within the city or within its extraterritorial zoning jurisdiction shall keep the lot or piece of ground and the adjoining streets and alleys free of any growth of 12 inches or more in height of weeds, grasses, or worthless vegetation.

(C) The throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or within its extraterritorial zoning jurisdiction is prohibited.

(D) It is hereby declared to be a nuisance to permit or maintain any growth of 12 inches or more in height of weeds, grasses, or worthless vegetation on any lot or piece of ground within the city or within its extraterritorial zoning jurisdiction or on the adjoining streets or alleys or to litter or cause litter to be deposited or remain thereon, except in proper receptacles.

(E) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating this section, be guilty of an offense.

(F) (1) (a) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance.

(b) Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the City Clerk. A hearing on the appeal shall be held within 14 days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance.

(c) The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city may have such work done. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance, the city may have such work done.

(2) The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either:

(a) Levy and assess the costs and expenses of the work upon the lot or piece of ground so benefitted as a special assessment in the same manner as other special assessments for improvements are levied and assessed; or

(b) Recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

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

LITTER. Includes, but is not limited to:

(a) Trash, rubbish, refuse, garbage, paper, rags, and ashes;

- (b) Wood, plaster, cement, brick, or stone building rubble;
- (c) Grass, leaves, and worthless vegetation, except when used as ground mulch or in a compost pile;
- (d) Offal and dead animals; and
- (e) Any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk.

WEEDS. Includes, but is not limited to: bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus* sp.) (tourn), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*).
(Neb. RS 17-563) Penalty, see § 10.99

§ 91.20 GARBAGE AND REFUSE.

(A) The owner, duly authorized agent, or tenant of any lot or land within the corporate limits or extraterritorial zoning jurisdiction of the city shall remove garbage or refuse found upon the lot, land, streets, roads, or alleys abutting the lot or land which constitutes a public nuisance.

(B) Notice that removal of garbage or refuse is necessary shall be given to each owner or owner's duly authorized agent and to the tenant, if any. The notice shall be provided by personal service or by certified mail. After providing the notice, the city shall, in addition to other proper remedies, remove the garbage or refuse, or cause it to be removed, from the lot, land, streets, roads, or alleys.

(C) If the Mayor declares that the accumulation of garbage or refuse upon any lot or land constitutes an immediate nuisance and hazard to public health and safety, the city shall remove the garbage or refuse, or cause it to be removed, from the lot or land within 48 hours after notice by personal service or following receipt of a certified letter in accordance with division (B) above if the garbage or refuse has not been removed.

(D) Whenever the city removes any garbage or refuse, or causes it to be removed, from any lot or land pursuant to this section, it shall, after a hearing conducted by the City Council, assess the cost of the removal against the lot or land.
(Neb. RS 18-1752)

FIRE PREVENTION**§ 91.35 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) (1) The Fire Chief may waive an open burning ban under division (A) above for an area under the City Fire Department's jurisdiction by issuing an open burning permit to a person requesting permission to conduct open burning. The permit issued by the Fire Chief to a person desiring to conduct open burning shall at a minimum contain:

- (a) The name and telephone number of the landowner;
- (b) The burn location;
- (c) The date and beginning and ending time of the burn;
- (d) A description of the material to be burned; and
- (e) The name and telephone number of the person responsible for the burn.

(2) The local Fire Department may have additional requirements for a burn to be permitted. The permit shall contain the signature, written or electronic, of the local Fire Chief. The State Fire Marshal shall provide a sample form with the minimum requirements on the website of the State Fire Marshal.

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

(D) The Fire Chief may adopt standards listing the conditions acceptable for issuing a permit to conduct open burning under division (B) above.

(E) The Fire Department may charge a fee not to exceed \$10 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) above in the course of that state's or political subdivision's official duties.

(Neb. RS 81-520.01) Penalty, see § 10.99

CHAPTER 92: PUBLIC WAYS AND PROPERTY

Section

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CITY PROPERTY

§ 92.001 DEFINITIONS.

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

OVERSEER OF STREETS. The city official with general charge, direction, and control of streets and sidewalks. If one official is responsible for streets and another official is responsible for sidewalks, ***OVERSEER OF STREETS*** shall mean whichever one is appropriate in the context the term is used.

SIDEWALK SPACE. The portion of a street between curb lines and adjacent property lines.

§ 92.002 STREETS, ALLEYS, WALKS, MALLS, AND OTHER IMPROVEMENTS.

(A) The City Council may grade, partially or to an established grade, change grade, curb, recurb, gutter, regutter, pave, gravel, regravell, macadamize, remacadamize, widen, or narrow streets or roadways, resurface or re-lay existing pavement, or otherwise improve any streets, alleys, public

grounds, or public ways, entirely or partially, and streets which divide the city corporate area and the area adjoining the city; construct or reconstruct pedestrian walks, plazas, malls, landscaping, outdoor sprinkler systems, fountains, decorative water ponds, lighting systems, and permanent facilities; and construct sidewalks and improve the sidewalk space. These projects may be funded at public cost or by the levy of special assessments on the property especially benefitted in proportion to such benefits, except as provided in Neb. RS 19-2428 through 19-2431.

(B) The City Council may by ordinance create improvement districts, to be consecutively numbered, which may include two or more connecting or intersecting streets, alleys, or public ways, and may include two or more types of the improvements authorized under this section in a single district in one proceeding.

(C) All of the improvements which are to be funded by a levy of special assessment on the property especially benefitted shall be ordered as provided in Neb. RS 17-510 through 17-512, except as otherwise provided in Neb. RS 17-509.

(Neb. RS 17-509)

Statutory reference:

Other provisions on improvements, assessments, and bonds, see Neb. RS 17-513 through 17-524, 18-1751, 19-2401, and 19-2408 through 19-2415

§ 92.003 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)

§ 92.004 REGULATION OF OBSTRUCTIONS.

(A) The city may remove all obstructions from the sidewalks, curbstones, gutters, and crosswalks at the expense of the person placing them there or at the expense of the city and require and regulate the planting and protection of shade trees in and along the streets and the trimming and removing of such trees.

(B) The city may regulate the building of bulkheads, cellar and basement ways, stairways, railways, windows, doorways, awnings, hitching posts and rails, lampposts, awning posts, all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks in the city.

(Neb. RS 17-555)

§ 92.005 REGULATION OF SNOW, ICE, AND OTHER ENCROACHMENTS.

(A) The city shall have the power to prevent and remove all encroachments, including snow, ice, mud or other obstructions, into and upon all sidewalks, streets, avenues, alleys, and other city property. (Neb. RS 17-557)

(B) If the abutting property owner refuses or neglects, after five days' notice by publication or, in place thereof, personal service of such notice, to remove all encroachments from sidewalks as provided in division (A) above, the city, through the proper officers, may cause such encroachments to be removed, and the cost of removal shall be paid out of the Street Fund. The City Council shall assess the cost of the notice and removal of the encroachment against the abutting property as a special assessment. The special assessment shall be known as a special sidewalk assessment and, together with the cost of notice, shall be levied and collected as a special assessment in addition to the general revenue taxes and shall be subject to the same penalties as other special assessments and shall draw interest from the date of the assessment. Upon payment of the assessment, the assessment shall be credited to the Street Fund. (Neb. RS 17-557.01)

§ 92.006 PERMITTED USE OF PUBLIC STREET SPACE.

Any person 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 as long as is necessary if such person makes application to and receives a permit to do so in writing from the Overseer of Streets. No permit shall authorize the occupancy of more than one-third of the roadway of the public space adjacent to the real estate on which the building or sidewalk is to be erected, constructed, reconstructed, wrecked, or repaired. A suitable passageway for pedestrians shall be maintained within the public space included in the permit, which passageway shall be protected and lighted in the manner required by the Overseer of Streets. Penalty, see § 10.99

§ 92.007 POLES, WIRES, AND PIPE LINES.

(A) Poles, wires, conduits, gas mains, pipelines, and other appurtenances of public service companies shall be located or erected over, upon, or under the streets, alleys, and common grounds of the city. Application for location of such appurtenances shall be made to the City Council in writing. Approval by the Council shall be issued in writing. Any public service company granted a right-of-way for the erection and maintenance of poles, wires, conduits, gas mains, pipelines, or other appurtenances shall at all times erect and locate their appurtenances at such places and in such manner as shall be designated by the Council.

(B) (1) All poles, wires, conduits, 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 Council. Any such removal or relocation shall be ordered by resolution of the Council and the City Clerk shall notify any and all companies affected.

(2) The companies shall, within 24 hours after receiving notice, at their own expense cause the poles, wires, conduits, gas mains, pipelines, or other appurtenances to be removed or relocated. The Council shall designate another location as closely as possible where the appurtenances may be reset or placed.

(C) All poles, wires, conduits, gas mains, pipelines, or other appurtenances shall be reset, placed, or erected in such a manner that they will not interfere with the water system; the sewerage system; any poles, wires, conduits, mains, lines, or other appurtenances of any public utility; any adjacent buildings; or travel on the public ways and property. Whenever possible, all poles, wires, conduits, gas mains, pipelines, and appurtenances shall be confined to the alleys of the city.

§ 92.008 DANGEROUS STAIRWAYS AND ENTRANCES.

It shall be unlawful for any person to construct or maintain any stairway, open cellarway, 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, except that all existing stairways, open cellarways, open basement ways, or open entrances thereto in or adjacent to sidewalks, pavements, or streets may be permitted to remain from and after the adoption of this prohibition if the person owning or using the opening in the sidewalk, pavement, or street satisfies the Overseer of Streets that the opening is properly protected by a balustrade, or coping of durable material, and furnishes the city with a bond in the amount set by the City Council for the benefit of any person who might suffer an injury or damage by reason of the use of the stairway, cellarway, basement way, or entrance.

Penalty, see § 10.99

§ 92.009 EXCAVATIONS AND EXPOSURES; BARRICADES AND LIGHTS.

(A) Any owner or occupant engaged in the construction or demolition of any building or improvement upon or near the public ways and property shall protect all excavations or exposures of any kind by suitable barricades or guards by day and by warning lights at night.

(B) The failure, neglect, or refusal of the owner or occupant to erect and maintain such protections shall constitute a violation of this section, and the city may stop all work upon the buildings and improvements until suitable protections are erected and maintained in the required manner.

Penalty, see § 10.99

§ 92.010 GUTTERING AND EAVE SPOUTS.

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

Penalty, see § 10.99

§ 92.011 PROHIBITED OBSTRUCTIONS.

(A) It shall be unlawful for any person to obstruct or encumber by fences, gates, buildings, structures, or otherwise any of the streets, alleys, or sidewalks.

(B) The public ways and property shall be considered to be obstructed when the owner or occupant of the adjacent property permits or suffers to remain on any premises owned or controlled by him or her any hedge, shrubbery, bush, or similar growth within two feet adjacent to the lot line, whether there is a sidewalk abutting or adjoining the premises or not. It shall be the duty of owners and occupants to at all times keep trimmed and pruned all such similar growth.

(C) Trees and shrubs growing upon the lot line partially on public ground and partially upon the abutting property, or wholly upon the abutting property, and interfering with the use, making, or construction of any public improvement, or so that the roots thereof interfere with any utility wire or pipe, shall be deemed an obstruction. Such trees and shrubs and their roots may be removed by the city at the expense of the owner of the property upon which the trees or shrubs are partially or wholly located if the owner fails or neglects, after notice, to do so.

(D) When any obstruction that is described in this section is determined to exist, the city may proceed against the owner or the occupant of the property adjacent to the sidewalk space as provided in § 91.16.

Penalty, see § 10.99

§ 92.012 TREES IN SIDEWALK SPACE.

(A) No person shall plant any tree or allow any tree to grow within the sidewalk space without first making a written or verbal application to and receiving a written permit from the Overseer of Streets upon payment of the fee, if any, established by the City Council.

(B) Any tree planted within the sidewalk space after the adoption of this prohibition shall be deemed to be unlawfully planted and growing and may be determined to be a nuisance. Nothing in this section shall be construed to apply to any trees growing within the sidewalk space prior to the adoption of this prohibition.

(C) When any such tree is determined to be a nuisance, the city may proceed against the owner or occupant of the property adjacent to the sidewalk space as provided in § 91.16.
Penalty, see § 10.99

§ 92.013 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 above the surface of the walk and at least 14 feet above the surface of the street or to the heights otherwise specified by the City Council. Whenever the branches or limbs of any tree extend over streets or sidewalks contrary to such provisions 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 may proceed against the owner or occupant of the property abutting or adjacent to the street or sidewalk as provided in § 91.16.

Penalty, see § 10.99

§ 92.014 SIGNS AND CANOPIES.

(A) No person shall erect or maintain any sign, signboard, poster, or rigid canopy over any street, sidewalk, or alley or on other public property without having first obtained a permit therefor. Permits for signs, signboards, posters, and canopies shall be issued by the City Clerk, subject to the approval of the Overseer of Streets, upon the payment of the fee, if any, established by the City Council.

(B) All signs, signboards, posters, 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 them being dislodged by ordinary winds or falling from other causes.

(C) No sign, signboard, poster, 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.

(D) Upon a determination that a sign, signboard, poster, or canopy is in violation of this section, the city may proceed against the owner or occupant of the premises where such sign, signboard, poster, or canopy is located as provided in § 91.16.

Penalty, see § 10.99

§ 92.015 CUTTING INTO PAVING, CURB, OR SIDEWALK.

(A) 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 obtains a permit, he or she shall inform the City Clerk of the place where such cutting is to be done, and it shall be the duty of the Overseer of Streets to inspect the proposed place of entry into the paving, sidewalk, or curb.

(B) When cutting into any paving, curb, or sidewalk, it shall be the duty of the party to comply with such rules and regulations as may be prescribed by the Council or the City Engineer. When the applicant is ready to close the opening made, he or she shall inform the Overseer of Streets, who shall supervise and inspect the materials used and the work done in closing the opening.

(C) It shall be discretionary with the Council to order the Overseer of Streets, under the supervision and inspection of the City Engineer or the committee of the Council on the streets and alleys, to do the cutting and closing of the paving, curb, or sidewalk and charge the costs thereof to the party who obtained the permit. The Council may consent to the cutting and closing of the paving, curb, or sidewalk by the party holding the permit.

(D) Before any permit is issued by the Council, the applicant for the permit shall deposit with the City Treasurer a sum set by resolution of the Council for all paving, curb, or sidewalk to be cut. Such sum shall be set on a per-square-foot cost of construction basis. The deposit shall be retained by the city for the purpose of replacing the paving, curb, or sidewalk in the event the work is done by the city. If the Council 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 Overseer of Streets or of the committee of the Council on streets and alleys.

(E) In addition to making the deposit, the applicant shall, before any permit is issued, execute a bond to the city with a good and sufficient surety, to be approved by the Council, in a sum set by resolution.

§ 92.016 HEAVY EQUIPMENT.

(A) It shall be unlawful for any person to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing on any unpaved street without first having protected such curb, gutter, bridge, culvert, sidewalks, crosswalk, or crossing with heavy plank sufficient in strength to warrant against the breaking or damaging of such curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing.

(B) Except as provided in § 71.05, 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 with sharp wheels that

bear upon the pavement; with wheels that have cutting edges; with wheels that have 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, except that where heavy vehicles, structures, and machines move along paved or unpaved streets, the city police are hereby authorized and empowered to choose the route over which the moving of such vehicles, structures, or machines will be permitted and allowed.

SALE AND ACQUISITION OF PROPERTY; PUBLIC WORKS

§ 92.030 SALE AND CONVEYANCE; REAL PROPERTY.

(A) Except as provided in division (G) below, 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 that property and the manner and terms of such sales, except that the 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) above and the terms of such sales shall be published once each week for three consecutive weeks in a legal newspaper published in or of general circulation in the city.

(D) (1) If, within 30 days after the third publication of the notice, a remonstrance petition against the sale conforms to Neb. RS 32-628, is signed by registered voters of the city equal in number to 30% of the registered voters of the city voting at the last regular city election held therein, and is filed with the City Council, that property shall not then, nor within one year thereafter, be sold. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the 30-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

(2) Upon receipt of the remonstrance, the City Council, with the aid and assistance of the Election Commissioner or the County Clerk, shall determine the validity and sufficiency of signatures on the petition. The City Council shall deliver the petition to the Election Commissioner or the County Clerk by hand carrier, by the use of law enforcement officials, or by certified mail, return receipt requested.

(3) Upon receipt of the petition, the Election Commissioner or County Clerk shall issue to the City Council a written receipt that the petition is in the custody of the Election Commissioner or County Clerk. The Election Commissioner or County Clerk shall compare the signature of each person signing the petition with the voter registration records to determine if each signer was a registered voter on or before the date on which the petition was filed with the City Council. The Election Commissioner or County Clerk shall also compare the signer's printed name, street and number or voting precinct, and city or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the Election Commissioner or County Clerk determines that the printed name, street and number or voting precinct, and city or post office address match the registration records and that the registration was received on or before the date on which the petition was filed with the City Council. The determinations of the Election Commissioner or County Clerk may be rebutted by any credible evidence which the City Council finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the petition, the sufficiency of the petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process.

(4) Upon completion of the comparison of names and addresses with the voter registration records, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the Election Commissioner or County Clerk shall set forth the reason for the invalidity of the signature. If the Election Commissioner or County Clerk determines that a signer has affixed his or her signature more than once to the remonstrance and that only one person is registered by that name, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature.

(5) The Election Commissioner or County Clerk shall certify to the City Council the number of valid signatures necessary to constitute a valid remonstrance. The Election Commissioner or County Clerk shall deliver the remonstrance and the certifications to the City Council within 40 days after the receipt of the remonstrance from the City Council. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than 20 signatures on one signature page shall be counted.

(6) The City Council shall, within 30 days after the receipt of the remonstrance and certifications from the Election Commissioner or County Clerk, hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. The City Council shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

(E) Real estate now owned or hereafter owned by the city may be conveyed without consideration to the state for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of Neb. RS 18-1001 through 18-1006.

(F) Following passage of the resolution directing a sale, publishing of the notice of the proposed sale, and passing of the 30-day right-of-remonstrance period, the property shall then be sold. The sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. (Neb. RS 17-503)

(G) Divisions (A) through (F) above 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 prominent places within the city for a period of not less than seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required. (Neb. RS 17-503.01)

§ 92.031 SALE AND CONVEYANCE; PERSONAL PROPERTY.

(A) 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 of the sale. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the city for a period of not less than seven days prior to the sale of the property. 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 in or of general circulation in the city at least seven 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.

(B) Personal property may be conveyed notwithstanding the procedure in division (A) above when:

(1) Such property is being sold in compliance with the requirements of federal or state grants or programs; or

(2) Such property is being conveyed to another public agency.
(Neb. RS 17-503.02)

§ 92.032 ACQUISITION OR CONSTRUCTION OF PUBLIC BUILDINGS; ELECTION REQUIREMENTS.

(A) The city is authorized and empowered to purchase, accept by gift or devise, purchase 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, including the construction of buildings authorized to be constructed by Neb. RS Chapter 72, Article 14, and including the construction of buildings to be leased in whole or in part by the city to any other political or governmental subdivision of the state authorized by law to lease such buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of the city.

(B) Except as provided in division (C) below, before any such purchase can be made or building erected, the question shall be submitted to the electors of the city at a general city election or at an election duly called for that purpose, or as set forth in division (D) below, and be adopted by a majority of the electors voting on such question.

(Neb. RS 17-953)

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

(1) Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the city and no election shall be required to approve the purchase or construction unless, within 30 days after the publication of the notice, a remonstrance petition against the purchase or construction is signed by registered voters of the city equal in number to 15% of the registered voters of the city voting at the last regular city election held therein and is filed with the City Council. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the 30-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. If a 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) above 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 as provided in § 92.034. (Neb. RS 17-953.01)

(D) (1) The Mayor and City Council adopting the proposition to make such purchase or erect such building or buildings for the purposes set forth in division (A) above shall have the power to borrow money and pledge the property and credit of the city upon its negotiable bonds. No such bonds shall be

issued until after the same have been authorized by a majority vote of the electors voting on the proposition of their issuance, at a general city election or at a special election called for the submission of such proposition. The question of such purchase or erection of such a building or buildings, as set forth in division (A) above, and the question of the issuance of the negotiable bonds referred to in this division (D) may be submitted as one question at a general city or special election if so ordered by resolution or ordinance.

(2) Notice of the time and place of the election shall be given by publication in some legal newspaper printed in or of general circulation in the city three successive weeks immediately prior thereto.

(3) No such election for the issuance of such bonds shall be called until a petition therefor signed by at least 10% of the legal voters of the city has been presented to the City Council. The number of voters voting at the last regular city election prior to the presenting of the petition shall be deemed the number of votes in the city for the purpose of determining the sufficiency of the petition.

(4) The question of bond issues for such purpose in the city, when defeated, shall not be resubmitted for six months from and after the date of such election.

(5) When the building to be constructed is to be used by the state or its agency or agencies under a lease authorized by Neb. RS Chapter 72, Article 14, or the building is to be leased by any other political or governmental subdivision of the state, when the combined area of the building to be leased by the state or its agency or agencies and the political or governmental subdivision of the state is more than 50% of the area of the building, and when such sum does not exceed \$2,000,000, then no such vote of the electors will be required.

(Neb. RS 17-954)

§ 92.033 ACQUISITION OF REAL PROPERTY; APPRAISAL.

Notwithstanding any other provision of law, 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 such property has been performed by a certified real property appraiser.

(Neb. RS 13-403)

§ 92.034 ACQUISITION OF REAL PROPERTY; PUBLIC MEETING; ACCESS FOR RECREATIONAL USE.

(A) The city shall acquire an interest in real property by purchase or eminent domain only after the City Council has authorized the acquisition by action taken in a public meeting after notice and public hearing.

(B) The city shall provide to the public a right of access for recreational use to real property acquired for public recreational purposes. Such access shall be at designated access points and shall be equal to the right of access for recreational use held by adjacent landowners. The right of access granted to the public for recreational use shall meet or exceed such right held by a private landowner adjacent to the real property.

(Neb. RS 18-1755)

**§ 92.035 PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING;
REQUIREMENTS.**

(A) (1) Except as otherwise provided in this section and Neb. RS 81-3449 and 81-3453, 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, or professional engineer, or those who are under the direct supervision of an architect or professional engineer.

(2) This division (A) shall not apply to any public work in which the contemplated expenditure for the complete project does not exceed \$100,000 or the adjusted dollar amount set by the Board of Engineers and Architects.

(Neb. RS 81-3445)

(B) The provisions of division (A) above regulating the practice of architecture do not apply to the following activities or the other activities specified in Neb. RS 81-3449:

(1) 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;

(2) A public service provider who employs a design professional performing professional services for itself;

(3) The practice of any other certified trade or legally recognized profession;

(4) 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; and

(5) 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.

(Neb. RS 81-3449)

(C) The provisions of division (A) above regulating the practice of engineering do not apply to the following activities, the activities specified in division (B) above, or the other activities specified in Neb. RS 81-3453:

(1) Those services ordinarily performed by subordinates under the 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; and

(2) The construction of water wells as defined in Neb. RS 46-1212, the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells, unless such construction, installation, or decommissioning is required by the 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.

(Neb. RS 81-3453)

(D) For the purpose of this section, the city is considered a public service provider if it employs or appoints an architect or a professional engineer to be in responsible charge of the city's architectural or engineering work.

(Neb. RS 81-3423)

§ 92.036 SPECIAL ASSESSMENTS FOR PUBLIC WORKS OR IMPROVEMENTS; NOTICE TO NONRESIDENT PROPERTY OWNERS.

(A) Before any political subdivision or special taxing district for public works or public improvements shall be formed, and before the city or any political subdivision or special taxing district may impose any special assessment for public works or public improvements, a copy of any notice required to be published by law shall be mailed to the last known address of all nonresident property owners as shown on the current tax rolls at the time such notice is first published.

(Neb. RS 13-310)

(B) The City Clerk or any other person upon whom the duty is imposed by law to publish notice required by law in regard to the formation of a special taxing district for public works or public improvements shall mail by certified mail, with return receipt requested, a copy of the published notice in regard to the formation of any special taxing district within the city to the last known address as shown on the current tax rolls of each nonresident property owner.

(Neb. RS 13-311)

(C) The City Clerk or any other person upon whom the duty is imposed by law to publish notice required by law in regard to any special assessment by a special taxing district shall mail by certified mail, with return receipt requested, a copy of such notice to be published to the last known address as shown on the current tax rolls of each nonresident property owner.

(Neb. RS 13-312)

(D) The failure of the City Clerk or any other person upon whom the duty is imposed by law to mail a copy of a published notice as provided in this section shall invalidate the assessment against the property involved while permitting all other assessments and procedures to be lawful.

(Neb. RS 13-313)

(E) For the purpose of this section, 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 and who is a record owner of property within the boundaries of the city, special assessment district, or taxing district involved.

(Neb. RS 13-314)

SIDEWALKS

§ 92.050 REQUIREMENT TO KEEP 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. Unless the City Council has provided otherwise, all sidewalks within the business district shall be cleaned within five hours after the cessation of a storm unless the storm or fall of snow shall have taken place during the night, in which case, the sidewalk shall be cleaned before 9:00 a.m. the following day, and sidewalks within the residential areas of the city shall be cleaned within 24 hours after the cessation of the storm. Penalty, see § 10.99

§ 92.051 USE OF SPACE BENEATH.

(A) No person shall be allowed to keep or use the space beneath the sidewalk lying between lot line and curbline unless a permit has been obtained from the City Council. Before any permit is granted, the

applicant shall submit plans and specifications of any present or proposed construction to the City Engineer. If the plans or specifications are disapproved by the Engineer, no permit shall be granted.

(B) All permits hereafter granted shall continue only upon the condition that the party receiving them builds, maintains, and keeps in repair a sidewalk over the space used or constructed to be used and pays all damages that may be sustained by any person by reason of such use or by reason of the sidewalk being defective or in a dangerous condition.

(C) As a condition precedent to the issuance or continuance of any permit for the use of any space underneath the city sidewalks as contemplated in this section, the City Council may require the applicant to furnish a bond to the city as obligee for the benefit of any person who may suffer an injury or damage by reason of such use. The bond shall be in such sum as the City Council, in its discretion, may designate.

Penalty, see § 10.99

§ 92.052 CONSTRUCTION AT OWNER'S INITIATIVE.

(A) Any person desiring to construct, or cause to be constructed, any sidewalk shall do so only as provided in this section. 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 such application in the office of the City Clerk. The permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed. The Overseer of Streets shall issue the desired permit unless good cause appears why the permit should be denied, except that if it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, or elevation, the Overseer of Streets shall submit the application to the City Council for determination as to whether the permit should be granted or denied. It shall be unlawful for any person to construct, or cause to be constructed, such 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 Overseer of Streets.

Penalty, see § 10.99

§ 92.053 CONSTRUCTION AND REPAIR AT CITY DIRECTION.

(A) (1) The Mayor and City Council may construct and repair sidewalks or cause the construction and repair of sidewalks in such manner as the Mayor and City Council deem necessary and assess the

expense of such construction or repairs on the property in front of which such construction or repairs are made, after having given notice:

(a) By publication in one issue of a legal newspaper of general circulation in the city; and

(b) By either causing a written notice to be served upon the occupant in possession of the property involved or to be posted upon such premises ten days prior to the commencement of such construction or repair.

(2) The powers conferred under this section are in addition to those provided in Neb. RS 17-509 through 17-521 and may be exercised without creating an improvement district.

(3) If the owner of any property abutting any street or avenue or part thereof fails to construct or repair any sidewalk in front of the owner's property within the time and in the manner as directed and requested by the Mayor and City Council after having received due notice to do so, the Mayor and City Council may cause the sidewalk to be constructed or repaired and may assess the cost of such construction or repairs against the property.

(Neb. RS 17-522)

(B) All sidewalks shall be constructed and repaired in conformity with such plans and specifications as may be approved by the City Council.

(C) Assessments made under the provisions of 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, 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 a legal newspaper in or of general circulation in the city at least four weeks before the same shall be held or, in lieu thereof, personal service may be made upon persons owning or occupying property to be assessed; and

(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)

Statutory reference:

Authority to improve through sidewalk district, see Neb. RS 19-2417 through 19-2419

STREETS AND ALLEYS

§ 92.065 DEDICATION TO PUBLIC USE.

No street or alley which shall hereafter be dedicated to public use by the Proprietor of Ground in the city shall be deemed a public street or alley, or be under the use or control of the City Council, unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose.

(Neb. RS 17-567)

§ 92.066 GRADING, PAVING, AND OTHER IMPROVEMENTS.

The city has the power to provide for the grading and repair of any street, avenue, or alley and the construction of bridges, culverts, and sewers. No street, avenue, or alley shall be graded unless the grading is ordered to be done by the affirmative vote of two-thirds of the City Council.

(Neb. RS 17-508)

Cross-reference:

Other provisions on grading and paving, see § 92.002

Statutory reference:

Acquisition of additional land or easement, see Neb. RS 18-1705

Boundary street with county or another municipality, see Neb. RS 18-2005

Limited street improvement districts, see Neb. RS 19-2416

§ 92.067 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 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 of 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) Those improvements may be performed upon any portion of a street or alley 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 Mayor and City Council 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)

§ 92.068 OPENING, WIDENING, IMPROVING, OR VACATING.

(A) (1) The city shall have the 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 ascertained in that manner as shall be provided by ordinance.

(2) Whenever any street, avenue, alley, or lane is vacated, the same shall revert to the owners of the abutting real estate, one-half on each side thereof, and become a part of 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 a portion of 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 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:

(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, above, 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 the 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)

§ 92.069 VACATING PUBLIC WAYS; PROCEDURE.

(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 the public at large, even though those losses or damages or injuries suffered by the property owner are greater in degree than the rest of the city or public at large.

(B) Whenever the City Council decides that it would be in the best interests of the city to vacate a street, avenue, alley, lane, or similar public way, the City Council shall comply with the following procedure.

(1) *Notice.* Notice shall be given to all abutting property owners either by first-class mail to their last known address or, if there is no known address, then by publishing the notice in a newspaper that is of general circulation in the city. The content of the notice shall advise the abutting property owners that the City Council will consider vacating that 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 or five or seven disinterested residents of the city to a special commission to ascertain the amount of special damages that the abutting property owners are entitled to receive and which resulted from the City Council vacating the street, avenue, alley, lane, or similar public way. The appointees of the special commission shall be approved by the City Council. Only special damages shall be awarded to the abutting property owners.

(D) In determining the amount of compensation to award the abutting property owners as special damages, the commission shall use the following rule.

An abutting property owner is entitled to recover as compensation the difference between the value of the property immediately before and immediately after the vacating of the street, avenue, alley, lane, or similar public way. If no difference in value exists, the abutting property owner is entitled to no compensation.

§ 92.070 CROSSINGS.

The City Council may order and cause to be constructed, under the supervision of the Overseer of Streets, those street, avenue, and alley crossings as the City Council deems 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 Overseer of Streets, 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.

§ 92.071 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 Overseer of Streets, upon the erection of any new building, to assign the proper numbers to the building and give notice to the owner and occupant of the same.

Penalty, see § 10.99

§ 92.072 DRIVEWAY APPROACHES.

(A) The Overseer of Streets 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 30 days of mailing the notice, the property owner fails or neglects to cause the repairs or replacements to be made, the Overseer of Streets may cause the work to be done and assess the cost upon the property served by the approach.

(Neb. RS 18-1748) Penalty, see § 10.99

§ 92.073 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 Overseer of Streets authorizing those excavations. Penalty, see § 10.99

§ 92.074 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 Overseer of Streets.

Penalty, see § 10.99

§ 92.075 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.

Penalty, see § 10.99

§ 92.076 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.

Penalty, see § 10.99

§ 92.077 SNOW, DEBRIS, AND THE LIKE ON STREET PROHIBITED.

It shall be unlawful to place, push, or deposit snow, sleet, ice, or mud, or any debris, including leaves, grass, and branches, from private property onto the streets of the city.

Penalty, see § 10.99

Statutory reference:

Authority to regulate, see Neb. RS 17-557

CHAPTER 93: ANIMALS

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GENERAL PROVISIONS**§ 93.01 DEFINITIONS.**

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

ANIMAL. Any vertebrate member of the animal kingdom other than an uncaptured wild creature.

ANIMAL CONTROL OFFICER. Any person authorized by law or employed or appointed for the purpose of aiding in the enforcement of this chapter or any other law or ordinance relating to the licensing, control, seizure, or impoundment of animals.

OWNER. Any person who owns, possesses, keeps, harbors, or has charge, custody, or control of an animal or permits an animal to habitually remain or be lodged or fed within his or her house, store, building, enclosure, yard, lot, grounds, or premises. **OWNER** does not include any veterinarian or kennel operator temporarily maintaining on his or her premises an animal owned by another person for not more than 30 days.

RUN AT LARGE. Not being under the actual control of the owner by means of:

(1) A leash, cord, chain, or other suitable means of physical restraint which is securely fastened or tethered in a manner sufficient to keep the animal on the premises where tethered;

(2) A leash, cord, chain, or other suitable means of physical restraint of six feet or less in length physically held by the owner;

(3) Being confined within cage, receptacle, enclosed vehicle, fenced enclosure, or shelter; or

(4) Being within the real property limits of the owner and in the owner's presence and under direct and effective voice or other control.

§ 93.02 RUNNING AT LARGE; TETHERING.

(A) It shall be unlawful for the owner of any cow, hog, horse, mule, sheep, goat, dog, chicken, turkey, goose, or other animal, except a cat, to permit the animal to run at large at any time on any of the public ways and property or the property of another in the city or to be tethered or staked out in such a manner so as to allow the animal to reach or pass into any public way or property or any property of another. The owner of a cat may permit the cat to run at large within the corporate limits, subject to any restrictions or prohibitions otherwise imposed by the City Council.

(B) Any animal found running at large or tethered or staked out in violation of this section is a public nuisance and may be impounded or destroyed as provided in this chapter. Nothing in this section shall be construed to permit anyone to own an animal in the corporate limits of the city that is prohibited by the City Council.

Penalty, see § 93.99

Statutory reference:

Authority to regulate, see Neb. RS 17-526 and 17-547

Fine for permitting collarless dog to run at large, see Neb. RS 54-607

§ 93.03 WILD ANIMALS.

No wild animals may be kept within the corporate limits except wild animals kept for exhibition purposes by circuses and educational institutions.

Penalty, see § 93.99

§ 93.04 KILLING, POISONING, AND INJURING.

It shall be unlawful for any person to kill, administer, or cause to be administered poison of any sort to, or in any manner injure, maim, or destroy, or attempt to injure, maim, or destroy, any animal or to place any poison or poisoned food where it is accessible to an animal, except that:

(A) This section shall not apply to any law enforcement officer or animal control officer acting within his or her power and duty;

(B) This section shall not apply if the animal is vicious, dangerous, or showing characteristics of rabies and cannot be captured without danger to the persons attempting to effect a capture of the animal; and

(C) Any owner of a dog that he or she wishes to be destroyed may place the dog in an animal pound or shelter or with a licensed veterinarian to be humanely destroyed and disposed of according to the provisions in this chapter or other provisions of law.

Penalty, see § 93.99

§ 93.05 ENCLOSURES.

All pens, cages, sheds, yards, or any other area or enclosure for the confinement of 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.

Penalty, see § 93.99

§ 93.06 ABANDONMENT, NEGLECT, AND MISTREATMENT.

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

ABANDON. To leave any animal in one's care, whether as owner or custodian, 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. **ANIMAL** does not include an uncaptured wild creature or a livestock animal as defined in this section.

BOVINE. A cow, an ox, or a bison.

CRUELLY MISTREAT. To knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal.

CRUELLY NEGLECT. 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 city or village, or any other public official authorized by the city or any other city or village to enforce state or local animal control laws, rules, regulations, or ordinances. **LAW ENFORCEMENT OFFICER** also includes a special investigator appointed as a deputy state sheriff as authorized pursuant to Neb. RS 81-201 while acting within the authority of the Director of Agriculture.

LIVESTOCK ANIMAL. Any bovine, equine, swine, sheep, goat, domesticated cervine animal, ratite bird, or poultry.

OWNER OR CUSTODIAN. Any person owning, keeping, possessing, harboring, or knowingly permitting an animal to remain on or about any premises owned or occupied by such person.

POLICE ANIMAL. A horse or dog owned or controlled by the state or any county, city, or village for the purpose of assisting a law enforcement officer in the performance of his or her official enforcement duties.

(Neb. RS 28-1008)

(B) *Enforcement powers; immunity.*

(1) A law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the animal.

(2) It shall be the duty of a law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated to make prompt investigation of such violation. A law enforcement officer may, in lieu of making an arrest, issue a citation to the owner or custodian as prescribed in Neb. RS 29-422 through 29-429.

(3) Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.
(Neb. RS 28-1012)

(C) *Violation.*

(1) A person who intentionally, knowingly, or recklessly abandons, cruelly neglects, or cruelly mistreats an animal is guilty of an offense.

(2) A person commits harassment of a police animal if he or she knowingly and intentionally teases or harasses a police animal in order to distract, agitate, or harm the police animal for the purpose of preventing such animal from performing its legitimate official duties.

(Neb. RS 28-1009)

Penalty, see § 93.99

Statutory reference:

Authority to prohibit cruelty to animals, see Neb. RS 17-138

Exemptions, see Neb. RS 28-1013

Serious illness or injury to animal; death of animal; felony, see Neb. RS 28-1008 and 28-1009

§ 93.07 EQUINES; BOVINES; PROHIBITED ACTS.

(A) (1) No person shall intentionally trip or cause to fall, or lasso or rope the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest.

(2) The intentional tripping or causing to fall, or lassoing or roping the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(Neb. RS 54-911)

(B) (1) No person shall intentionally trip, cause to fall, or drag any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest.

(2) The intentional tripping, causing to fall, or dragging of any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(Neb. RS 54-912)

Penalty, see § 93.99

Statutory reference:

Livestock Animal Welfare Act, see Neb. RS 54-907 through 54-912

§ 93.08 IMPOUNDMENT.

(A) This section shall apply to the impoundment of animals to which § 93.29 does not apply.

(B) Any animal found in violation of the provisions of this chapter shall be impounded. All impounded domestic animals shall be given proper care, treatment, and maintenance.

(C) Notice of the impoundment of all animals, including any significant marks of identification, shall be posted at the pound and at the office of the City Clerk within 24 hours after impoundment as public notification of impoundment. Notice of the impoundment of any licensed dog shall also be mailed to the owner listed on the license application by regular United States mail to the address listed on the application.

(D) Each impounded domestic animal shall be kept and maintained at the pound for a period of not less than five days after public notice has been given unless reclaimed earlier by the owner. The owner may reclaim the animal during the period of impoundment by payment of any general impoundment and daily board fees set by resolution of the City Council and on file in the office of the City Clerk, except that in addition, an unusual or other nondomesticated or wild animal shall only be released upon condition that the owner shall immediately remove the animal from the city or destroy it. A diseased animal may be released upon a determination that the health and safety of the public is no longer threatened. The owner of any released animal shall be required to comply with any licensing and rabies vaccination requirements applicable to such animal within 72 hours after release.

(E) If the animal is unclaimed at the end of the required waiting period after public notice has been given, the animal control officer may destroy and dispose of the animal in a humane manner in accordance with the applicable rules and regulations, except that if, in the judgment of the officer, a suitable home can be found for the animal, the animal shall be turned over to the person who can provide such home and the new owner shall be required to pay all fees and meet all applicable licensing and vaccinating requirements. The city shall acquire legal title to any unlicensed dog or any other animal

impounded in the animal shelter for a period longer than the required waiting period after giving notice. The owner of the animal shall remain liable for payment of the fees established by the City Council.

Statutory reference:

Authority to establish pens and pounds, see Neb. RS 17-548 and 71-4408

Authority to impound and sell animals, see Neb. RS 17-526 and 17-547

§ 93.09 OFFICER'S COMPENSATION.

If the City Council so provides, any official appointed or designated to destroy and dispose of animals under the provisions of this chapter shall be paid, in addition to his or her regular salary or other compensation, the sum set by the Council for each animal so destroyed and disposed of.

Statutory reference:

Authority to compensate keeper of pound, see Neb. RS 17-548

§ 93.10 INTERFERENCE WITH POLICE.

It shall be unlawful for any person to hinder, delay, or interfere with any police officer or animal control officer who is performing any duty enjoined upon that person by the provisions of this chapter or to break open, or in any manner directly or indirectly aid, counsel, or advise the breaking open, of the animal shelter, any ambulance wagon, or any other vehicle used for the collecting or conveying of animals to the shelter.

Cross-reference:

Obstructing a peace officer prohibited, see § 132.05

RABIES

§ 93.25 DEFINITIONS.

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

CAT. A cat which is a household pet.

DEPARTMENT. The State Department of Health and Human Services.

DOMESTIC ANIMAL. Any dog of the species *Canis familiaris*, cat of the species *Felis domesticus*, or ferret of the species *Mustela putorius furo*.

HYBRID ANIMAL. Any animal which is the product of the breeding of a domestic dog with a nondomestic canine species.

OWN. To possess, keep, harbor, or have control of, charge of, or custody of a domestic or hybrid animal. This term does not apply to domestic or hybrid animals owned by other persons which are temporarily maintained on the premises of a veterinarian or kennel operator for a period of not more than 30 days.

OWNER. Any person possessing, keeping, harboring, or having charge or control of any domestic or hybrid animal or permitting any domestic or hybrid animal to habitually be or remain on or be lodged or fed within the person's house, yard, or premises. This term does not apply to veterinarians or kennel operators temporarily maintaining on their premises domestic or hybrid animals owned by other persons for a period of not more than 30 days.

RABIES CONTROL AUTHORITY. City health and law enforcement officials who shall enforce the provisions of this subchapter relating to the vaccination and impoundment of domestic or hybrid animals. Such public officials shall not be responsible for any accident or disease of a domestic or hybrid animal resulting from the enforcement of such sections.

VACCINATION AGAINST RABIES. The inoculation of a domestic or hybrid animal with a United States Department of Agriculture-licensed rabies vaccine administered consistent with its labeling. The vaccination shall be performed by a veterinarian duly licensed to practice veterinary medicine in this state or licensed in the state where the vaccination was administered.
(Neb. RS 71-4401)

§ 93.26 VACCINATION REQUIRED; COST; EXEMPTIONS.

(A) Every domestic animal in the city shall be vaccinated against rabies with a licensed vaccine and revaccinated at intervals specified by rules and regulations adopted and promulgated by the Department. Young domestic animals shall be initially vaccinated at the age specified in the rules and regulations. Unvaccinated domestic animals acquired or moved into the city shall be vaccinated within 30 days after purchase or arrival unless under the age for initial vaccination.

(B) (1) Except as provided in division (B)(3) below, every hybrid animal in the city shall be vaccinated against rabies and shall be revaccinated at intervals specified by the rules and regulations adopted and promulgated by the Department. A young hybrid animal shall be initially vaccinated at the age specified in such rules and regulations. An unvaccinated hybrid animal acquired or moved into the city shall be vaccinated within 30 days after purchase or arrival unless under the age for initial vaccination.

(2) The rabies vaccine used to vaccinate a hybrid animal pursuant to this section shall be sold only to licensed veterinarians.

(3) An owner of a hybrid animal in the city prior to the date of development of a licensed vaccine determined scientifically to be reliable in preventing rabies in a hybrid animal shall have one year after such date to comply with this section.
(Neb. RS 71-4402)

(C) The cost of rabies vaccination shall be borne by the owner of the domestic or hybrid animal.
(Neb. RS 71-4404)

(D) (1) The provisions of this subchapter, with respect to vaccination, shall not apply to any domestic or hybrid animal owned by a person temporarily remaining within the city for less than 30 days, to any domestic or hybrid animal brought into the city for field trial or show purposes, or to any domestic or hybrid animal brought into the city for hunting purposes for a period of less than 30 days. Such domestic or hybrid animals shall be kept under strict supervision of the owner. It shall be unlawful to bring any domestic or hybrid animal into the city which does not comply with the animal health laws and import rules and regulations of the state which are applicable to domestic or hybrid animals.

(2) Domestic or hybrid animals assigned to a research institution or a similar facility shall be exempt from this subchapter.
(Neb. RS 71-4405)
Penalty, see § 93.99

§ 93.27 POST-INCIDENT MANAGEMENT.

Any domestic animal which has bitten any person or caused an abrasion of the skin of any person shall be subjected to post-incident management as provided in the rules and regulations adopted and promulgated by the Department.
(Neb. RS 71-4406) Penalty, see § 93.99

§ 93.28 DOMESTIC OR HYBRID ANIMAL OR LIVESTOCK; POST-EXPOSURE MANAGEMENT.

Domestic or hybrid animals or livestock known to have been exposed to a confirmed or suspected rabid animal shall be subjected to post-exposure management as provided in the rules and regulations adopted and promulgated by the Department.
(Neb. RS 71-4407) Penalty, see § 93.99

§ 93.29 ANIMAL POUND; IMPOUNDMENT; RELEASE; FEES.

(A) (1) The rabies control authority may authorize an animal pound or pounds or may enter into a cooperative agreement with a licensed veterinarian for the establishment and operation of a pound.

(2) Any dog or hybrid of the family Canidae found outside the owner's premises whose owner does not possess a valid certificate of rabies vaccination and valid rabies vaccination tag for the dog or hybrid of the family Canidae shall be impounded. The rabies control authority may require the impoundment of domestic or hybrid animals other than dogs or hybrids of the family Canidae. All impounded domestic or hybrid animals shall be given proper care, treatment, and maintenance. Each impounded domestic or hybrid animal shall be kept and maintained at the pound for a period of not less than 72 hours unless reclaimed earlier by the owner.

(3) Notice of the impoundment of all animals, including any significant marks of identification, shall be posted at the pound as public notification of impoundment. Any unvaccinated domestic or hybrid animal may be reclaimed by its owner during the period of impoundment by payment of prescribed pound fees and by complying with the rabies vaccination requirement of this subchapter within 72 hours of release. Any vaccinated domestic or hybrid animal impounded because its owner has not presented a valid certificate of rabies vaccination and a valid rabies vaccination tag for the domestic or hybrid animal may be reclaimed by its owner by furnishing proof of rabies vaccination and payment of all impoundment fees prior to release.

(4) At the expiration of impoundment, a domestic or hybrid animal may be claimed by payment of the established pound fees and by compliance with the rabies vaccination requirement of this subchapter within 72 hours of release. If the domestic or hybrid animal is unclaimed at the end of five days, the authorities may dispose of the domestic or hybrid animal in accordance with applicable laws or rules and regulations.

(Neb. RS 71-4408)

(B) Impoundment fees shall be paid by the owner. Fees for impoundment at public facilities shall be established by the rabies control authority.

(Neb. RS 71-4411)

§ 93.30 PROCLAMATION OF DANGER.

Whenever, in its opinion, the danger to the public safety from a species of rabid animals is great or imminent, the City Council shall issue a proclamation ordering all owners of any such species to muzzle the animal or to confine it for a period of not less than 30 days or more than 90 days from the date of the proclamation or until the danger is passed. The animal may be harbored by any good and sufficient

means in a house, garage, or yard on the premises on which the owner may reside. Upon issuance of a proclamation, all owners of any such species shall muzzle or confine the animal as provided in this section.

Penalty, see § 93.99

§ 93.31 ENFORCEMENT.

(A) When the owner of any domestic or hybrid animal or other animal fails or refuses to comply with §§ 93.27 or 93.28, the rabies control authority shall obtain an order for seizure of the animal pursuant to Neb. RS Chapter 29, Article 8.
(Neb. RS 71-4410)

(B) In the city, all ordinances, codes, or rules and regulations concerning the control of rabies or the vaccination of domestic or hybrid animals against rabies shall be enforced by the city health and law enforcement officials or those other officers with regulatory authority as specified by the City Council.
(Neb. RS 71-4412)

DOGS

§ 93.45 LICENSE AND TAX REQUIRED; EXEMPTION; TAGS.

(A) Any owner of a dog over the age of six months within the city shall, within 30 days after acquisition of the dog, acquire a license for the dog annually by or before May 1 of each year. Licenses shall be issued by the City Clerk upon payment of a license tax in the amount established by the City Council, plus the \$1.25 fee required under Neb. RS 54-603(3). It shall be unlawful for the owner of a dog to wrongfully and knowingly license an unspayed female dog as a male or spayed female dog if the Council has established different license taxes for such dogs.

(B) The tax shall be delinquent from and after May 10. The owner of any dog brought into or harbored within the corporate limits subsequent to May 1 of any year shall be liable for payment of the dog tax, and such tax shall be delinquent if not paid within ten days thereafter. The license shall not be transferable, and no refund will be allowed in case of death, sale, or other disposition of the licensed dog.

(C) The owner shall state, at the time the application is made and upon printed forms provided for such purpose, his or her name and address and the name, breed, color, and sex of each dog owned by

him or her. A certificate of rabies vaccination, effective for the ensuing year of the license, shall be presented when application for a license is made, and no license or tag shall be issued until the certificate is shown.

(D) Every service animal shall be licensed as required by this section, but no license tax shall be charged. Upon the retirement or discontinuance of the animal as a service animal, the owner of the animal shall be liable for the payment of the required license tax.

(Neb. RS 54-603)

(E) (1) Upon payment of the license tax, the Clerk shall issue to the owner of the dog a license certificate and a metallic tag, which shall be valid until April 30 following such licensing. The Clerk shall issue tags of a suitable design that are different in appearance each year.

(2) The metallic tag and the rabies tag shall be properly attached to the collar or harness of the dog. It shall be unlawful for the owner of any dog to permit or allow such dog to wear any licensing identification other than the metallic tag issued by the Clerk.

(3) If a license tag is lost, upon satisfactory evidence that the original tag was issued in accordance with the provisions of this section, the Clerk 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 established by the City Council for each duplicate or new tag so issued.

(F) All license taxes, fees, and other collections shall be credited to the General Fund of the city, except as otherwise provided by Neb. RS 54-603.

Penalty, see § 93.99

Statutory reference:

Authority to impose license tax, require rabies certificate, and destroy unlicensed dogs, see Neb. RS 17-526, 54-603, and 71-4412

§ 93.46 COLLAR OR HARNESS REQUIRED.

(A) It shall be the duty of every owner of a dog to securely place upon the neck of the dog a good and sufficient collar with a metallic plate thereon. The plate shall be plainly inscribed with the name of the owner.

(Neb. RS 54-605)

(B) The owner of a dog may use a harness instead of a collar as long as the harness meets all other requirements of division (A) above.

Penalty, see § 93.99

§ 93.47 REMOVAL OF COLLAR, HARNESS, OR TAGS.

It shall be unlawful for any person to remove, or cause to be removed, the collar, harness, metallic license tag, or rabies tag from any dog without the consent of the owner of the dog.

Penalty, see § 93.99

§ 93.48 LIABILITY OF OWNER.

It shall be unlawful for the owner to allow a dog to injure or destroy any real or personal property of any description belonging to another person. The owner of the dog, in addition to the usual judgment upon conviction, may be made to be liable to the person injured in an amount equal to the value of the damage sustained.

Penalty, see § 93.99

Statutory reference:

Authority to guard against injuries or annoyances, see Neb. RS 17-526

Statutory liability for damages, see Neb. RS 54-601, 54-602, and 54-606

§ 93.49 BARKING AND CHASING; COMPLAINTS.

(A) It shall be unlawful for the owner to allow a dog to annoy or disturb any neighborhood or person by loud, continued, or frequent barking, howling, or yelping or to habitually bark at or chase pedestrians, drivers, or owners of horses or vehicles while they are on any public sidewalks, streets, or alleys in the city.

(B) Upon the written complaint of two or more affected persons from different households, filed within any 30-day period with the City Clerk or animal control officer, that any dog owned by the person named in the complaint is an annoyance or disturbance, or otherwise violates the provisions of this section, the city police or animal control officer shall investigate the complaint and, if in his or her opinion the situation warrants, notify the owner to silence and restrain the dog.

(C) The provisions of this section shall not be construed to apply to any city animal shelter.

Penalty, see § 93.99

Statutory reference:

Authority to guard against annoyances, see Neb. RS 17-526

§ 93.50 DANGEROUS DOGS.

(A) 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 the city, and includes any local law enforcement agency or other agency designated by the city to enforce the animal control laws of the city.

ANIMAL CONTROL OFFICER. Any individual employed, appointed, or authorized by an animal control authority 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 includes 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) Any dog that, according to the records of the animal control authority:

1. Has killed a human being;
2. Has inflicted injury on a human being that requires medical treatment;
3. Has killed a domestic animal without provocation; or
4. Has been previously determined to be a potentially dangerous dog by an animal control authority, the owner has received notice of such determination from an animal control authority or an animal control officer, 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) A dog shall not be defined as a ***DANGEROUS DOG*** 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.

(c) A dog shall not be defined as a ***DANGEROUS DOG*** if the injury, damage, or threat was sustained by an individual who, at the time, was committing a willful trespass as defined in Neb. RS 20-203, 28-520, or 28-521, 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.

(d) A dog shall not be defined as a ***DANGEROUS DOG*** if the dog is a police animal as defined in Neb. RS 28-1008.

DOMESTIC ANIMAL. A cat, a dog, or livestock. ***LIVESTOCK*** includes buffalo, deer, antelope, fowl, and any other animal in any zoo, wildlife park, refuge, wildlife area, or nature center intended to be on exhibit.

MEDICAL TREATMENT. Treatment administered by a physician or other licensed health care professional that results in sutures or surgery or treatment for one or more broken bones.

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:

1. Inflicts an injury on a human being that does not require medical treatment;
2. Injures a domestic animal; or
3. Chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack.

(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.
(Neb. RS 54-617)

(B) (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 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.

(3) Except as provided in division (B)(4) below or for a reasonable veterinary purpose, no owner of a dangerous dog shall transport such dog or permit such dog to be transported to another county, city, or village in this state.

(4) An owner of a dangerous dog may transport such dog or permit such dog to be transported to another county, city, or village in this state for the purpose of permanent relocation of the owner if the owner has obtained written permission prior to such relocation from the animal control authority of the county, city, or village in which the owner resides and from the county, city, or village in which the owner will reside. Each animal control authority may grant such permission based upon a reasonable evaluation of both the owner and the dog, including if the owner has complied with the laws of this state and of the county, city, or village in which he or she resides with regard to dangerous dogs after the dog

was declared dangerous. An animal control authority shall not grant permission under this section if the county, city, or village has an ordinance or resolution prohibiting the relocation of dangerous dogs. After the permanent relocation, the animal control authority of the county, city, or village in which the owner resides shall monitor the owner and such dog for a period of at least 30 days, but not to exceed 90 days, to ensure the owner's compliance with the laws of this state and of such county, city, or village with regard to dangerous dogs. Nothing in this division (B)(4) shall permit the rescindment of the declaration of dangerous dog.

(Neb. RS 54-618)

(C) (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) (a) 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 entry 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 least one foot. The pen or structure shall also protect the dog from the elements. The pen or structure shall be at least ten feet from any property line of the owner.

(b) 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 not less than ten inches by 12 inches and shall contain the words "warning" and "dangerous animal" in high-contrast lettering at least three inches high on a black background.

(Neb. RS 54-619)

(D) (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 animal control authority for the care of a 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.

(Neb. RS 54-620)

(2) In addition to any other penalty, a court may order the animal control authority to dispose of a dangerous dog in an expeditious and humane manner.

(Neb. RS 54-621)

(E) If a dangerous dog of an owner with a prior conviction under this section attacks or bites a human being or domestic animal, in addition to any other penalty, the dangerous dog shall be

immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

(Neb. RS 54-623)

Penalty, see § 93.99

Statutory reference:

Owner felony liability; serious bodily injury second offense, see Neb. RS 54-622.01

Prior conviction; ownership of dangerous dog prohibited for ten years after, see Neb. RS 54-623

§ 93.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) (1) As set out in § 93.50, any owner whose dangerous dog inflicts on a human being a serious bodily injury as defined in Neb. RS 28-109 is guilty of a Class I misdemeanor for the first offense, whether or not the same dangerous dog is involved.

(2) It is a defense to a violation of division (B)(1) above that the dangerous dog was, at the time of the infliction of the serious bodily injury, in the custody of or under the direct control of a person other than the owner or the owner's immediate family.

(Neb. RS 54-622.01)

