

TITLE XVII: LOCAL LEGISLATION

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REFERENCES: TITLE 111 - ADMINISTRATION**§17-31.02 APPOINTED OFFICIALS: CLERK-TREASURER POSITION**

CREATED. The appointive offices of Municipal Clerk and Municipal Treasurer are hereby combined and merged in accordance with the authority granted to the Governing Body by Title III Administration § 31.02.

§17-31.03 ACTING CITY CLERK. That Section 31.03 of the Municipal Ordinance for the City of Sutton be amended by adding Section G which would read as follows;

Section (G) The position of Acting City Clerk is created in order to fulfill the duties and responsibilities of the City Clerk in her absence due to vacation, illness or emergencies. Whenever the City Clerk shall be absent three or more days the utilities billing clerk or assistance billing clerk shall be acting City Clerk and shall assume the duties and responsibilities of the City Clerk. (Ordinance No. 255; 7/18/2006)

§17-31.04 APPOINTED OFFICIALS: DEPUTY CLERK-TREASURER.

1. There is hereby created the position of Deputy Clerk-Treasurer which shall be filled by appointment of the Mayor with the consent of the council to perform duties as assigned by the Clerk-Treasurer or as otherwise directed by the City Administrator in the absence of the Clerk-Treasurer. Position may be full-time or part-time as determined by the Mayor and Council (Ordinance NO. 350 10/21/2014)

§17-31.10 APPOINTED OFFICIALS: CITY ADMINISTRATOR. The Mayor may appoint an individual, by and with the consent of a majority of the City Council, to serve as a full time City Administrator. In the event that a full time Administrator is appointed, he shall be the administrative head of the

Municipal government under the direction and control of the Mayor and City Council and shall be responsible to the Mayor and City Council for the efficient conduct of his office. The office of the City Administrator may not be held by the Mayor.

In the event that a full time Administrator is not appointed by the Mayor:

1. The duties assigned by this Code to a City Administrator shall be performed by the Mayor and Council of the City, and such other officer or employees of the City as are designated herein; and

2. The Mayor shall be responsible for coordinating the work of the various departments and employees of the City, and shall provide a brief report at each Council meeting on the activities of the past month and the needs and plans for future work.

The duties of the City Administrator (or such individual appointed or specified as set out above) shall be all those duties assigned by this Code, together with the following duties:

1. He shall make and keep up to date an inventory of all property, real and personal, owned by the Municipality.
2. He shall act as purchasing agent for the purchase of all supplies, goods, wares and merchandise, equipment and material which may be required for the various departments, divisions or services of the Municipality.
3. He shall keep the Mayor and Council fully advised as the financial condition and needs of the Municipality and shall be responsible for and prepare the annual estimate of expenditures for presentation to the Mayor and Council prior to the passage of the annual appropriation ordinance.
4. To serve as public relations officer of the Municipal government, and in such capacity to endeavor to investigate and adjust all complaints filed against any employee, department, division or service thereof and cooperate with all community organizations whose aim and purpose is to advance the

best interests of the Municipality and its people and to attend meetings of such organizations if in the judgment of the City Administrator such attendance is necessary and desirable.

5. To attend all meetings of the Council with the duty of reporting any matter concerning Municipal affairs under his supervision or direction and to attend such other meetings of the Municipal Departments and officials as his duties may require.

6. To analyze the functions, duties and activities of the various departments, divisions and services of the Municipal government and of all employees thereof, and to make his recommendations regarding the same to the Mayor and Council.

7. To carry out the Mayor's and/or Council's recommendations and operations of the various departments.

8. To procure facts and submit long range improvements to the Mayor and Council.

9. The City Administrator may appoint and dismiss all subordinate employees of the Municipality, as well as provide for the transfer of such employees from one department to another.

10. Recommend to the Mayor and Council for adoption such measures and ordinances as are deemed necessary or expedient.

11. Prepare and recommend to the Mayor and Council a classification and compensation plan.

12. Make investigations into the affairs of the Municipality and any department or division thereof, and any contract, or the proper performance of any obligations pertaining to the Municipality.

13. Exercise general supervision over all public buildings, streets and other public property which are under the control and jurisdiction of the Mayor and Council.

14. Prepare and submit to the Mayor and Council as of the end of the fiscal year, a complete report on the finances and administrative activities of the Municipality for the preceding year.
15. Keep the insurable property of the Municipality appropriately insured.
16. Shall be under the supervision and direction of the Mayor at all times.
17. Shall have the immediate supervision of all departments and employees in the City except those officials and boards prescribed by State statutes.
18. Shall be ex officio member of all boards and committees for liaison purposes.
19. Shall maintain all records that are required.
20. Shall have periodic staff meetings with all department heads and employees.
21. Shall work on grants and other funding which could be available for city finances and projects.
22. The Administrator shall devote his entire time, attention and energies to the affairs of the Municipality and shall not, during the term of his office or employment, be engaged in any other business activity whether or not such business activity is pursued for gain, profit or other pecuniary advantage.
23. Perform such other duties and exercise such other powers as may be delegated to him from time to time by ordinances or resolutions of the Council; and where action of the Council is not required such duties and powers as may be prescribed by the Mayor. The salary of the City Administrator shall be fixed by ordinance of the Council.
24. The City Administrator shall act as purchasing agent for the purchase of all supplies, goods, wares and merchandise, equipment and material up to \$5,000.00 including all changeorders and add-ons which may be required for the various departments, divisions or services of the Municipality.

The City Administrator shall act as an agent of the Mayor in the discharge of all of his duties, responsibilities, and powers set out herein; and in the event the City Administrator shall be absent from the City, or incapable of discharging such duties, responsibilities, and powers for any reason, the Mayor shall act as City Administrator during such absence or incapacity. *(Ref. 17-601 RS Neb.)(Amended by Ordinance NO. 354; 2/9/2015)*

§17-31.11 APPOINTED OFFICIALS; SPECIAL ENGINEER. The Governing Body may employ a Special Engineer to make any particular estimate, survey, or other work. The Special Engineer shall make a record of the minutes of his surveys and all other work done for the Municipality. He shall, when directed by the Governing Body, accurately make all plats, sections, profiles, and maps as may be necessary in the judgment of the Governing Body. He shall, upon request of the Governing Body, make estimates of the costs of labor and material which may be done or furnished by contract with the Municipality, and make all surveys, estimates, and calculations necessary for the establishment of grades, bridges, building of culverts, sewers, electric light system, waterworks, power plant, public heating system, curbing and gutters, and the improvement of streets and erection and repair of buildings, and shall perform such other duties as the Governing Body may require. All records of the Special Engineer shall be public records which shall belong to the Municipality, and shall be turned over to his successor. *(Ref. 17-405, 17-568, 17-568.01, 17-919 RS Neb.)*

§17-31.12 APPOINTED OFFICIALS; ZONING ADMINISTRATOR. The Mayor may appoint, with consent of the City Council, a Zoning Administrator. In the absence of a specific appointment by the Mayor, the City

Administrator is hereby designated as the Zoning Administrator. (Ref. 17-604 RS Neb.)

§17-31.13 APPOINTED OFFICIALS: CIVIL DEFENSE DIRECTOR. There is hereby created the position of Civil Defense Director for Sutton, Nebraska. The Civil Defense Director shall under the supervision of the Mayor or his agent be directly responsible for the planning, coordination, administration and operation of all civil defense activity in the City of Sutton. The Sutton Civil Defense Director shall also be responsible to plan, coordinate and work with the Clay County Civil Preparedness Agency in all matters relating to any interlocal agreements, funding where state or federal funds are utilized and in other matters that may affect the disaster response capabilities of Sutton or Hastings/Adams County. The Director shall be appointed by the Mayor with the consent of the City Council, based upon input from the emergency services in Sutton and the Clay County Civil Preparedness Agency. The Director shall within limitations of his volunteer position devote time to the duties of the position and shall be qualified in accordance with criteria established by the Governor of the State of Nebraska. The Sutton Civil Defense Director may also be appointed as a Deputy Director for Clay County with the primary area of responsibility to be within the Rural Fire Protection District.

In addition to any other duties prescribed by the Executive Group and approved by the City Council, the Civil Defense Director shall:

1. Coordinate the recruiting of volunteer personnel and agencies to augment the personnel and facilities currently utilized by the Sutton area.
2. Develop and coordinate plans for the immediate use of all facilities, equipment, manpower and other resources of the City of Sutton for the purpose of minimizing or preventing damage to persons or property, and

protecting and restoring governmental services and public utilities necessary for the public health, safety, and welfare.

3. Negotiate agreements with owners of buildings and other properties for the use of such facilities as public shelters, which such agreements shall be presented to the City Council for its approval.
4. Educate the civilian population through public information programs, as to actions necessary and required for the protection of lives and property in case of any enemy attack, or other disaster, either impending or present.
5. Conduct public practice alerts to insure the efficient operation of the Sutton Civil Defense forces, and to familiarize them with procedures and operations.
6. Assist and support the activity of all other public and private agencies engaged in any other civil defense activity.
7. Develop in cooperation and in collaboration with other public and private agencies within this state, mutual aid agreements for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. Such agreements shall be consistent with the state, county and local civil defense plans. The terms of all mutual aid arrangements shall be made, embodied in writing, and subject to the approval by the City Council.

The Civil Defense Director shall have the authority to appoint one or more volunteer Deputy Civil Defense Directors to act in his absence. (*Ref. 17-604 RS Neb.*)

§17-31.14 APPOINTED OFFICIALS; INVENTORY OF REAL AND PERSONAL PROPERTY. All appointed officials shall, on an annual basis, make and submit a complete inventory of all property of the Municipality, real and personal, in his or her possession, control or custody. The Governing Body may require other employees of the Municipality to make and submit such inventories in addition to those required above.

§17-31.15 APPOINTED OFFICIALS; MUNICIPAL AMBULANCE BOARD

PRESIDENT. The President of the Sutton Ambulance Board shall be appointed as head of the Ambulance Department.

§17-31.16 SEAL; OFFICIAL CORPORATE. The official Corporate Seal of the Municipality shall be kept in the office of the Municipal Clerk, and shall bear the following inscription, "Seal of the City of Sutton, Clay County, Nebraska." The Municipal Clerk shall affix an impression of the said official seal to all warrants, licenses, permits, ordinances, and all other official papers issued by order of the Governing Body and countersigned by the Municipal Clerk. (*Ref. 17-502 RS Neb.*)

§17-32.02 (A) (1) PLANNING COMMISSION

Section 1. That the Municipal Code for the City of Sutton be amended by deleting wording in section 32.02 (A) (1); which makes it read as follows:

(A) (1) If the City Council adopts zoning or other regulations pursuant to Neb. RS 19-901 *et seq.*, the Planning Commission shall consist of 5 regular members, as specified by the City Council by ordinance, who shall represent, insofar as is possible, the different professions or occupations in the city and shall be appointed by the Mayor, by and with the approval of a majority vote of the members elected to the City Council. Two of the regular members may be residents of the area over which the city is authorized to exercise extraterritorial zoning and subdivision regulation. When there are 500 residents in the area over which the city exercises extraterritorial zoning and subdivision regulation, 1 regular member of the Commission shall be a resident from such area. If it is determined by the City Council that 500 residents reside in the area subject to extraterritorial zoning or subdivision regulation, and no such resident is a regular member of the Commission, the first available vacancy on the Commission shall be filled by the appointment of such an individual. A number of commissioners equal to a majority of the number of regular members appointed to the Commission shall constitute a quorum for the transaction of any business. All regular members of the Commission shall serve without compensation and shall hold no other city office except when appointed to serve on the Board of Adjustment as provided in Neb. RS 19-908. The term of each regular member shall be 3 years, except that 1/3 or

fewer of the regular members of the first commission to be so appointed shall serve for terms of 1 year, 1/3 or fewer for terms of 2 years, and the remaining members for terms of 3 years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before the Council, be removed by the Mayor with the consent of a majority vote of the members elected to the Council for inefficiency, neglect of duty, or malfeasance in office or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired portion of the term by the Mayor.(Amended by Ord. NO. 263 2/13/2007).

§17-33.04 REGULAR MEETING TIME AND DATE: The regular meeting of the council shall be held on the Second Monday of each month in the Council Chamber at 8:00 p.m. The Council may, by order, adjourn at any time not to exceed one regular meeting. Any regular meeting may be adjourned from time to time prior to the next regular; and as such adjourned meeting any and all business may be transacted as at any regular meeting. (Ordinance NO. 353 1/13/2015)

§17-34.04 ELECTIONS; TIE VOTES. In the case of a tie vote of any of the candidates in either the primary or general election, the County Clerk shall notify such candidates to appear at his office on a given day and hour to determine the same by lot before the canvassing board, and the certificate of nomination or election shall be given accordingly. Notice to appear shall be given by certified mail. (*Ref. 17-107.02(5) RS Neb.*)

§17-34.01 ELECTIONS; WARDS. The City of Sutton shall be and is hereby divided into two wards, described as follows: (a) First Ward shall consist of all territory in City lying north of a line commencing at the west corporate limits of City at a point where the center line of the Chicago, Burlington and Quincy Railroad right of way bisects said west corporate limits, thence from said point northeasterly along the center line of said right of way to the center line of Saunders Avenue, thence south on the center line of Saunders Avenue to the center line of Elm Street, thence east along

the center line of Elm Street and on a continuation of said center line of Elm Street to the east corporate limits of City; (b) Second Ward shall consist of all remaining territory in the corporate limits of City not included in First Ward as described in subsection (a) of this section. (Ord. NO. 263, 2/13/07)

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REFERENCES: TITLE V - PUBLIC WORKS

§17-50.06 MUNICIPAL WATER DEPARTMENT; OPERATION AND FUNDING. The Municipality owns and operates the Municipal Water Department through the Public Works Foreman. The Governing Body, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Water Department may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Water Fund and shall remain in the custody of the Municipal Treasurer. The Public Works Foreman shall have the direct management and control of the Municipal Water Department and shall faithfully carry out the duties of his office. The Public Works Foreman shall have the authority to adopt rules and regulations for the sanitary and efficient management of the Water Department subject to the supervision and review of the Governing Body. The Governing Body shall set the rates to be charged for services rendered by ordinance and shall file a copy of the rates in the office of the Municipal Clerk for public inspection at any reasonable time. (*Ref. 17-531, 17-534, 19-1305 RS Neb.*)

§17-50.07 MUNICIPAL WATER DEPARTMENT; DEFINITIONS. The following definitions shall be applied throughout this Article. Where no definition is specified, the normal dictionary usage of the word shall apply.

MAIN. The term "main" is hereby defined to be any pipe other than a supply or service pipe that is used for the purpose of carrying water to, and dispersing the same in the Municipality.

SUPPLY PIPE. The term "supply pipe" is hereby defined to be any pipe tapped into a main and extending from there to a point at or near the lot line of the consumer's premise where the shut-off, stop box, or curb cock is located.

SERVICE PIPE. The term "service pipe" is hereby defined to be any pipe extending from the shut-off, stop box, or curb cock at or near the lot line to and beyond the property line of the consumer to the location on the premise where the water is to be dispersed.

SEPARATE PREMISE. The term "separate premise" is hereby defined to be more than one (1) consumer procuring water from the same service or supply pipe. The second (2nd) premise may be a separate dwelling, apartment, building, or structure used for a separate business.

§17-50.08 MUNICIPAL WATER DEPARTMENT; CONSUMER'S APPLICATION. Every person or persons desiring a supply of water must make application therefor to the Municipal Clerk. The City Administrator may require any applicant to make a service deposit in such amount as has been set by the Governing Body and placed on file at the office of the Municipal Clerk. Water may not be supplied to any house or private service pipe except upon the order of the City Administrator. *(Ref. 17-537 RS Neb.)*

§17-50.09 MUNICIPAL WATER DEPARTMENT; SERVICE TO NON-RESIDENTS. The Department shall not supply water service to any person outside the corporate limits without special permission from the Governing Body; Provided, the entire cost of laying mains, service pipe, and supply pipe shall be paid by the consumer. Nothing herein shall be construed to obligate the Municipality to provide water service to non-residents. *(Ref. 19-2701 RS Neb.)*

§17-50.10 MUNICIPAL WATER DEPARTMENT; WATER CONTRACT. The Municipality through its Water Department, shall furnish water to persons within its corporate limits whose premises abut a street or alley in which a commercial main now is or may hereafter be laid. The Municipality may furnish water to persons within its corporate limits whose premises do not abut a street or alley in which a Municipal commercial main is now or may hereafter be laid and may also furnish water to persons whose

premises are situated outside the corporate limits of the Municipality, as and when, according to law, the Governing Body may see fit to do so. The rules, regulations, and water rates hereinafter named in this Article, shall be considered a part of every application hereafter made for water service and shall be considered a part of the contract between every consumer now or hereafter served. Without further formality, the making of application on the part of any applicant or the use or consumption of water service by present consumers thereof and the furnishing of water service to said consumer shall constitute a contract between the consumer and the Municipality, to which said contract both parties are bound. If the consumer shall violate any of the provisions of said contract or any reasonable rules and regulations that the Governing Body may hereafter adopt, the Public Works Foreman or his agent, may cut off or disconnect the water service from the building or premise or place of such violation. No further connection for water service to said building, premise, or place shall again be made except by order of the Public Works Foreman or his agent.

§17-50.11 MUNICIPAL WATER DEPARTMENT; INSTALLATION PROCEDURE. In making excavations in streets, alleys, or sidewalks for the purpose of installing pipe, or making repairs, the paving, stones, and earth must be removed and deposited in a manner that will occasion the least inconvenience to the public and provide for adequate drainage. No person shall leave an excavation made in the street, alley, or sidewalk open at any time without a barricade, and during the night, warning lights. After service pipes are laid, the streets, alleys, and sidewalks shall be restored to good condition. If the excavation in any street, alley, or sidewalk is left open or unfinished for a period of twenty-four (24) hours or more, the Public Works Foreman shall have the duty to finish or correct the work, and all expenses so incurred shall be charged to the consumer. All installations or repairs of pipes require two (2) inspections by the Public Works Foreman. The first (1st) inspection shall be made when connections or repairs are completed and before the pipes are covered. The second (2nd) inspection shall be made after the dirt work is completed and the service is restored. It is the

customer's responsibility to notify the Public Works Foreman at the time the work is ready for each inspection. All installation shall be done under the supervision and strictly in accordance with the rules, regulations, and specifications prescribed for such installation by the Public Works Foreman; provided that the said rules, regulations, and specifications have been reviewed and approved by the Governing Body. *(Ref. 17-537 RS Neb.)*

§17-50.12 MUNICIPAL WATER DEPARTMENT; INSTALLATION EXPENSE. The Municipality shall pay the cost of tapping the main and providing fixtures and labor up to and including the stop box at the lot line of the customer. No person other than the Public Works Foreman or his duly authorized agent shall tap the water main. The customer shall pay a tap fee in such sum as set by resolution of the Governing Body. The customer shall at his own expense bring water service from the stop box and upon his own premise and shall employ a plumber who shall install water service to the place of dispersement. Non-residents shall pay such tap fees and installation charges in such sums as the Public Works Foreman, pursuant to resolution of the Governing Body, shall in each case fix. The Governing Body shall file a copy of all tap fees and installation charges in the office of the Municipal Clerk for public inspection at any reasonable time. *(Ref. 17-542 RS Neb.)*

§17-50.13 MUNICIPAL WATER DEPARTMENT; REPAIRS AND MAINTENANCE. The Municipality shall repair or replace, as the case may be, all supply pipe between the commercial main and the stop box. The customer at his own expense shall replace and keep in repair all service pipe from the stop box to the place of dispersement. When leaks occur in service pipes, the Public Works Foreman shall shut off water service until the leak is repaired at the expense of the customer to the satisfaction of the Public Works Foreman. *(Ref. 17-537 RS Neb.)*

§17-50.14 MUNICIPAL WATER DEPARTMENT; FEES AND COLLECTIONS. The Governing Body has the power and authority to fix the rates to be paid by the water consumers for the use of water from the Water Department. A rate schedule is set forth in section 17-50.72 of this Code and all such fees shall be on file for public inspection at the office of the Municipal Clerk. The Utilities Billing Clerk shall bill the consumers and collect all money received by the Municipality on the account of the Water Department. She shall faithfully account for, and pay to the Municipal Treasurer all revenue collected by her, taking her receipt therefor in duplicate, filing one with the Municipal Clerk and keeping the other on file in the Water Department's official records. *(Ref. 17-540 RS Neb.) (Amended by Ord. No. 168, 1/9/01)*

§17-50.15 MUNICIPAL WATER DEPARTMENT; MINIMUM RATES. All water consumers shall be liable for the minimum rate provided by ordinance unless and until the consumer shall, by written order, direct the Public Works Foreman to shut off the water at the stop box, in which case he shall not be liable thereafter for water rental until the water is turned on again. *(Ref. 17-542 RS Neb.)*

§17-50.16 MUNICIPAL WATER DEPARTMENT; LIEN. In addition to all other remedies, if a customer shall for any reason remain indebted to the Municipality for water service furnished, such amount due, together with any rents and charges in arrears, shall be considered a delinquent water rent which is hereby declared to be a lien upon the real estate for which the same was used. The Municipal Clerk shall notify in writing or cause to be notified in writing, all owners of premises or their agents whenever their tenants or lessees are sixty (60) days or more delinquent in the payment of water rent. It shall be the duty of the Public Works Foreman on the first (1st) day of June of each year to report to the Governing Body a list of all unpaid accounts due for water together with a description of the premise upon which the same was used. The report shall be examined, and if approved by the Governing Body, shall be certified by the Municipal Clerk to

the County Clerk to be collected as a special tax in the manner provided by law. (*Ref. 17-538 RS Neb.*)

§17-50.17 MUNICIPAL WATER DEPARTMENT; SINGLE PREMISE. No consumer shall supply water to other families, or allow them to take water from his premise, nor after water is supplied into a building shall any person make or employ a plumber or other person to make a tap or connection with the pipe upon the premise for alteration, extension, or attachment without the written permission of the Public Works Foreman. (*Ref. 17-537 RS Neb.*)

§17-50.18 MUNICIPAL WATER DEPARTMENT; RESTRICTED USE. The Governing Body or the Public Works Foreman may order a reduction in the use of water or shut off the water on any premise in the event of a water shortage due to fire or other good and sufficient cause. The Municipality shall not be liable for any damages caused by shutting off the supply of water of any consumer while the system or any part thereof is undergoing repairs or when there is a shortage of water due to circumstances over which the Municipality has no control. (*Ref. 17-537 RS Neb.*)

§17-50.19 MUNICIPAL WATER DEPARTMENT; FIRE HYDRANTS. All hydrants for the purpose of extinguishing fires are hereby declared to be public hydrants, and it shall be unlawful for any person other than members of the Municipal Fire Department under the orders of the Fire Chief, or the Assistant Fire Chief; or members of the Water Department to open or attempt to open any of the hydrants and draw water from the same, or in any manner to interfere with the hydrants.

§17-50.20 MUNICIPAL WATER DEPARTMENT; POLLUTION. It shall be unlawful for any person to pollute or attempt to pollute any stream or source of water for the supply of the Municipal Water Department. (*Ref. 17-536 RS Neb.*)

§17-50.21 MUNICIPAL WATER DEPARTMENT; MANDATORY HOOK-UP.

All persons within three hundred (300') feet of a water main shall be required, upon notice by the Governing Body, to hook-up with the Municipal Water System. *(Ref. 17-539 RS Neb.)*

§17-50.22 MUNICIPAL WATER DEPARTMENT; WATER SERVICE CONTRACTS.

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

§17-50.23 MUNICIPAL WATER DEPARTMENT; INSPECTION. The Public Works Foreman, or his duly authorized agents, shall have free access, at any reasonable time, to all parts of each premise and building to, or in which, water is delivered for the purpose of examining the pipes, fixtures, and other portions of the system to ascertain whether there is any disrepair or unnecessary waste of water. *(Ref. 17-537 RS Neb.)*

§17-50.24 MUNICIPAL WATER DEPARTMENT; POLICE REPORTS. It shall be the duty of the Municipal Police to report to the Public Works Foreman all cases of leakage and waste in the use of water and all violations of the Municipal Code relating to the Water Department. They shall have the additional duty of enforcing the observance of all such regulations.

§17-50.25 MUNICIPAL WATER DEPARTMENT; DESTRUCTION OF PROPERTY. It shall be unlawful for any person to willfully or carelessly break, injure, or deface any building, machinery, apparatus, fixture,

attachment, or appurtenance of the Municipal Water Department. No person may deposit anything in a stop box or commit any act tending to obstruct or impair the intended use of any of the above mentioned property without the written permission of the Public Works Foreman.

§17-50.26 MUNICIPAL WATER DEPARTMENT; CONSTRUCTION OF PRIVATE WELLS, PROHIBITED. (1) Construction of a water well of any kind, whether a sand point, a well drilled by cable or by rotation shall be prohibited within corporate limits, or within one (1) mile of said corporate limits, unless the City Council has approved it by a majority vote. The well constructor must obtain written permission of the City Council before constructing the well.

(2) The water well must be located and constructed according to title 178 Nebraska Department of Health/Housing and Environmental Health Services/Regulations. Chapter 9 - Rules and Regulations Governing a Private Water Well.

§17-50.27 MUNICIPAL WATER DEPARTMENT; FLUORIDE IN WATER. Pursuant to the majority vote of the electorate of the City of Sutton held on November 4, 2008, fluoride shall not be added to the public water supply of the City of Sutton. (Amended by Ord. No. 384 12/9/2008)

§17-50.28 MUNICIPAL SEWER DEPARTMENT; OPERATION AND FUNDING. (1) The Municipality owns and operates the Municipal Sewer System through the Public Works Foreman.

(2) For the purpose of defraying the cost of the maintenance and repairing of any sewer or water utilities in the Municipality, the Governing Body may each year levy a tax not exceeding the maximum limit prescribed by State law on the taxable value of all taxable property in the Municipality. The revenue from the tax shall be known as the Water and Sewer Maintenance Fund and shall be used exclusively for the purpose of maintenance and repairs of the water and sewer system.

(3) The Public Works Foreman shall have the direct management and control of the Sewer Department, shall faithfully carry out the duties of the office, and shall have the authority to adopt rules and regulations for the sanitary and efficient management of the Department subject to the supervision and review of the Governing Body. *(Ref. 17-149 RS Neb.) (Amended by Ord. No. 118, 7/14/98)*

§17-50.29 MUNICIPAL SEWER DEPARTMENT; APPLICATION FOR PERMIT. Any person wishing to connect with the Sewer System shall make an application therefor to the Municipal Clerk. The City Administrator may require any applicant to make a service deposit in such amount as has been set by the Governing Body and placed on file at the office of the Municipal Clerk. Sewer service may not be supplied to any house or building except upon the order of the City Administrator. The Department shall not supply sewer service to any person outside the corporate limits without special permission from the Governing Body; Provided, that the entire cost of pipe and other installation charges shall be paid by such consumers. Nothing herein shall be construed to obligate the Municipality to provide sewer service to non-residents. *(Ref. 17-149, 19-2701 RS Neb.)*

§17-50.30 MUNICIPAL SEWER DEPARTMENT; SEWER CONTRACT. The Municipality through the Municipal Sewer Department shall furnish sewer services to persons within its corporate limits whose premises abut a street or alley in which a commercial main is now or may hereafter be laid. The Municipality may also furnish sewer service to persons whose premises are situated outside the corporate limits of the Municipality, as and when, according to law, the Governing Body may see fit to do so. The rules, regulations, and sewer rental rates hereinafter named in this Article, shall be considered a part of every application hereafter made for sewer service and shall be considered a part of the contract between every customer now or hereafter served. Without further formality, the making of the application on the part of any applicant or the use of sewer service by present customers thereof shall constitute a contract between the customer and the Municipality

to which said contract both parties are bound. If the customer shall violate any of the provisions of said contract or any reasonable rules and regulations that the Governing Body may hereafter adopt, the Public Works Foreman, or his agent, may cut off or disconnect the sewer service from the building or premise of such violation. No further connection for sewer service to said building or premise shall again be made except by order of the Public Works Foreman or his agent. *(Ref. 17-901, 17-902 RS Neb.)*

§17-50.31 MUNICIPAL SEWER DEPARTMENT; MANDATORY HOOK-UP.

Upon written notice by the Public Works Foreman the property owner, occupant, or lessee of any premise within three hundred (300') feet of any sewer main shall without delay cause the said building to be connected with the Sewer System and equipped with inside sewerage facilities. Every building hereafter erected shall be connected with the Sewer System at the time of its construction. In the event that any property owner, occupant, or lessee shall neglect, fail, or refuse, within a period of ten (10) days after notice has been given to him to do so by registered mail or by publication in a newspaper in or of general circulation in the Municipality, to make such connection, the Governing Body shall have the power to cause the same to be done, to assess the cost thereof against the property, and to collect the assessment thus made in the manner provided for collection of other special taxes and assessments. *(Ref. 17-149, 17-149.01 RS Neb.)*

§17-50.32 MUNICIPAL SEWER DEPARTMENT; DIRECT CONNECTIONS.

Each and every building must make a direct connection with the main sewer line. Under no circumstances will two (2) or more houses be allowed to make such connections through one (1) pipe. *(Ref. 18-503 RS Neb.)*

§17-50.33 MUNICIPAL SEWER DEPARTMENT; SERVICE CONTRACTS.

Contracts for sewer service are not transferable. Any person wishing to change from one location to another shall make a new application and sign a new contract. If any customer shall move from the premise where service is furnished, or if the said premise is destroyed by fire or other casualty, he

shall at once inform the Public Works Foreman who shall cause the sewer service to be shut off from the said premise. If the customer should fail to give notice, he shall be charged for that period of time until the official in charge of sewers is otherwise advised of such circumstances. (*Ref. 18-503 RS Neb.*)

§17-50.34 MUNICIPAL SEWER DEPARTMENT; INSTALLATION PROCEDURE. In making excavations in streets, alleys, or sidewalks for the purpose of installing pipe, or making repairs, the paving, stones, and earth must be removed and deposited in a manner that will occasion the least inconvenience to the public and provide for adequate drainage. No person shall leave an excavation made in the street, alley, or sidewalk open at any time without a barricade, and during the night, warning lights. After the house sewer is laid, the public ways and property shall be restored to good condition. If the excavation in the public ways and property is left open or unfinished for a period of twenty-four (24) hours or more, the Public Works Foreman shall have the duty to finish or correct the work, and all expenses so incurred shall be charged to the owner, occupant, or lessee of the property. All installations or repairs of pipes require two (2) inspections by the Public Works Foreman. The first (1st) inspection shall be made when connections or repairs are complete and before the pipes are covered. The second (2nd) inspection shall be made after the dirt work is completed and the service restored. It is the customers responsibility to notify the Public Works Foreman at the time the work is ready for each inspection. All installation shall be done under the supervision and strictly in accordance with the rules, regulations, and specifications for such installation prescribed by the Public Works Foreman; provided, that the said rules, regulations, and specifications have been reviewed and approved by the Governing Body. (*Ref. 18-503 RS Neb.*)

§17-50.35 MUNICIPAL SEWER DEPARTMENT; INSTALLATION EXPENSE. The customer, upon approval of his application for sewer service, shall pay to the Public Works Foreman a tap fee which shall

compensate the Municipality for the expense of processing his application and tapping the sewer main. The Public Works Foreman, in his discretion, may direct the customer to hire a plumber to tap the main. The customer shall then be required to pay the expense of procuring the materials required as well as the services of a plumber and shall pay all other costs of installation. *(Ref. 18-503 RS Neb.)*

§17-50.36 MUNICIPAL SEWER DEPARTMENT; REPAIRS AND MAINTENANCE. The Municipality shall repair or replace, as the case may be, all pipe constituting major sewer mains. It shall be the responsibility of the customer to repair or replace, all other sewer pipe and appurtenances from the main to and including the customer's property. All replacements and repairs made by the customer shall be done in the manner and with the materials approved by the Public Works Foreman; provided, that the same have been previously approved by the Governing Body.

§17-50.37 MUNICIPAL SEWER DEPARTMENT; CLASSIFICATION. The Governing Body may classify for the purpose of rental fees the customers of the Municipal Sewer Department; Provided, that such classifications are reasonable and do not discriminate unlawfully against any consumer or group of consumers. *(Ref. 17-925.02 RS Neb.)*

§17-50.38 MUNICIPAL SEWER DEPARTMENT; RATE SETTING. Customers of the Municipal Sewer Department shall be charged a flat rate for the use of sewer service. A rate schedule is set forth in section 17-50.69 of this Code. Rates shall be set by ordinance and shall be on file at the office of the Municipal Clerk for public inspection at any reasonable time. *(Amended by Ord. No. 168, 1/9/01)*

§17-50.39 MUNICIPAL SEWER DEPARTMENT; SERVICE DEPOSIT. The Governing Body, in its discretion, may require a service deposit from any or all customers of the Municipal Sewer Department in a sum set by resolution and filed in the office of the Municipal Clerk for public inspection at any

reasonable time. From the said fund shall be deducted all delinquent sewer charges. The deposit shall be collected by the Utilities Billing Clerk who shall immediately turn the same over to the Municipal Treasurer who shall keep the deposit in a trust fund for customers of the Sewer Department. The said fund shall be put out at interest separate and apart from other funds. Interest arising there from shall be expended solely for the repair of equipment and property belonging to the Municipal Sewer Department. (*Ref. 17-925.01 RS Neb.*)

§17-50.40 MUNICIPAL SEWER DEPARTMENT; OLD HOUSE SEWERS.

Old house sewers and drains may be used in connection with new buildings or new plumbing only when they are found, on examination by the Public Works Foreman, to conform in all respects to the requirements governing new sewers and drains. If the old work is found defective or otherwise unsatisfactory, he shall notify the owner to make the necessary changes to conform with the provisions of the Municipal Code.

§17-50.41 MUNICIPAL SEWER DEPARTMENT; UNLAWFUL USE. It

shall be unlawful for any person to discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, surface drainage, or unpolluted industrial process waters into the sanitary sewer.

§17-50.42 MUNICIPAL SEWER DEPARTMENT; MANHOLES.

Entrance into a manhole or opening for any purpose except by authorized persons is hereby prohibited. It shall be unlawful to deposit or cause to be deposited in any receptacle connected with the Sewer System any substance which is not the usual and natural waste carried by the Sewer System.

§17-50.43 MUNICIPAL SEWER DEPARTMENT; INSPECTIONS. The

Public Works Foreman or his authorized agents, shall have free access at any reasonable time to all parts of each premise and building which is

connected with the Sewer System to ascertain whether there is any disrepair or violations of this Article therein.

§17-50.44 MUNICIPAL SEWER DEPARTMENT; SERVICE TO NON-RESIDENTS. Any person whose premise is located outside the corporate limits of the Municipality and who desires to install a house or building sewer that will be connected with the Municipal Sewer System, shall file a written application with the Municipal Clerk for a permit for such connection and setting forth the name of the owner, occupant, or lessee of the premise, the use to which the premise is devoted, and such other information as the Governing Body may require. (*Ref. 17-149, 19-2701 RS Neb.*)

§17-50.45 MUNICIPAL SEWER DEPARTMENT; LIEN. In addition to all other remedies, if a customer shall for any reason remain indebted to the Municipality for sewer service furnished, such amount due, together with any rents and charges in arrears shall be considered a delinquent sewer rent which is hereby declared to be a lien upon the real estate for which the same was furnished. The Municipal Clerk shall notify in writing or cause to be notified in writing, all owners of premises or their agents whenever their tenants or lessees are sixty (60) days or more delinquent in the payment of sewer rent. It shall be the duty of the Public Works Foreman on the first (1st) day of June of each year to report to the Governing Body a list of all unpaid accounts due for sewer service together with a description of the premise served. The report shall be examined, and if approved by the Governing Body, shall be certified by the Municipal Clerk to the County Clerk to be collected as a special tax in the manner provided by law. (*Ref. 17-925.01 RS Neb.*)

§17-50.46 MUNICIPAL SEWER DEPARTMENT; PROHIBITED WATERS OR WASTES. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

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

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

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

(D) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders. *(Ord. No. 202, 11/12/02)*

§17-50.47 MUNICIPAL SEWER DEPARTMENT; PROHIBITED DISCHARGES. No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes, if it appears likely in the opinion of the Superintendent that such wastes can harm the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the Superintendent will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of

the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are:

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

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

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

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

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

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

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

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

(i) Materials which exert or cause:

(1) Unusual concentrations of inert suspended solids (such as, but not limited to, Fuller's earth, lime slurries, and lime residues) or

of dissolved solids, (such as, but not limited to, sodium chloride or sodium sulfate).

- (2) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).
- (3) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
- (4) Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

(j) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(k) (1) Any waters or wastes having:

- a. A five- (5) day BOD greater than 300 parts per million by weight or,
- b. Containing more than 350 parts per million by weight of suspended solids, or
- c. Having an average daily flow greater than two (2%) per cent of the average sewage flow of the City.

shall be subject to the review of the Superintendent.

(2) Where necessary in the opinion of the Superintendent, the owner shall provide, at his expense, such preliminary treatment as may be necessary to:

- a. Reduce the biochemical oxygen demand to 300 parts per million by weight,
- b. Reduce the suspended solids to 350 parts per million by weight, or
- c. Control the quantities or rates of discharge of such waters or wastes.

(3) Plans and specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the

approval of the Superintendent and no construction of such facilities shall be commenced until said approvals are obtained in writing. (*Ord. No. 202, 11/12/02*)

§17-50.48 MUNICIPAL ELECTRICAL SYSTEM; OWNERSHIP. The Municipality owns and operates the Municipal Electrical System through the Electric Distribution Superintendent. The Governing Body, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Electrical System may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Electrical Fund and shall remain in the custody of the Municipal Treasurer. The Electric Distribution Superintendent shall have the direct management and control of the Municipal Electrical System and shall faithfully carry out the duties of his office. He shall have the authority to adopt rules and regulations for the safe and efficient management of the Electrical System subject to the supervision and review of the Governing Body. (*Ref. 17-902 through 17-904, 17-906, 17-909 RS Neb.*)

§17-50.49 MUNICIPAL ELECTRICAL SYSTEM; CONTRACTS AND TERMS. The Municipality through its Electrical Department, shall furnish electric current for light and power purposes to persons whose premises abut on any supply wire of the distribution system and may furnish electric current to such other persons within or without its corporate limits, as and when, according to law, the Governing Body may see fit to do so. The rules, regulations, and rates for electric service, hereinafter named, in this Article, shall be considered a part of every application hereafter made for electric service and shall be considered a part of the contract between every consumer now served by the Electrical Department. Without further formality, the making of application on the part of any applicant or the use or consumption of electric energy by present customers and the furnishing of electric service to said applicant or customer shall constitute a contract

between applicant or customer and the Municipality, to which both parties are bound. If customer should violate any of the provisions of said contract or any reasonable rules and regulations that the Governing Body may hereafter adopt, the Electric Distribution Superintendent, or his agent, shall cut off or disconnect the electric service from the building or place of such violation and no further connection of electric service for such building or place shall again be made except by order of the Electric Distribution Superintendent or his agent.

§17-50.50 MUNICIPAL ELECTRICAL SYSTEM; CONSUMER'S APPLICATION. Every person or persons desiring electrical service must make application therefor to the Municipal Clerk. Any applicant may be required to make a service deposit in such amount as has been set by the Governing Body and on file at the office of the Municipal Clerk. Electricity may not be supplied to any house or building except upon the written order of the City Administrator. The System shall not supply to any person outside the corporate limits electrical service without special permission from the Governing Body; Provided, that the entire cost of wire, installation, and other expenses shall be paid by the consumer. Nothing herein shall be construed to obligate the Municipality to supply electrical service to non-residents. (*Ref. 17-902, 19-2701 RS Neb.*)

§17-50.51 MUNICIPAL ELECTRICAL SYSTEM; ELECTRICAL SERVICE CONTRACTS. Contracts for electrical service are not transferable. Any person wishing to change from one location to another shall make a new application and sign a new contract. If any consumer shall sell, dispose, or remove from the premise where service is furnished in his name, or if the said premise is destroyed by fire or other casualty, he shall at once inform the Electric Distribution Superintendent who shall cause the electrical service to be shut off from the said premise. If the consumer should fail to give such notice, he shall be charged for all electricity used on the said premise until the Electric Distribution Superintendent is otherwise advised of such circumstances. (*Ref. 17-902, 19-1404 RS Neb.*)

§17-50.52 MUNICIPAL ELECTRICAL SYSTEM; INSTALLATION EXPENSE. The expense of installation and equipment up to and including the electrical meter shall be paid by the Municipality. The expense of installation and wiring from the meter to the points of distribution shall be the responsibility of the consumer. Maintenance and replacement expense shall be apportioned in the same manner. *(Ref. 17-902, 19-1404 RS Neb.)*

§17-50.53 MUNICIPAL ELECTRICAL SYSTEM; METERS. All electrical meters shall be read at least one (1) time each month during which electrical service is used between the eighteenth (18th) day and the first (1st) day of the succeeding month. In the event a meter is broken or otherwise fails to register accurately the use of electricity by any consumer, the six (6) month average of the season one (1) year previous to such breakage shall be used for billing purposes. *(Ref. 19-1404 RS Neb.)*

§17-50.54 MUNICIPAL ELECTRICAL SYSTEM; FEES AND COLLECTIONS.

(Amended by Ord. No. 167, 1/9/01) (Repealed by Ordinance NO. 324 10/9/2012)

§17-50.55 MUNICIPAL ELECTRICAL SYSTEM; MINIMUM RATES.

(1) All electrical consumers shall be liable for the minimum rate provided by ordinance unless and until the consumer shall, by written order direct the Electric Distribution Superintendent to shut off the electricity in which case he shall not be liable thereafter for electrical service until the electricity is turned on again. *(Ref. 17-902, 19-1404 RS Neb.)*

(2) It is hereby determined by the Mayor and City Council of the City of Sutton, Nebraska that Section 3 or Ordinance NO. 238 allowing a \$5.00 credit for load management is no longer needed and therefore delete Section 3 of said Ordinance. *(Adopted by Ordinance NO. 345 4/8/2014)*

§17-50.56 MUNICIPAL ELECTRICAL SYSTEM; SERVICE DEPOSIT FUND. The Light Commissioner shall require applicants for electric service who are tenants, occupants, and owners of the premises served, to accompany their applications with a service deposit of not less than \$300 to insure payment of electric service bills and other charges. If the customer signs up for auto pay the deposit will be reduced to \$150. Customer must remain on auto pay or pay the additional \$150 deposit fee to match the \$300. Owners will be credited back the \$300 after 12 consecutive months of no late payments. The precise amount of the service deposit in each case shall be determined after taking into consideration the value of service, the necessity of furnishing external transformer by the city in order to serve customer and the type of meter necessary to measure the same. The service deposit required for electrical service shall be promptly paid upon demand by all customers of the Electrical System. From the said deposit shall be deducted all delinquent electrical charges. The service deposit shall be collected by the Utilities Billing Clerk and immediately turned over to the Municipal Treasurer who shall keep the said fees in a trust fund for the customers of the Electrical System. Said fund shall be put out at interest separate and apart from other funds. Interest arising therefrom shall be expended solely for the repair of equipment and property of the Municipal Electrical System. (Ref. 19- 1404 RS Neb.)(Amended by Ord. NO. 378 10/9/2017)

§17-50.57 MUNICIPAL ELECTRICAL SYSTEM; RESTRICTED USE.

The Municipal Electrical System does not guarantee the delivery of electric current over the lines of the distribution system except when it has sufficient power, current, equipment, and machinery to do so. The Electric Distribution Superintendent has the power and authority to disconnect or discontinue such service for any good and sufficient reason without liability. The Municipality shall use due care and reasonable diligence to provide and supply uninterrupted service to consumers, but shall not be liable for damages resulting from interruption of service due to causes over which the

Municipality has no control and the Municipality expressly reserves the right to discontinue or disconnect any consumer's service without preliminary notice. (Ref. 17-902, 19-1404 RS Neb.)

§17-50.58 MUNICIPAL ELECTRICAL SYSTEM; BUILDING MOVING.

Should any house or building moving occur or be necessary and it becomes necessary in said work to remove or disturb any of the property or wires of the Municipal Electrical System, the same should not be done except upon written permission received from the Electric Distribution Superintendent, who shall then order paid in advance the actual cost of moving the said wires and such cost shall be paid by the applicant prior to the moving of the building or house. All expense of removing, changing, and replacing the said wires or apparatus of the Electrical System shall be paid out of the deposit made prior to moving and any surplus remaining after all expenses are paid shall be returned to the applicant; Provided, that if in the course of moving the said building or house it becomes apparent that additional expense will be incurred, such additional deposit as deemed necessary may be demanded. (Ref. 19-1404 RS Neb.)

§17-50.59 MUNICIPAL ELECTRICAL SYSTEM; METER IN DISREPAIR.

In the event that any customer's meter falls out of repair or fails to register properly, the Utilities Billing Clerk shall charge such customer the six (6) month average of the season one (1) year previous to such disrepair. In the event that there is no such basis for comparison, the City Administrator shall charge the customer such amount as he deems is fair both to the customer and the Municipality. (Ref. 19-1404 RS Neb.)

§17-50.60 MUNICIPAL ELECTRICAL SYSTEM; TRIMMING TREES.

Any person desiring to cut or remove trees or branches thereof in close proximity to the lines of the Municipal Electrical System shall, before doing the said work, give reasonable written notice to the Electric Distribution Superintendent and shall follow any and all rules and regulations which he may prescribe for doing such work. It shall be unlawful for any person

felling or removing such trees or branches to disrupt or damage the lines without first giving proper notice and receiving permission in writing to do so. Whenever it becomes necessary to protect the lines or property of the Electrical System, the Governing Body shall have the power to order cut and remove any overhanging branches, or limbs of trees so that the lines will be free and safe.

§17-50.61 MUNICIPAL ELECTRICAL SYSTEM; INSPECTIONS. The Electric Distribution Superintendent or his duly authorized agents shall have free access at any reasonable time to each premise and building to or in which electricity is supplied; Provided, that in the event of an emergency, such inspections may take place at any time. *(Ref. 17-902 RS Neb.)*

§17-50.62 MUNICIPAL ELECTRICAL SYSTEM; DESTRUCTION OF PROPERTY. It shall be unlawful for any person to willfully or carelessly break, injure, or deface any building, machinery, apparatus, fixture, attachment, or appurtenance of the Municipal Electrical System. *(Ref. 28-512 RS Neb.)*

§17-50.63 COGENERATION; PURPOSE. In order to comply with sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 and with the rules and regulations of the Federal Energy Regulatory Commission pertaining thereto, the following policies relating to interconnections of the electric system of the Municipality with cogeneration and small power production facilities, rates for sales of electric energy to such facilities, and rates for purchases of electric energy from such facilities are hereby established.

§17-50.64 COGENERATION; DEFINITIONS. For the purpose of this Article the following definitions will apply.

COGENERATION FACILITY means a facility which produces electric energy and steam or other forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes.

QUALIFYING COGENERATION FACILITY means a cogeneration facility that meets the requirements of the Federal Energy Regulatory Commission regarding ownership, fuel use, and operating and efficiency standards.

SMALL POWER PRODUCTION FACILITY means a facility which produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, or any combination thereof totaling not greater than eighty (80) megawatts at one site.

QUALIFYING SMALL POWER PRODUCTION FACILITY means a small power production facility that meets the requirements of the Federal Energy Regulatory Commission regarding ownership, fuel use, fuel efficiency, and reliability.

INTERCONNECTION COSTS means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. (Interconnection costs do not include any costs involved in the calculation of avoided costs.)

AVOIDED COSTS means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from

qualifying facilities, such utility would generate itself or purchase from another source.

§17-50.65 COGENERATION; INTERCONNECTIONS WITH QUALIFYING FACILITIES. Qualifying facilities desiring to interconnect with the electric system of the Municipality shall make application to the Department of Utilities for such interconnection. Applicants shall use such forms as are prescribed by the Municipality and shall furnish all information requested.

The Municipality shall establish reasonable standards to be met by qualifying facilities to ensure system safety and reliability of interconnected operations. Such standards may include but shall not be limited to the following areas: power factor; voltage regulations; fault, overcurrent, and over- under voltage protection; harmonics; synchronization; and isolation.

Interconnection costs associated with the interconnection with a qualifying facility shall be paid for by such qualifying facility. Qualifying facilities shall be required to execute contractual agreements with the Municipality before any inter-connection is established.

§17-50.66 COGENERATION; RATES FOR SALES OF ELECTRIC ENERGY TO QUALIFYING FACILITIES. Rates for sales of electric energy to qualifying facilities shall be those current standard rates adopted from time to time by resolution of the Mayor and City Council which apply to other customers of the utility in the same classification(s) of electric service.

§17-50.67 COGENERATION; RATES FOR PURCHASES OF ELECTRIC ENERGY FROM QUALIFYING FACILITIES. Rates for purchases of electric energy from qualifying facilities shall be established by resolution of the Mayor and City Council.

Such rates shall be just and reasonable to the electric consumer of the utility and in the public interest, shall not discriminate against qualifying cogeneration and small power production facilities, and shall be related to avoided costs; however, in no case is the utility required to pay more than the avoided costs.

Standard rates shall be established for purchases from qualifying facilities with a design capacity of one hundred (100) kilowatts or less. Rates for purchases from qualifying facilities with a design capacity over one hundred (100) kilowatts may be standard rates or may be by individual contracts, the terms of which are fair and reasonable.

§17-50.68 UTILITIES GENERALLY; UTILITY BILLS. Utility bills shall be due and payable monthly at the office of the Utilities Billing Clerk. Bills shall be due on the twenty-fifth (25th) day of each month and shall be payable by the 26th of the month. Bills not paid by noon on the 26th of each month shall be deemed to be delinquent. Upon being deemed delinquent such bill shall be subject to a delinquency fee of fifteen (\$15.00) dollars. Upon being deemed to be delinquent, the City may discontinue service pursuant to the provisions of section §50-01 of this Code. Once discontinued, service shall not be recommenced except on payment in full of the delinquent charges and upon further payment of a reconnection fee that is kept on file in the office of the Municipal Clerk. The City may also take any action authorized by law to effect collection of the delinquent charges. From this point forward disconnect will be on the 10th of each month (if the 10th falls on a weekend or holiday it will be due the next business day). (Amended by Ord. NO. 378 10/9/2017)

§17-50.68 ESTABLISHING RECONNECTION FEES.

Section 1.

- A. A reconnect Fee of \$30 during regular business hours.
 - B. A reconnect Fee of \$100 for after hours, weekends, and holidays.
- (Adopted by Ordinance NO. 378 10/9/2017)

§17-50.70 CIVIL DEFENSE; SHORT TITLE. This Article shall be known and may be cited and referred to as the "Civil Defense Regulations of Sutton, Nebraska."

§17-50.71 CIVIL DEFENSE; INTENT AND PURPOSE. It is the intent and purpose of this Article to establish an office that will insure the complete and efficient utilization of all facilities in the Sutton area to combat disaster resulting from enemy actions or other disasters as defined herein. The Sutton Civil Defense Office will be the coordinating agency for all activity in connection with civil defense. It will be the instrument through which the Executive Group may exercise the authority and discharge the responsibilities vested in the Civil Defense Director by the Nebraska Disaster and Civil Defense Act of 1943, as amended from time to time. This Article will not relieve any City department of the responsibilities or obligations imposed upon it by the Governing Body and in no event shall this be construed to preclude the Mayor from directly communicating with City department heads.

§17-50.72 CIVIL DEFENSE; DEFINITIONS. The following definitions shall apply to the interpretation of this Article, unless the context otherwise requires:

1. **CIVIL DEFENSE.** The preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters caused by enemy attack, sabotage or other hostile action, or by fire, flood, earthquake, or other natural causes. These functions include firefighting services, police services, medical and health services, rescue, engineering, air raid warning services, communications, radiological, chemicals, and other special weapons defense, evacuation of persons from restricted area, emergency welfare services, civilian war aid, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions

related to civilian protection, together with all other activities necessary or incidental to the preparation for and the carrying out of the foregoing functions. Nothing herein shall be construed to prevent or prohibit city department heads from administering and operating their own departments.

2. CIVIL DEFENSE EMERGENCY. An emergency declared by the President of the United States or Congress pursuant to applicable federal law finding that an attack upon the United States has occurred or is anticipated and that the national safety therefore requires the invocation of the emergency authority provided for by federal law. Such emergency also shall exist in the event of an enemy attack or other hostile action within the State of Nebraska, or when the President determines that any attack has been made upon or is anticipated within a designated geographic area which includes all or a part of the State of Nebraska. Any such emergency shall terminate in the manner provided by federal law, or by proclamation of the Governor, or by resolution of the Legislature, terminating such an emergency.

3. LOCAL CIVIL DEFENSE EMERGENCY. May be determined only by the Mayor, or in his absence the Executive Group, chain of command. It shall not be continued or renewed for a period in excess of seven days except by or with the consent of the Governing Body. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the Municipal Clerk and Clay County Civil Defense Office and the State Civil Defense Agency.

4. DISASTER. Shall mean occurrence of imminent threat of wide-spread or sever damage, injury, or loss of life or property resulting from any natural or

man-made cause, including but not limited to fire, flood, earthquake, wind, emergency action to avert danger or damage, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, civil disturbance, or hostile military or paramilitary action.

5. LOCAL GOVERNMENT. Clay County, and each village and city within Clay County, Nebraska, shall be deemed to be a local government.

6. CIVIL DEFENSE WORKER. Shall include any full-time or part-time paid, volunteer, or auxiliary employee of this State or other state, territories, possessions, or the District of Columbia, of the Federal government, or any neighboring country, or any political subdivision thereof, or of any agency or organization performing civil defense services at any place in this state subdivision thereof and shall also include instructors and students in recognized educational programs where civil defense services are taught.

7. VOLUNTEER. Shall mean contributing a service, equipment, or facilities to the civil defense organization without remuneration.

8. CIVIL DEFENSE VOLUNTEER. Any person duly registered, identified and appointed by the Civil Defense Director and assigned to participate in civil defense activity.

9. DIRECTOR. The Civil Defense Director of the Sutton Civil Defense Department, appointed as prescribed in this Code.

10. REGULATIONS. Shall include plans, programs, and other emergency procedures deemed essential to civil defense.

11. THE EXECUTIVE GROUP. Shall consist of a chain of command consisting of 1) Mayor; 2) Civil Defense Director; 3) Assistant Civil Defense Director; 4) Fire Chief; 5) Deputy Directors, in that order.

12. CHAIRMAN. Shall mean the Mayor of the City of Sutton, Nebraska.

§17-50.73 CIVIL DEFENSE: INTERLOCAL COOPERATION. The Mayor may, with a majority vote of the City Council, enter into an Interlocal Cooperation Agreement with the Clay County Civil Preparedness Agency. This may be for the purposes of administrative support, emergency/disaster operations support, funding support, and for the purpose of providing for a civil preparedness organization which utilizes combined emergency planning along with coordinated planning and actions with Clay County, and other villages within the County. Such agreement upon approval shall be in force as outlined within the guidelines of said resolution and is not intended to relieve the City of Sutton from any legal responsibilities as outlined in Federal or State statutes.

§17-50.74 CIVIL DEFENSE: AUTHORITY OF EXECUTIVE GROUP.

1. The Mayor, or in his absence the chain of command, shall be responsible for meeting the dangers to the city and its inhabitants presented by disasters and shall have general direction and control of the disaster response and the Sutton Civil Defense Office, subject however to the terms of any Interlocal Cooperation Agreement.

2. The Mayor shall be generally responsible for carrying out the provisions of this Article. In order to effect the policy and purposes of this Article, the Mayor or in his absence, the chain of command may issue proclamations

and make, amend, and rescind the necessary orders, rules and regulations to carry out the provisions of this Article.

3. A local disaster emergency may be declared only by the Mayor or in his absence, the chain of command. It shall be declared by proclamation of the Chairman upon the determination or finding that a disaster has occurred or that the occurrence of threat thereof is imminent. It shall not be continued or renewed for a period in excess of seven (7) days except by or with the consent of the City Council. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the Municipal Clerk, Clay County Civil preparedness Agency and the State Civil Defense Agency. The effect of a declaration of a local disaster emergency shall be to activate the response and recovery aspects of any and all applicable local or interjurisdictional disaster or civil defense plans and to authorize the furnishing of aid and assistance thereunder.

4. All proclamations issued pursuant to this Article shall indicate the nature of the disaster, the area or areas threatened, and the conditions which have brought it about or which make possible the termination of the state of disaster emergency. All proclamations shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and; unless the circumstances attendant upon the disaster prevent or impede shall be promptly filed with the State Civil Defense Agency, local Civil Defense Agency and the Municipal Clerk.

5. In addition to any other powers conferred by law, the Mayor or in his absence, the chain of command may when and where reasonable and prudent under the circumstances:

- a. Suspend the provisions of any regulatory ordinance prescribing the procedures for conduct of city business, or the orders, rules, or regulations of any city agency or department, if strict compliance with the provisions of any such ordinance, order, rule, or regulation in any way prevents, hinders or delays necessary action in coping with the emergency;
- b. Utilize all available resources of the City government as are reasonably necessary to cope with the disaster emergency;
- c. Transfer the direction, personnel or functions of City departments and agencies or units thereof for the purpose of performing or facilitating disaster response;
- d. Subject to any applicable requirements for compensation, commandeer or utilize any private property if found necessary to cope with the disaster emergency;
- e. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the City if the Mayor, or in his absence the chain of command, deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;
- f. Prescribe routes, modes of transportation, and destinations in connection with evacuation;
- g. Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

- h. Suspend or limit the sale of dispensing, or transportation of alcoholic beverages, fire arms, explosives and combustibles; and
- i. Make provisions for the availability and use of temporary housing.

6. To the greatest extent practicable, the Mayor, or in his absence the chain of command, shall delegate or assign command authority by prior arrangement embodied in appropriate proclamations, orders, rules and regulations, but nothing shall restrict his authority to do so by orders issued at the time of the disaster emergency. Where circumstances dictate, the Mayor, or in his absence the chain of command, shall exercise powers conferred upon him by this section through the appropriate City department heads.

§17-50.75 CIVIL DEFENSE; DISASTER BASIC PLAN.

A comprehensive Disaster Basic Plan shall be adopted and maintained by resolution of the Sutton City Council based upon the recommendations of the Sutton and Clay County Civil Defense Offices. In the preparation of this plan, it is the intent that the services, equipment, facilities, and personnel of all existing departments and agencies shall be utilized to the fullest extent. When approved, it shall be the duty of all municipal departments and agencies to perform the functions assigned by the plan and to maintain their portion of the plan in a current state of readiness at all times. The Disaster Basic Plan shall be considered supplementary to this Article and have the effect of law whenever a disaster as defined in this Article has been proclaimed. This plan shall be in accordance with State Law and the State Plan. The Disaster Basic Plan may be amended from time to time by resolution of the City Council, upon recommendations by the Sutton and Clay County Civil Defense Offices.

§17-50.76 CIVIL DEFENSE; TECHNICAL OR SKILLED ASSISTANCE.

When a required competency or skill for a disaster function is not available within the City's government, the Civil Defense Director shall seek assistance from other persons outside of government, but only upon the advice and consent of the Mayor, or in his absence the chain of command. The assignment of duties, when of a supervisory nature, shall also grant authority for the persons so assigned to carry out such duties, prior to, during, and after the occurrence of a disaster. Services from persons outside of government may be compensated, or may be accepted by the City on a volunteer basis.

§17-50.77 CIVIL DEFENSE; VIOLATION. It shall be unlawful for any person to violate the provisions of this Article or the regulations or plans issued pursuant to the authority contained herein, or to willfully obstruct, hinder or delay any member of the civil defense organization in the enforcement of the provisions of this Article or any regulations or plan issued thereunder.

§17-50.78 MUNICIPAL CEMETERY; OPERATION AND FUNDING. The Municipality owns and manages the Municipal Cemetery through the Cemetery Board. The Governing Body, for the purpose of defraying the cost of the care, management, maintenance, and beautification of the Cemetery may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the Municipality that is subject to taxation. The revenue from the said tax shall be known as the Cemetery Fund and shall include all gifts, grants, deeds of conveyance, bequests, money, stocks, bonds, or other valuable income-producing personal property and real estate

from any source for the purpose of endowing the Cemetery. The Cemetery Fund shall at all times be in the custody of the Municipal Treasurer. The Board shall have the power and authority to hire and supervise such employees as they may deem necessary and to pass such rules and regulations for the operation of the Cemetery as may be proper for its efficient operation. All actions by the Board shall be under the supervision and control of the Governing Body. *(Ref. 12-301 through 12-403 RS Neb.)*

§17-50.79 MUNICIPAL CEMETERY; SEXTON. The Cemetery Board, subject to approval of the Governing Body, shall have the authority to appoint a Sexton who shall perform such duties and make such reports as the Cemetery Board shall direct. It shall be the duty of the Sexton, upon receiving a burial permit to locate and direct the party named in the permit to the lot mentioned therein and to dig and excavate, or cause the same to be dug or excavated, in compliance with rules and regulations of Cemetery Board. *(Ref. 12-403 RS Neb.)*

§17-50.80 MUNICIPAL CEMETERY; CONVEYANCE OF LOTS. The Governing Body may convey cemetery lots by Certificate signed by the Mayor, and countersigned by the Municipal Clerk under the Municipal Seal specifying that the person to whom the same is issued is the owner of the lot described therein by number for the purpose of interment. The said Certificate shall give a right in fee simple to the proprietor, his heirs, and assigns. The Certificate shall then be recorded in the office of the County Clerk. *(Ref. 17-941 RS Neb.)*

§17-50.81 MUNICIPAL CEMETERY; FORFEITURE OF LOTS. If, for three (3) consecutive years, all charges and liens are not paid by the holders of the Lot Certificates, the said Certificates shall be declared forfeited and

subject to resale. All Certificates sold shall contain a forfeiture clause to the effect that if no interment is made on the said lot and all liens paid, the Certificate and the rights under the same may, at the option of the Cemetery Board, with the sanction of the Governing Body, be declared null and void and the lot shall be subject to resale. *(Ref. 17-938 RS Neb.)*

§17-50.82 MUNICIPAL CEMETERY; TRANSFER OF LOTS. Any person who wishes to transfer a certificate may do so by surrendering the original certificate to the Municipal Clerk, who shall issue a new certificate upon the receipt of the recording fee set by resolution of the Governing Body.

§17-50.83 MUNICIPAL CEMETERY; PERPETUAL CARE. The Municipal Treasurer shall allocate and set apart a percentage of the entire amount paid for lots or burial spaces if the said lots or burial spaces are to be endowed with perpetual care. The fund shall be permanent in nature, and as it accumulates shall be invested in such interest bearing securities as are authorized by State law. The income earned thereon shall be used solely for the purposes of perpetual care for the Cemetery lots. Any lot owner who shall not have, prior to the purchase of his lot, endowed his holdings with perpetual care, may do so by paying to the Secretary of the Cemetery Board such sum of money as the Board may in each case fix and determine. Thereafter, the owner shall not be liable for the payment of an annual maintenance assessment.

§17-50.84 MUNICIPAL CEMETERY; BURIAL PERMIT. All persons desiring to bury a deceased person shall first be required to file a completed death certificate with the Registrar of the County before any body may be buried in the Municipal Cemetery. If it is impossible to complete the certificate of death within the legal period of time prescribed by State law,

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

§17-50.85 MUNICIPAL CEMETERY; BURIAL OF INDIGENTS. Within the Municipal Cemetery there shall be included a plot of ground which shall be available for the free burial of indigents and unknown travelers who may die while they are within the Municipality.

§17-50.86 MUNICIPAL CEMETERY; DESTRUCTION OF PROPERTY. Any person who shall willfully destroy, mutilate, deface, injure, or remove any tomb, monument, or gravestone placed in the Cemetery, or any fence, railing, or other work for the protection or ornamentation of the Cemetery, or who shall willfully destroy, cut, break, or injure any tree, shrub, or plant shall be deemed to be guilty of an offense. *(Ref. 28-512 RS Neb.)*

§17-50.87 MUNICIPAL AMBULANCE DEPARTMENT; OPERATION AND FUNDING. The Municipality operates the Municipal Ambulance Department through the Sutton Volunteer Ambulance Board. The Governing Body, for the purpose of defraying the cost of the management, maintenance, and improving the Ambulance Department, may each year levy a tax not exceeding the maximum limits prescribed by State law, on the actual valuation of all real estate and personal property within the Municipality that is subject to taxation. The revenue from the said tax shall be known as the Ambulance Department Fund. The Fund shall be at all times in the possession of the Municipal Treasurer.

§17-50.88 MUNICIPAL AMBULANCE DEPARTMENT; AMBULANCE BOARD. The Ambulance Board shall manage the Ambulance Department and it shall be their duty to inform the Governing Body when any of the ambulances or equipment needs repair. Upon the consent and directive of the Governing Body, the Ambulance Board shall cause the repair, improvement, or maintenance of the said equipment and shall personally supervise and approve of the same. It shall be the duty of the Ambulance Board to come before the Governing Body at the regular meeting in January of each year to give an annual report to the Governing Body of the general condition and the proposed additions or improvements recommended by them.

§17-50.89 MUNICIPAL AMBULANCE DEPARTMENT; MEMBERSHIP. All qualified EMT-A volunteers must be willing to take the training required. Age requirements are subject to the State of Nebraska Department of Health. All applicants are any volunteer taking the EMT-A course. Any applicant becoming a member shall serve a probationary period until certification has been received by the Sutton Ambulance Service and subject

to the review and approval of the Governing Body. All vacancies shall be filled in this manner. Said members shall be considered to be employees of the Municipality for the purpose of providing them with workmen's compensation and other benefits. The members may organize themselves in any way they may decide, subject to the review of the Governing Body. They may hold meetings and engage in social activities with the approval of the Governing Body. The secretary shall upon request keep a record of all meetings and shall make a report to the Governing Body of all meetings and activities of the Ambulance Department. The Governing Body may compensate or reward any member or members of the Ambulance Department in an amount set by resolution. All members of the Ambulance Department shall be subject to such rules and regulations, and shall perform such duties, as may be prescribed or required of them by the Governing Body.

Ambulance Department members testifying as a witness in connection with his or her officially assigned duties in that capacity alone shall not be deemed employees of the State of Nebraska or of the Municipality.

§17-50.90 MUNICIPAL AMBULANCE DEPARTMENT; RECORDS. The Secretary shall keep or cause to be kept a record of all meetings of the Ambulance Department, the attendance record of all members, a record of all calls, and shall make a full report of such records to the Municipal Clerk during the last week in January each year. The record of any ambulance run shall include the cause, origin, circumstances, and the State of Nebraska minimum requirements of services rendered.

§17-50.91 MUNICIPAL AMBULANCE DEPARTMENT; SERVICES BEYOND CORPORATE LIMITS. For the purpose of defraying costs of service beyond the corporate limits, by agreement, the Sutton Rural

Volunteer Fire and Ambulance District provides funding of fifty percent (50%) of the City of Sutton Ambulance Department expense.

§17-50.92 MUNICIPAL AMBULANCE DEPARTMENT; MUTUAL AID AGREEMENT. For the purpose of better insuring the safety of lives and property of the citizens of Clay and surrounding counties from medical emergencies, the City of Sutton has entered into a mutual aid agreement with the Sutton Rural Fire and Ambulance District. The agreement shall be on file in the office of the Municipal Clerk for public inspection during reasonable hours.

§17-50.93 MUNICIPAL AMBULANCE DEPARTMENT; INFECTIOUS CONTROL POLICY. There shall hereby be established, pursuant to State of Nebraska (LB 157) an Infectious Control Policy. The Sutton Ambulance Department shall be responsible for maintaining a current policy and copies of which shall be on file with the Municipal Clerk.

§17-50.94 VIOLATION; PENALTY. (1) Any person, or any person's agent or servant, who violates any of the provisions of this chapter, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars (\$500.00) A new violation shall be deemed to have been committed every twenty-four (24) hours of failure to comply with the provisions of this chapter.

(2) (a) Whenever a nuisance exists as defined in this chapter, the Municipality may proceed by a suit in equity to enjoin, abate, and remove the same in the manner provided by law.

(b) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an

order of abatement as a part of the judgment in the case. (Ref. 17-505, 18-1720, 18-1722 RS Neb.) (Amended by Ord. No. 156, 5/9/00)

§17-50.95 GARBAGE COLLECTION. Commencing July 5, 1993, the City of Sutton, Nebraska, will by contract, provide weekly curbside collection of the normal household trash, refuse, garbage, etc., from all residences within the City. Such wastes shall be disposed of only in a licensed landfill facility which meets all state and federal criteria.

These collections are to be made on a specific day, unless weather or other adverse conditions make it impossible for the collector to perform this task on that specific day in which case it will be collected on the following day or as soon as conditions permit. Collections will be made during the normal working hours of eight o'clock (8:00) A.M. to sunset.

Residents shall have the refuse ready for collection at the street curbside in approved metal or plastic containers with lids secured or properly tied plastic containers. Additional pickup at any one residence or business shall be contracted for directly with the collector on an individual basis at established rates.

Residents will be responsible for litter or spillage prior to collection. The collection contractor shall be responsible for litter or spillage after collection, and all refuse collected by the contractor will be delivered to and deposited in a state licensed landfill or approved recycling plant site.

§17-50.96 SOLID WASTE; COLLECTION EQUIPMENT RE-QUIRED.

Solid waste shall be collected only in vehicles equipped with a trash bed constructed of substantial metal material, and such bed shall be completely enclosed. The body and bed of any vehicle used in the collection or transportation of solid wastes shall be maintained in a clean and odor-free condition. Before any person, firm, or corporation may engage in the

business of collecting, hauling, or transporting nonhazardous solid waste within the City, they shall demonstrate to the Mayor and Council that they currently own or have made proper provision for all required equipment.

§17-50.97 SOLID WASTE; CONTRACTS FOR SERVICE. The City of Sutton may contract with an independent contractor to provide for the collection and disposal of nonhazardous solid waste. Such contractor shall be selected by competitive bidding and the length of the term of any such contract shall be determined by the Mayor and Council, not to exceed five (5) years. Any such contractor shall enter into a written agreement with the City of Sutton, which agreement shall provide for the rates to be charged by the contractor and such other terms and conditions as may be required by the Mayor and Council. The contractor shall be responsible for selection of a licensed disposal facility in which to dispose of nonhazardous solid waste collection within the City, and for any contract for disposal service in such facility.

§17-50.98 SOLID WASTE; LICENSED FACILITIES. All nonhazardous solid waste collected within the City shall be disposed of only in a licensed solid waste facility. Any hazardous waste shall be disposed of only in the manner provided by state or federal laws and regulations.

§17-50.99 SOLID WASTE; PRIVATE COLLECTION SERVICES PROHIBITED. No person, firm or corporation who is not under contract with the City of Sutton shall collect or dispose of residential nonhazardous solid waste within the City, except yard wastes, grass clippings, tree branches, or materials which are collected for recycling.

§17-50.100 SOLID WASTE; HAZARDOUS ITEMS AND ITEMS REQUIRING SPECIAL HANDLING OR DISPOSAL.

(A) No person shall put out any of the items specified below to be collected by the municipal solid waste collector for land disposal.

(1) Yard waste from April 1 through November 30 of each year unless such yard waste has been separated from its source and is put out for separate collection and delivery to the landfill for the purpose of soil conditioning or composting under the conditions otherwise specified.

(2) Lead-acid batteries.

(3) Waste oil.

(4) Waste tires in any form except tires that are nonrecyclable. Tires are not considered disposed if they meet the requirements of section 13-2039 RS Neb.

(5) Discarded household appliances.

(6) Unregulated hazardous wastes, except household hazardous wastes, which are exempt from the regulations under the Environmental Protection Act.

(B) Any such items shall be disposed of only as permitted under the Nebraska Integrated Solid Waste Management Act or any amendments thereof. *(Ref. 13-2039 RS Neb.)*

(C) For purposes of this section:

(1) Land disposal includes, but is not limited to, incineration at a landfill.

(2) Nonrecyclable tire means a press-on solid tire, a solid pneumatic shaped tire, or a foam pneumatic tire. *(Ref. 13-2039 RS Neb.)*

(3) Waste tire means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect. *(Ref. 13-2013.02 RS Neb.)*

(4) Yard waste means grass and leaves. *(Ref. 13-2016.01 RS Neb.) (Amended by Ord. No. 218, 1/13/04)*

§17-50.101 SOLID WASTE; BILLS. Bills for solid waste removal service shall be due and payable monthly at the office of the Municipal Clerk. The fee to be charged for refuse collection shall be set by separate resolution passed by the City Council. Bills shall be prepared on the first (1st) business day of each month and shall be immediately due and payable. Bills not paid by the fifteenth (15th) calendar day of the month shall be deemed to be delinquent. When a bill is deemed delinquent, the Clerk shall give a written notice to the customer of such delinquency and shall demand payment immediately. If the bill is not paid within seven (7) days after notice is sent, it shall be discretionary with the Municipal Clerk to order a discontinuance of service at any time; provided, if the delinquent customer is a known welfare recipient, it shall be the duty of the Clerk to notify the customer and also the Nebraska Department of Social Services by certified mail of the proposed termination. The Clerk shall assess an additional fee set by resolution of the Governing Body and on file at the office of the Clerk in the event that solid waste collection is interrupted for the nonpayment of the bill, to compensate the Municipality for any additional charges to restart service.

§17-50.102 SOLID WASTE; LIEN. In addition to all other remedies, if a customer shall for any reason remain indebted to the Municipality for solid waste collection service furnished, such amount due, together with any charges in arrears, shall be considered delinquent and are hereby declared to be a lien upon the real estate for which the same was furnished. The Municipal Clerk shall notify in writing or cause to be notified in writing, all owners of premises or their agents whenever their tenants or lessees are

sixty (60) days or more delinquent in the payment of solid waste collection fees. It shall be the duty of the Municipal Clerk on the first (1st) day of June of each year to report to the Governing Body a list of all unpaid accounts due for solid waste collection together with a description of the premise for which the same was furnished. The report shall be examined, and if approved by the Governing Body, shall be certified by the Municipal Clerk to the County Clerk to be collected as a special tax in the manner provided by law.

§17-50.103 SOLID WASTE; HAZARDOUS ITEMS AND ITEMS REQUIRING SPECIAL HANDLING OR DISPOSAL. No person shall put out to be collected by the Municipal Solid Waste Collector, any of the following items:

- A. Yard wastes, including grass clippings and tree branches;
- B. Unregulated hazardous wastes, except household wastes which are exempt from the regulation of the Environmental Protection Act;
- C. Tires;
- D. Waste Oil;
- E. Lead-acid batteries; and
- F. Household appliances.

Any such items shall be disposed of only as permitted under the Nebraska Integrated Solid Waste Management Act or any amendments thereof.

§17-50.104 SOLID WASTE; MANDATORY SERVICE. Every occupied residence and every commercial, institutional and governmental building in which day-to-day activities are conducted within the Municipal limits of the City of Sutton, shall be served by the City's solid waste collection and disposal services and shall be subject to the assessment and payment of

charges for such service as set from time to time by the Governing Body. The City may also agree to provide service to persons who do not live within the City limits but who are served by Municipal utility services of any kind or who are within such close distance to the City limits as to make such service economical and practical for the City and its contracted hauler.

§17-50.105 SOLID WASTE; VIOLATION. Complaints regarding the violation of the terms of a contract entered into for exclusive franchise agreement by the contractor shall be directed to the contractor by the City in writing and the contractor shall have thirty (30) days within which to correct said violations. If violations are not corrected, then the City Council may vote to revoke said contract at a regular or special City Council meeting that contractor has been given notice of by certified mail at least seven (7) days prior to such meeting. Revocation of said contract shall be deemed effective by sending such notice to the contractor, by certified mail, stating the date that service is terminated, after the City Council has voted for revocation.

It shall be unlawful and an offense for any person, firm or corporation in the City or its zoning area to conduct or operate any type of dump or waste disposal system for the use of themselves or other persons. Each day of operation or conduct of such waste disposal system or transfer site or other means of disposing garbage within the City shall constitute a separate violation by said person, firm or corporation punishable by a fine of one hundred dollars (\$100.00) for each violation.

In addition to the above referenced penalty, any person, firm or corporation within the City which conducts, operates or uses any type of dump or waste disposal system for themselves or other persons, other than the City's solid waste disposal service shall also be subject to a noncompliance fee of up to five hundred dollars (\$500.00) pursuant to the

provisions of section 13-2023 of the Integrated Solid Waste Management Act.

§17-50.106 CITY DUMPSITE; DUMPING PROHIBITED. The City dumpsite in Sutton shall be closed from and after July 5, 1993, to all dumping of trash, refuse, garbage, animal matter or putrescible, hazardous waste. Persons dumping anything after July 5, 1993, will be prosecuted under the laws of Nebraska for littering.

§17-50.107 GARBAGE COLLECTORS; LICENSE. (1) No person shall collect, remove, haul, or convey any refuse or garbage through or upon any of the streets, or alleys of the City of Sutton or dispose of the same in any manner without obtaining a license from the Governing Body. The fee for such license shall be one hundred dollars (\$100.00). The issuance of the license shall be upon such terms and conditions acceptable to the Governing Body and consistent with the requirements of the City Code and state law.

(2) Every person who shall apply for a license under this section shall state the type or types of refuse or garbage to be collected, and the manner of collection, and the place and method of disposal. A written garbage collection agreement shall be entered into by the Governing Body and the garbage collector upon terms and conditions acceptable therewith. No license shall be granted if the place and method of disposal shall not conform to the requirements of the Code of the City of Sutton, or the requirements of any other governmental authority regulating garbage disposal. No licensed collector shall make any changes in the arrangements for disposal of refuse collected by him without first receiving the written approval of the Governing Body.

(3) Every person or persons occupying a residence or business within the limits of the City of Sutton shall make appropriate arrangements with a licensed collector for the disposal of refuse from said residence or business and such arrangements shall comply with the requirements of the City Code and the requirements of any other governmental authority regulating garbage disposal. It shall be unlawful for any person or persons to permit any unlicensed collector to collect or remove refuse or garbage from a residence, institution, business or commercial enterprise. *(Ord. No. 2, 12/14/93)*

§17-50.108 VIOLATION; PENALTY. (1) Any person, or any person's agent or servant, who violates any of the provisions of this chapter, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars (\$500.00) A new violation shall be deemed to have been committed every twenty-four (24) hours of failure to comply with the provisions of this chapter.

(2) (a) Whenever a nuisance exists as defined in this chapter, the Municipality may proceed by a suit in equity to enjoin, abate, and remove the same in the manner provided by law.

(b) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. *(Ref. 17-505, 18-1720, 18-1722 RS Neb.) (Amended by Ord. No. 156, 5/9/00)*

§17-50.109 ABATEMENT OF NUISANCE. *(Repealed by Ord. No. 156, 5/9/00)*

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REFERENCES: TITLE VII - TRAFFIC CODE

§17-70.02 OPERATION OF ALL TERRAIN VEHICLES AND UTILITY VEHICLES. To allow the operation of all terrain vehicles and utility vehicles within the corporate limits under certain circumstances.

Section 1. (a) All terrain vehicle means any motorized off highway vehicle which (i) is 50 inches or less in width, (ii) has a dry weight of 900 lbs or less, (iii) travels on three (3) or more low pressure tires, (iv) is designed for operator use only with no passengers or as specifically designed by the original manufacturer for the operator and one passenger, (v) has a seat or saddle designed to be straddled by the operator, and (vi) has handle bars or any other steering assembly for steering control.

(b) Utility vehicles shall mean any side by side vehicle (e.g. gator, mule, prowler) or golf cart.

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

Section 2. An all terrain vehicle or utility vehicle may be operated on the streets and highways within the corporate limits of the City of Sutton, Nebraska, only if the operator and the vehicle comply with the provisions of this section.

Section 3. An all terrain vehicle or utility vehicle may be operated on the streets and highways within the corporate limits of the City of Sutton, Nebraska, only between the hours of sunrise and sunset and shall not be operated at a speed in excess of (30) miles per hour. All vehicles shall be equipped with headlights, taillights, brake lights, an OEM muffler, and a federally approved bicycle safety flag which extends not less than (5) feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than 30 square inches and shall be day glow in color.

Section 4. In order to be authorized for operation on the streets and highways of the City of Sutton, Nebraska, an all terrain vehicle or utility

vehicle must be registered in the office of the City Clerk. A registration sticker will be issued upon submitting proof of the following:

- (a) A certificate from the Sutton City Office indicating that the all terrain vehicle or utility vehicle has been inspected by an official or officials designated by the Mayor and Council of the City of Sutton, Nebraska and that said vehicle complies in full, with the equipment requirements identified in Section 3 above.
- (b) Proof of liability insurance coverage for the all terrain vehicle or utility vehicle while operating such vehicle on a street or highway.
- (c) Payment of \$10 annual fee for registration of the vehicle. A \$25.00 annual fee shall be required of dealers of all terrain vehicles or utility vehicles within the City of Sutton, Nebraska. All such fees paid shall be credited to the street fund of the City of Sutton, Nebraska.

Section 5. Upon compliance with the registration requirements identified herein, the City Clerk shall issue a registration sticker for the all terrain vehicle or utility vehicle being registered. Said registration sticker must be prominently displayed upon the rear of said vehicle at all times while such vehicle is in operation on the streets and highways of the City of Sutton, Nebraska.

Section 6. Any Person operating an all terrain vehicle or utility vehicle as authorized by this ordinance shall be at least 21 years old and shall possess a valid driver's license issued by the State of Nebraska or another state. The individual operating the all terrain vehicle or utility vehicle shall provide proof of such insurance coverage, as required elsewhere in this Ordinance, to any peace officer requesting such proof within five (5) days of the request being made. No person shall operate an all terrain vehicle or utility vehicle on the streets or highways of the City of Sutton, Nebraska, in violation of the Nebraska rules of the road as established by the Revised Statutes of the Sate of Nebraska.

Section 7. (a) The City of Sutton may issue a work permit to an operator that otherwise complies with all terms of this ordinance with exception of age. A work permit shall be issued by the City Clerk, upon receipt of the following:

- (1) Application signed by the applicant, who is at least 16 years of age as of the date thereof, and the parent or legal guardian of the applicant. The applicant will acknowledge receipts of a copy of this ordinance and certification of the applicant and parent/guardian that the applicant will fully comply with all provisions hereof.
- (2) All other documentation required above in sections 4 through 6, inclusive, included but not limited to a valid driver's license, proof of liability insurance coverage and registration information.

(b) Upon issuance of a work permit, the holder thereof may operate an all terrain vehicle or utility vehicle for legitimate employment purposes (snow removal, lawn care or agricultural use):

(1) To or from the site where the operator is engaged in such employment and the residence of the operator, over the most direct and accessible route through the streets of the City of Sutton.

(2) The holder of the work permit shall not use any type of interactive wireless communication device while operating an all terrain vehicle or utility vehicle on the streets of the City of Sutton.

Section 8. Any person who violates any provision of this ordinance, specifically by operating an all terrain vehicle or utility vehicle on the streets and highways of the City of Sutton, Nebraska in violation of any provision of this Ordinance, shall be punished as provided generally in the Sutton Municipal Code and specifically, first offense \$100.00 and \$300.00 for each subsequent violation and shall be subject to having the all terrain vehicle or utility vehicle which was operated in violation of this Ordinance impounded for a period of thirty (30) days.

(Ordinance No. 287, passed 11/11/2008, as amended 8/9/2011 Ordinance No. 312)

§17-71.02 ESTABLISHING A NO U-TURN ZONE: No person shall make a U-Turn at the intersection of Saunders Avenue and Elm Street within the corporate limits of the City of Sutton, Nebraska. (Ordinance NO. 352 1/13/2015)

§17-71.20 SPEED LIMIT; CONGESTED DISTRICT. Based on an appropriate study as required by law, it is determined that the maximum safe rate of speed for motor vehicles on Saunders Avenue between Ivy Street and Cedar Street is fifteen (15) miles per hour, which is defined to be the congested district of the City. Appropriate speed limit signs shall be posted in such district.

§17-71.21 SPEED LIMIT, U.S. HIGHWAY 6. No person shall operate a motor vehicle on U.S. Highway 6 from the east corporate limits of the City of Sutton to the West corporate limits of the City of Sutton at a speed greater than forty (40) miles per hour. (Ordinance No. 268 passed 4/10/07)

§17-71.22 SPEED LIMITS; ASH STREET. (1) No person shall operate a motor vehicle on Ash Street from U.S. Highway 6 to 2nd Avenue East at a rate of speed greater than thirty-five (35) miles per hour. (*Ord. No. 144, passed 4/11/00*)

(2) No person shall operate a motor vehicle on Ash Street from Glen Avenue to west corporate limits of the Municipality at a rate of speed greater than thirty-five (35) miles per hour. (*Ord. No. 162, 6/13/00*)

§17-71.23 SPEED LIMITS; SAUNDERS AVENUE/ASH STREET. (A) No person shall operate a motor vehicle on Saunders Avenue, also known as Highway No. 5, from U.S. Highway 6, and its right-of-way south a distance of 1,760 feet to a point to within the corporate limits of the Municipality at a rate of speed greater than thirty-five (35) miles per hour. (*Ord. No. 213, 4/13/04*)

E: Section 1: Alternative Maximum Limits: No person shall operate a motor vehicle on Ash Street from the intersection of Saunders Avenue and

Ash Street to the intersection of Highway 6 and Ash Street, at a rate of speed greater than twenty-five (25) miles per hour.

Section 2:Flashing yellow lights shall be installed on Saunders Avenue and East Ash Street and at the Northeast corner of Way Avenue. When flashing yellow lights are activated, no person shall operate a motor vehicle on Ash Street from the intersection of Saunders Avenue and Ash Street to the Northeast corner of Way Avenue; at a rate of speed greater than fifteen (15) miles per hour (Amended by Ord. No. 297 4/10/2010)

§17-72.01 TRUCK PARKING.

A. NO TRUCK PARKING AREA. It shall be unlawful for the operator of any truck, truck-tractor or semi-trailer or for the operator of any automobile with attached trailer of an overall length of 18 feet, including load, to stop or park such vehicle for any period of time on streets in the no truck parking area described as follows: On Saunders Avenue from the south line of Grove Street to the north line of Maple Street.

B. LOADING AND UNLOADING. Such vehicles may stop, stand or park for such time as is necessary, in no case longer than one-half hour, expeditiously to load or unload their contents in alleys where such stopping is possible; provided it shall be unlawful for such vehicle to stop or park elsewhere on streets in the no truck parking area if stopping for loading or unloading in alleys is impossible, only after the operator of the designated vehicle shall have obtained written permit from the Chief of Police to so to do.

C. TRUCK END-GATES UP; TRUCK PARKING RULES. It shall be unlawful for the operator of any such truck, truck-tractor or semi-trailer, regardless of the length of the same, to park such vehicle with the end-gate of same down and extending beyond the body of such vehicle; nor shall such vehicle stop, stand or park within a street intersection, on a crosswalk, in front of a private driveway or on a sidewalk.

D. TRUCK PARKING LOTS. The Council may provide truck parking lots adjoining or adjacent to the no truck parking area; and when such truck

parking lots are so provided, it shall be the duty of the truck operators to use such lots for parking purposes.

E. CARRIERS, NIGHT PARKING. No motor carrier, common carrier or contract carrier of property shall stop or park in any street or alley within the residence district during the night, between 5:00 p.m. and 9:00 a.m. of the succeeding day; and no such carrier shall use or employ any portion of the parking space in said residence district for any commercial purpose.

F. OIL TANKERS, GASOLINE TRANSPORTS. No oil tanker, gasoline transport or tank truck transporting inflammable liquids shall park or stop for any period of time within the limits of any street or alley of the City except to load or unload its cargo in a safe and expeditious manner; provided, drivers of oil tankers, gasoline transports or tank trucks may stop or park said vehicles one time while en route through the City on arterial streets or highways therein, except on that portion of Saunders Avenue designated as the no truck parking area in subsection (A) of this section, for a period of time not more than 30 minutes for rest and meals. In case of breakdown or stalling on account of exhaustion of its motor fuel on any of said streets, the stopping of the disabled vehicle for the reasonable time necessary to remove the same to the next point where repairs can be made or to meet the emergency shall not be a violation of this section. No oil tanker, gasoline transport or tank truck for any period of time on any private premises within the City, except for purpose of loading or unloading, or breakdowns unless the private premises are situated outside the fire limits and are used and employed exclusively for the conduct of the wholesale or retail petroleum business with ample facilities for parking oil tankers and gasoline transports or tank trucks.

G. SIGNS. The no truck parking area, as described in subsection (A) of this section shall be plainly indicated by appropriate signs or standards placed at or near each means of approach to the area by order of the Council.

17-72.02 PARKING; U.S. HIGHWAY 6; PROHIBITED WITHIN CORPORATE LIMITS. *[Transferred to §17-72.03]*

§17-72.03 PARKING; TIME LIMIT. The Governing Body may, by resolution, entirely prohibit, or fix a time limit for, the parking and stopping of vehicles on any street, streets, or district designated by such resolution, and the parking, or stopping, of any vehicle in any such street, streets, or district, for a period of time longer than fixed in such resolution shall constitute a violation of this Article. *(Ref. 60-680 RS Neb.)*

- (1) No person shall park a motor vehicle on U.S. Highway 6 or its right-of-way from the east corporate limits of the City to the West corporate limits of the City. *[Transferred from § 5-305]*
- (2) (Amended by Ord. No. 308 3/8/2011) (Repealed by Ord. NO. 370, 12/12/2016)
- (3) No unattached trailer or semi-trailer designed to be attached to and propelled or drawn by mechanical power and used in the transportation of passengers or property shall be parked on any street in the City.
- (4) Any contractor or licensed business performing construction, repair, or maintenance on any residence or business within the City of Sutton shall apply to the Police Chief for a special parking permit for a limited time parking exemption. (Amended by Ord. No. 309, 6/4/2011)
- (5) No Person shall park on Ash Street from Saunders Avenue to Butler Avenue. (Amended by Ord. No. 328, 3/12/2013)

§17-72.04 PARKING; MAXIMUM TIME LIMIT. The parking of a motor vehicle on a public street for over twenty-four (24) consecutive hours is unlawful, except where a different maximum time limit is posted. A motor vehicle parked on any public street shall be required to be moved at least two (2) vehicle lengths every twenty-four (24) consecutive hour period. *(Ref. 60-680 RS Neb.) (Amended by Ord. No. 198, 7/16/02)*

§17-72.05 PARKING; HANDICAPPED OR DISABLED PERSONS; DESIGNATION OF ONSTREET PARKING SPACES AND ACCESS AISLES; DISPLAY OF PERMITS.

(A) The Governing Body may designate parking spaces, including access aisles, for the exclusive use of:

(1) Handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to handicapped or disabled persons pursuant to section 60-311.14 RS Neb.,

(2) Handicapped or disabled persons whose motor vehicles display a distinguishing license plate issued to a handicapped or disabled person by another state,

(3) Such other handicapped or disabled persons or temporarily handicapped or disabled persons, as certified by the Municipality, whose motor vehicles display the permit specified in section 18-1739 RS Neb., and

(4) Such other motor vehicles, as certified by the Municipality, which display such permit.

All such permits shall be displayed by hanging the permit from the motor vehicle's rearview mirror so as to be clearly visible through the front windshield. The permit shall be displayed on the dashboard only when there is no rearview mirror.

(B) If the Governing Body so designates a parking space or access aisle, it shall be indicated by posting aboveground and immediately adjacent to and visible from each space or access aisle a sign as described in Neb. RS 18-1737. In addition to such sign, the space or access aisle may also be indicated by blue paint on the curb or edge of the paved portion of the street adjacent to the space or access aisle. *(Ref. 18-1736 RS Neb.) (Amended by Ord. Nos. 16, 9/13/94; 41, 1/9/96; 75, 6/10/97; 133, 4/13/99; 185, 4/9/02)*

§17-72.06 PARKING; HANDICAPPED OR DISABLED PERSONS; DESIGNATION OF OFFSTREET PARKING STALLS, SPACES, AND ACCESS AISLES. The Municipality and any person in lawful possession of any off street parking facility may designate stalls or spaces, including access aisles,

in such facility owned or operated by the Municipality or person for the exclusive use of:

(1) Handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to such individuals pursuant to section 60-311.14 RS Neb.,

(2) Such other handicapped or disabled persons or temporarily handicapped or disabled persons, as certified by the Municipality, whose motor vehicles display the permit specified in section 18-1739 RS Neb., and

(3) Such other motor vehicles, as certified by the Municipality, which display such permit. Such designation shall be made by posting aboveground and immediately adjacent to and visible from each stall or space, including access aisles, a sign which is in conformance with the requirements in section 18-1737 RS Neb. (*Ref. 18-1737 RS Neb.*) (*Amended by Ord. Nos. 15, 9/13/94; 76, 6/10/97; 186, 4/9/02*)

§17-72.07 PARKING: HANDICAPPED OR DISABLED PERSONS: DEFINITIONS. For purposes of this Article:

(A) ACCESS AISLE means a space adjacent to a handicapped parking space or passenger loading zone which is constructed and designed in compliance with the federal Americans with Disabilities Act of 1990 and the federal rules and regulations adopted and promulgated in response to the act. (*Ref. 18-1736 RS Neb.*)

(B) (1) HANDICAPPED OR DISABLED PERSON means any individual with a severe visual or physical impairment which limits personal mobility and results in an inability to travel unassisted more than 200 feet without the use of a wheelchair, crutch, walker, or prosthetic, orthotic, or other assistant device, any individual whose personal mobility is limited as a result of respiratory problems, any individual who has a cardiac condition to the extent that his or her functional limitations are classified in severity as being Class III or Class IV, according to standards set by the American Heart Association, and any individual who has permanently lost all or substantially all the use of one or more limbs.

(2) Temporarily handicapped or disabled person means any handicapped or disabled person whose personal mobility is expected to be limited in such manner for no longer than one year. *(Ref. 18-1738 RS Neb.)*

(C) HANDICAPPED PARKING INFRACTION means the violation of any section of this Article regulating:

(1) The use of parking spaces, including access aisles, designated for use by handicapped or disabled persons,

(2) The unauthorized possession, use, or display of handicapped or disabled parking permits, or

(3) The obstruction of any wheelchair ramps constructed or created in accordance and in conformity with the federal Americans with Disabilities Act of 1990. *(Ref. 18-1741.01 RS Neb.)*

(Amended by Ord. Nos. 14, 9/13/94; 42, 1/9/96; 77, 6/10/97; 184, 4/9/02)

§17-72.08 PARKING; HANDICAPPED OR DISABLED PERSONS; PERSONAL PERMIT; ISSUANCE; RENEWAL.

(A) The Municipal Clerk shall take an application, on a form provided by the Department of Motor Vehicles, from a handicapped or disabled person or temporarily handicapped or disabled person or his or her parent, legal guardian, or foster parent for a permit which will entitle the holder thereof or a person driving a motor vehicle for the purpose of transporting such holder to park in those spaces or access aisles provided for by this Article when the holder of the permit will enter or exit the motor vehicle while it is parked in such spaces or access aisles. For purposes of this section, the handicapped or disabled person or temporarily handicapped or disabled person shall be considered the holder of the permit.

(B) A person applying for a permit or for the renewal of a permit shall complete an application, shall provide proof of identity, and shall submit a completed medical form containing the statutory criteria for qualification and signed by a physician, physician assistant, or advanced practice registered nurse certifying that the person who will be the holder meets the definition of handicapped or disabled person or temporarily handicapped or disabled person. No applicant shall be required to provide his or her social security

number. In the case of a temporarily handicapped or disabled person, the certifying physician, physician assistant, or advanced practice registered nurse shall indicate the estimated date of recovery or that the temporary handicap or disability will continue for a period of six months, whichever is less.

(C) A person may hold only one (1) permit under this section and may hold either a permit under this section or a permit under section 5-319 (Motor Vehicle Permit; Issuance), but not both.

(D) A copy of the completed application form shall be given to each applicant. The Municipal Clerk shall submit to the Department of Motor Vehicles the name, address, and license number of all persons applying for a permit pursuant to this section.

(E) An application for the renewal of a permit under this section may be filed within thirty (30) days prior to the expiration of the permit. The existing permit shall be invalid upon receipt of the new permit. (*Ref. 18-1738 RS Neb.*)

(F) The Municipal Clerk shall not accept the application for a permit of any person making application contrary to the provisions of section 18-1738.02 RS Neb. (*Ref. 18-1738.02 RS Neb.*) (*Amended by Ord. Nos. 43, 1/9/96; 78, 6/10/97; 187, 4/9/02*)

§17-72.09 PARKING; HANDICAPPED OR DISABLED PERSONS; PERMITS; PROHIBITED ISSUANCE; DUPLICATE PERMITS. (A) No

permit shall be issued to any person or for any motor vehicle if any parking permit has been issued to such person or for such motor vehicle and such permit has been suspended pursuant to section 5-322 (Permits Nontransferable; Violations; Suspension). At the expiration of such suspension, a permit may be renewed in the manner provided for renewal in this Article.

(B) A duplicate permit may be provided without cost if the original permit is destroyed, lost, or stolen. Such duplicate permit shall be issued in the same manner as the original permit, except that a newly completed medical form need not be provided if a completed medical form submitted at the

time of the most recent application for a permit or its renewal is on file with the Municipal Clerk or the Department of Motor Vehicles. A duplicate permit shall be valid for the remainder of the period for which the original permit was issued. *(Ref. 18-1739 RS Neb.) (Amended by Ord. Nos. 45, 1/9/96; 80, 6/10/97; 189, 4/9/02)*

§17-72.10 PARKING; HANDICAPPED OR DISABLED PERSONS; PERMITS; PERIOD VALID; RENEWAL OF TEMPORARY PERMITS. (A) All

permanently issued permits for handicapped or disabled parking authorized by this Article shall be issued for a period ending on September 30 of the third year after the date of issuance and shall expire on that date.

(B) All permits authorized under this Article for temporarily handicapped or disabled parking shall be issued for a period ending not more than six (6) months after the date of issuance but may be renewed one time for a period not to exceed six (6) months. For the renewal period, there shall be submitted an additional application with proof of a handicap or disability. *(Ref. 18-1740 RS Neb.) (Amended by Ord. Nos. 13, 9/13/94; 46, 1/9/96; 81, 6/10/97; 190, 4/9/02)*

§17-72.11 PARKING; HANDICAPPED OR DISABLED PERSONS; PERMITS NONTRANSFERABLE; VIOLATIONS; SUSPENSION. (A)

Permits issued under this Article shall not be transferable and shall be used only by the party to whom issued or for the motor vehicle for which issued and only for the purpose for which it is issued. No person shall alter or reproduce in any manner a permit issued pursuant to this Article. No person shall knowingly hold more than one (1) permit or knowingly provide false information on an application for a permit.

(B) No person who is not the holder of a handicapped or disabled parking permit issued to him or her as a handicapped or disabled person shall display a handicapped or disabled parking permit and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person.

(C) No person who is the holder of a handicapped or disabled parking permit issued for the use of such person when transporting a handicapped or disabled person shall display his or her handicapped or disabled parking permit and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless a handicapped or disabled person is actually in the vehicle displaying the permit at the time it is parked, has left the vehicle while it was parked, and will return to the vehicle before it leaves the designated space or access aisle.

(D) No person who is not the holder of a handicapped or disabled parking permit issued for use when a vehicle is transporting a handicapped or disabled person shall display a handicapped or disabled parking permit and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless a handicapped or disabled person is actually in the vehicle displaying the permit at the time it is parked, has left the vehicle while it was parked, and will return to the vehicle before it leaves the designated space or access aisle.

(E) Any violation of this section shall constitute a handicapped parking infraction and shall be cause for suspension of such permit for a period of six (6) months and imposition of the penalty provided for violation of this Chapter. In addition, the trial court shall impose a fine of not more than two hundred fifty dollars (\$250.00) which may be waived by the court if, at the time of sentencing, all handicapped parking permits issued to or in the possession of the offender are returned to the court. At the expiration of such six-month period, a suspended permit may be renewed in the manner provided for renewal in this Article. *(Ref. 18-1741 RS Neb.) (Amended by Ord. Nos. 47, 1/9/96; 82, 6/10/97; 191, 4/9/02)*

§17-72.12 PARKING; HANDICAPPED OR DISABLED PERSONS; REMOVAL OF UNAUTHORIZED VEHICLE; PENALTY. (A) The owner or person in lawful possession of an off street parking facility, after notifying the municipal police, and the Municipality, if it provides on street parking or owns, operates, or provides an off street parking facility, may cause the removal, from a stall or space, including access aisles, designated

exclusively for handicapped or disabled persons or temporarily handicapped or disabled persons or motor vehicles for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, of any vehicle not displaying the proper permit or the distinguishing license plates specified in this Article if there is posted aboveground and immediately adjacent to and visible from such stall or space, including access aisles, a sign which clearly and conspicuously states the area so designated as a tow-in zone.

(B) A person who parks a vehicle in any on street parking space or access aisle which has been designated exclusively for handicapped or disabled persons or temporarily handicapped or disabled persons or motor vehicles for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, or in any so exclusively designated parking space or access aisle in any off street parking facility, without properly displaying the proper permit or when the handicapped or disabled person to whom or for whom, as the case may be, the license plate or permit is issued will not enter or exit the vehicle while it is parked in the designated space or access aisle shall be guilty of a handicapped parking infraction and shall be subject to the penalties and procedures set forth in section 5-325 (Citation, Issuance; Complaint; Trial; Dismissal). The display on a motor vehicle of a distinguishing license plate or permit issued to a handicapped or disabled person by and under the duly constituted authority of another state shall constitute a full and complete defense in any action for a handicapped parking infraction. If the identity of the person who parked the vehicle in violation of this section cannot be readily determined, the owner or person in whose name the vehicle is registered shall be held prima facie responsible for such violation and shall be guilty and subject to the penalties and procedures described in this section.

(C) In the case of a privately owned off street parking facility, the Municipality shall not require the owner or person in lawful possession of such facility to inform the Municipality of a violation of this section prior to the Municipality issuing the violator a handicapped parking infraction citation.

(Ref. 18-1737 RS Neb.) (Amended by Ord. Nos. 12, 9/13/94; 48, 1/9/96; 84, 6/10/97; 192, 4/9/02)

§17-72.13 PARKING; HANDICAPPED OR DISABLED PERSONS; CITATION, ISSUANCE; COMPLAINT; TRIAL; DISMISSAL.

(1) For any offense classified as a handicapped parking infraction, a handicapped parking citation may be issued by any peace officer or by any person designated by ordinance by the Governing Body to exercise the authority to issue a citation for any handicapped parking infraction.

(2) When a handicapped parking citation is issued for a handicapped parking infraction, the person issuing the handicapped parking citation shall enter thereon all required information, including the name and address of the cited person or, if not known, the license number and description of the offending motor vehicle, the offense charged, and the time and place the person cited is to appear in court. Unless the person cited requests an earlier date, the time of appearance shall be at least three (3) days after the issuance of the handicapped parking citation. One (1) copy of the handicapped parking citation shall be delivered to the person cited or attached to the offending motor vehicle.

(3) At least twenty-four (24) hours before the time set for the appearance of the cited person, either the Municipal Attorney or other person authorized by law to issue a complaint for the particular offense shall issue and file a complaint charging such person with a handicapped parking infraction or such person shall be released from the obligation to appear as specified.

(4) The trial of any person for a handicapped parking infraction shall be by the court without a jury. A person cited for a handicapped parking violation may waive his or her right to trial.

(5) For any handicapped parking citation issued for a handicapped parking infraction by reason of the failure of a vehicle to display a handicapped parking permit issued pursuant to section 18-1738 or 18-1738.01 RS Neb., the complaint shall be dismissed if, within seven (7) business days after the date of issuance of the citation, the person cited files with the court the affi-

davit included on the citation, signed by a peace officer certifying that the recipient is the lawful possessor in his or her own right of a handicapped parking permit issued under section 18-1738 or 18-1738.01 RS Neb. and that the peace officer has personally viewed the permit. (Ref. 18-1741.01, 18-1741.04, 18-1741.06 RS Neb.) (Ord. No. 11, 9/13/94) (Amended by Ord. No. 83, 6/10/97)

§17-72.14 PARKING; RESIDENTIAL LOTS. (1) It shall be un-lawful for any person to allow a vehicle or trailer to be parked within the front yard of a residentially zoned lot, unless said vehicle or trailer is parked on a paved hard-surfaced driveway, well-maintained rock or gravel parking area.

(2) It shall be unlawful for any person to allow a vehicle or trailer to be parked within the street-side yard of residentially zoned corner lot, unless said vehicle or trailer is parked on a driveway.

(3) It shall be unlawful for any person to construct or park upon a parking pad or parking area in the front yard of their residence.

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

DRIVEWAY. A private, solid concrete, asphalt, well-maintained rock or gravel roadway, which serves the garage or the rear or side yard to the property or provides access from one point of public right-of-way to another point of public right-of-way.

FRONT YARD. The open space extending across the full width of the residence between the front lot line and the nearest line of the residence.

PARKING PAD or PARKING AREA. A concrete, asphalt area, well-maintained rock or gravel roadway, other than a driveway.

STREET-SIDE SIDE YARD. The yard between the side of the residence and the street right-of-way and extending entirely from the front lot line to the rear lot line.

TRAILER. A wheeled cart, wagon or platform, designed to be towed behind a vehicle as defined below.

VEHICLE. Every self-propelled land vehicle, passenger vehicle, watercraft, mobile home and camper, except self-propelled chairs used by

persons who are disabled and electric personal assistive mobility devices.
(Ord. 215, 5/11/04) (Amended by Ord. No. 222, 9/14/04)

§17-72.15 VIOLATION; PENALTY. (1) Any person, or any person's agent or servant, who violates any of the provisions of this chapter, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars (\$500.00) A new violation shall be deemed to have been committed every twenty-four (24) hours of failure to comply with the provisions of this chapter.

(2) (a) Whenever a nuisance exists as defined in this chapter, the Municipality may proceed by a suit in equity to enjoin, abate, and remove the same in the manner provided by law.

(b) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (Ref. 17-505, 18-1720, 18-1722 RS Neb.) (Amended by Ord. No. 156, 5/9/00)

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REFERENCES: TITLE IX – GENERAL REGULATIONS

§17-90.01 MUNICIPAL PARKS; OPERATION AND FUNDING. The Municipality owns and operates the Municipal Parks and other recreational areas through the Board of Park Commissioners. The Governing Body, for the purpose of defraying the cost of the care, management, and maintenance of the Municipal Park may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The Board shall have the authority to adopt rules and regulations for the efficient management of the Municipal Parks and other recreational areas of the Municipality. The Board shall not enter into a contract of any nature which involves an expenditure of funds, except for ordinary operating expenses, unless the contract has been approved by resolution of the majority of the members of the Governing Body prior to the contractual agreement. *(Ref. 17-948 through 17-952 RS Neb.)*

§17-90.02 MUNICIPAL PARKS; INJURY TO PROPERTY.

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

§17-90.03 MUNICIPAL PARKS; PRESERVATION OF HISTORICAL PROPERTY AND PROHIBITION OF SALE.

The Municipality owns and operates a Municipal Park and within said park are historical monuments, mortar, cannons and other memorials. All historical monuments and artifacts are to be preserved for future generations

and no sale of these monuments or artifacts shall be permitted. (*Ord. No. 136, 5/11/99*)

§17-90.04 MUNICIPAL SWIMMING POOL; OPERATION AND FUNDING.

The Municipality owns and manages the Municipal Swimming Pool. The Governing Body, for the purpose of defraying the cost of the management, maintenance, and improvements of the Swimming Pool may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the Municipality that is subject to taxation. The revenue from the said tax shall be known as the Swimming Pool Fund and shall include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the Swimming Pool. The Swimming Pool Fund shall at all times be in the custody of the Municipal Treasurer. The Park Board shall manage the Swimming Pool. The Board shall have the power and authority to hire and supervise the Swimming Pool Manager and such employees as they may deem necessary and shall pass such rules and regulations for the operation of the Swimming Pool as may be proper for its efficient operation. All actions by the Board shall be under the supervision and control of the Governing Body. (*Ref. 17-948, 17-951, 17-952 RS Neb.*)

§17-90.05 MUNICIPAL SWIMMING POOL; RULES AND REGULATIONS.

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

§17-90.06 MUNICIPAL SWIMMING POOL; ADMISSION CHARGE. The Park Board may, for the purpose of defraying the expenses involved in maintaining, improving, managing, and beautifying the Swimming Pool, make a reasonable admission charge for the use by any person of the Municipal Swimming Pool. The said charges shall be on file at the office of the Municipal Clerk and shall also be posted in a conspicuous place at the Municipal Swimming Pool for public inspection. Such rates may be structured for classes of persons in a reasonable manner; Provided, that nothing herein shall be construed to permit or allow discrimination on the basis of race, creed, color, or national origin in the classification of persons for admission charges. *(Ref. 17-949 RS Neb.)*

§17-90.07 MUNICIPAL SWIMMING POOL; RENTALS. The Park Board shall have the authority to rent the Municipal Swimming Pool to such organizations and other persons as they may in their discretion see fit, subject to the review of the Governing Body. The Board shall prescribe rules and regulations for such rentals and shall require an appropriate number of qualified lifeguards to be in attendance during the rental period. Such fees and other costs shall be on file at the office of the Municipal Clerk and posted in a conspicuous place at the Municipal Swimming Pool. *(Ref. 17-949 RS Neb.)*

§17-90.08 MUNICIPAL LIBRARY; OPERATION AND FUNDING. The Municipality owns and manages the Municipal Library through the Library Board. The Governing Body, for the purpose of defraying the cost of the management, purchases, improvements, and maintenance of the Library may each year levy a tax not exceeding the maximum limit prescribed by State law, on the actual valuation of all real estate and personal property within the Municipality that is subject to taxation. The revenue from the said tax

shall be known as the Library Fund and shall include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the Municipal Library. The Library Fund shall at all times be in the custody of the Municipal Treasurer. The Board shall have the power and authority to appoint the librarian and to hire such other employees as they may deem necessary and may pass such other rules and regulations for the operation of the Library as may be proper for its efficient operation. All actions by the Board shall be under the supervision and control of the Governing Body. *(Ref. 51-201, 51-202, 51-211 RS Neb.)*

§17-90.09 MUNICIPAL LIBRARY; BOOKS. The Library Board may authorize the sale, exchange, or disposal of any surplus, damaged, defective, obsolete, or duplicate books in the Library. Records shall be kept of any such surplus, damaged, defective, obsolete, or duplicate books so disposed of. *(Ref. 51-207 RS Neb.)*

§17-90.10 MUNICIPAL LIBRARY; RULES AND REGULATIONS. The Library Board shall establish rules and regulations for the governing of the Municipal Library for the preservation and efficient management thereof. They shall fix and impose by general rules, penalties and forfeitures for injury to the Library grounds, rooms, books, or other property, or for failure to return a book. All fees, penalties, and forfeitures may be collected in civil action in the event of failure, neglect, or refusal to pay the said assessments. *(Ref. 51-205, 51-214 RS Neb.)*

§17-90.11 MUNICIPAL LIBRARY; BOOKS ISSUED. The Librarian shall keep, or cause to be kept, a register of all books issued and returned at the time they shall so be issued and returned. None of the books shall be

detained more than fourteen (14) days without being renewed. No book may be renewed more than two (2) consecutive times by any person without the special permission of the Librarian or an authorized employee of the Municipal Library. *(Ref. 51-211 RS Neb.)*

§17-90.12 MUNICIPAL LIBRARY; DAMAGED AND LOST BOOKS. Any person who injures or fails to return any book taken from the Library shall forfeit and pay to the Library not less than the value of the book in addition to any replacement costs and penalty which the Library Board may assess. *(Ref. 51-211 RS Neb.)*

§17-90.13 MUNICIPAL LIBRARY; BOOK LABELING. It shall be the duty of the Librarian to label, or cause to be labeled, with a printed or stamped label, proof of Municipal ownership on each book, and also to write the said proof on the thirtieth (30th) page of each volume. *(Ref. 51-211 RS Neb.)*

§17-90.14 MUNICIPAL LIBRARY; 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 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. *(Ref. 51-211 RS Neb.)*

§17-90.15 MUNICIPAL LIBRARY; COST OF USE. The Municipal Library shall be free for the use of the inhabitants of the Municipality. The Librarian may exclude from the use of the Library and reading rooms any person who shall willfully violate or refuse to comply with the rules and regulations established for the government thereof. *(Ref. 51-201, 51-212 RS Neb.)*

§17-90.16 MUNICIPAL LIBRARY; MONEY COLLECTED. Any money collected by the Library shall be turned over monthly by the Librarian to the Municipal Treasurer along with a report of the sources of the revenue. (*Ref. 51-209 RS Neb.*)

§17-90.17 MUNICIPAL LIBRARY; LIBRARY BOARD; 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. (*Ref. 51-213 RS Neb.*) (*Ord. No. 228, 1/11/05*)

§17-91.31 FIRES; DISORDERLY SPECTATOR. It shall be unlawful for any person during the time of a fire and for a period of thirty-six (36) hours after its extinguishment to hinder, resist or refuse to obey the Municipal Fire Chief, or to act in a noisy or disorderly manner. The Fire Chief and Assistant Fire Chief shall have the power and authority during such time to arrest or command any such person to assist them in the performance of their official duties. (*Ref. 28-908 RS Neb.*)

§17-91.32 FIRES; EQUIPMENT. It shall be unlawful for any person except the Fire Chief and the members of the Municipal Fire Department to molest,

destroy, handle or in any other way to interfere with the use and storage of any of the fire trucks and other apparatus belonging to the Municipality. (Ref. 28-519 RS Neb.)

§17-91.33 FIRES; INTERFERENCE. It shall be unlawful for any person or persons to hinder or obstruct the Municipal Fire Chief or the members of the Fire Department in the performance of their duty. (Ref. 28-908 RS Neb.)

§17-91.34 FIRES; OBSTRUCTION. It shall be unlawful for any person to obstruct the use of a fire hydrant, or have or place any material within fifteen feet (15') of the said hydrant. Any vehicle or material found as an obstruction may be immediately removed by the Fire Chief or any member of the Fire Department, at the risk, cost, and expense of the owner or claimant. (Ref. 39-672 RS Neb.)

§17-91.35 FIRES; ASSISTANCE. It shall be unlawful for any person to refuse, after the command of the Fire Chief or Assistant Fire Chief, to aid in extinguishing a fire or to assist in the removal and protection of property. (Ref. 28-908 RS Neb.)

§17-91.36 FIRES; DRIVING OVER HOSE. It shall be unlawful for any person, without the consent of the Fire Chief or Assistant Fire Chief, to drive any vehicle over unprotected hose of the Fire Department. (Ref. 39-682 RS Neb.)

§17-91.37 FIRES; TRAFFIC. Every vehicle already stationary when the fire alarm shall have been sounded must remain so for a period of five (5) minutes after the sounding of the fire alarm. No vehicle, except by the specific direction of the Fire Chief or Assistant Fire Chief, shall follow,

approach or park closer than five hundred feet (500') to any fire vehicle, or to any fire hydrant to which a hose is connected. Nothing herein shall be construed to apply to vehicles carrying doctors, members of the Fire Department, or emergency vehicles. *(Ref. 39-681 RS Neb.)*

§17-91.38 FIRES; FALSE ALARM. It shall be unlawful for any person to intentionally and without good and reasonable cause raise any false alarm of fire. *(Ref. 28-907, 35-520 RS Neb.)*

§17-91.39 FIRES; PEDESTRIANS. It shall be unlawful for any pedestrian to enter or remain in any street after a fire alarm shall have sounded until the fire trucks shall have completely passed. *(Ref. 28-908 RS Neb.)*

§17-91.40 FIRES; ON PAVEMENT; PROHIBITED. No person shall set out any fire on any pavement or near any sidewalk, gutter, driveway or curb within the City.

§17-91.41 FIRE PREVENTION; FIRE PREVENTION CODE. There is hereby adopted by the Council for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code known as the Fire Prevention Code, recommended by the American Insurance Association, being particularly the 1970 abbreviated edition thereof and the whole thereof, save and except such portions as are hereinafter deleted, modified or amended, of which code not less than three (3) copies have been and now are filed in the office of the Municipal Clerk and the same are hereby adopted and incorporated as fully as if set out at length herein, and the provisions thereof shall be controlling within the limits of the City.

§17-91.42 FIRE PREVENTION; FIRE CODE ENFORCEMENT. The code hereby adopted shall be enforced by the Chief of the Fire Department and by the Chief of Police.

§17-91.43 FIRE PREVENTION; ESTABLISHMENT OF LIMITS OF DISTRICTS IN WHICH STORAGE OF EXPLOSIVES AND BLASTING AGENTS, FLAMMABLE LIQUIDS IN OUTSIDE ABOVEGROUND TANKS, AND LIQUEFIED PETROLEUM GASES IS RESTRICTED. The limits referred to in section 53(b) of the code hereby adopted, in which storage of explosives and blasting agents is prohibited, the limits referred to in section 74(a) of the code hereby adopted in the storage of Class I liquids in outside aboveground tanks is prohibited, and the limits referred to in section 114 of the code hereby adopted, in which bulk storage of liquefied petroleum gas is restricted, as hereby established as follows: The City limits.

§17-91.44 FIRE PREVENTION; ESTABLISHMENT OF MOTOR VEHICLE ROUTES FOR TRANSPORTING EXPLOSIVES AND BLASTING AGENTS. THE ROUTES REFERRED TO IN SECTION 55(l) of the Fire Prevention Code for vehicles transporting explosives and blasting agents are hereby established as follows: Federal and state highways.

§17-91.45 FIRE PREVENTION; ESTABLISHMENT OF MOTOR VEHICLE ROUTES FOR TRANSPORTING HAZARDOUS CHEMICALS OR OTHER DANGEROUS ARTICLES. The routes referred to in section 109.1(b) of the Fire Prevention Code for vehicles transporting hazardous chemicals and other dangerous articles are hereby established as follows: Federal and state highways.

§17-91.46 FIRE PREVENTION; MODIFICATIONS. The City Council shall have power to modify any of the provisions of the Fire Prevention Code upon application in writing by the owner or lessee, or his authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secured, and substantial justice done. The particulars of such modification when granted or allowed and the decision of the City Council thereon shall be entered upon the City records and a signed copy shall be furnished the applicant.

§17-91.47 FIRE PREVENTION; APPEALS. Whenever the Chief of the Fire Department or other enforcing officer shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from such decision to the City Council within thirty (30) days from the date of the decision appealed.

§17-91.48 FIRE PREVENTION; CODES ADOPTED.

A. The following standard fire prevention codes containing rules and regulations, printed in book or pamphlet form are hereby included in this section by reference and shall be applicable in the City:

1. Regulations of the National Fire Protection Association for Dry Cleaning Plants, Pamphlet No. 32, dated 1974;
2. Regulations provided for Standards for the Storage and Handling of Liquefied Petroleum Gases, NFPA Pamphlet No. 58, 1974 edition;
3. Regulations of Oil Burning Equipment, NFPA Pamphlet No. 31, 1974 edition;

4. National Fuel Gas Code, NFPA Pamphlet No. 54, 1974 edition.

B. Three (3) copies of the several codes, rules and regulations referred to above are on file in the office of the Municipal Clerk and such codes, rules and regulations, together with subsequent amendments thereto when three (3) copies of each of said amendments are likewise filed with the Municipal Clerk, are hereby approved and adopted by the Council as the standard of efficiency of the most approved methods of fire prevention with respect to the subjects therein contained and are hereby incorporated and made a part of this section the same as though spread at large and copied at full length therein. In construing the subject matter incorporated by reference herein it is the intention of the Council that if any part of the subject matter shall conflict so that it can not be reconciled with any other ordinance enacted by the City, the provisions of the ordinance which legislates directly and specifically upon the precise matter in question shall prevail.

§17-91.49 FIREWORKS: DEFINED. Fireworks shall mean any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of common or special fireworks set forth by the United States Department of Transportation in Title 49, Code of Federal Regulations. (*Ref. 28-1241 RS Neb.*)

§17-91.50 FIREWORKS: PERMITTED FIREWORKS. It shall be unlawful for any person to ignite or cause to be exploded fireworks or firecrackers of any description whatsoever, except sparklers, vesuvian fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charges for the purpose of making a noise, color wheels, lady fingers, not exceeding seven-eighths (7/8") inch in length or one-eighth

(1/8") inch in diameter, and which do not contain more than fifty (50) milligrams each in weight of explosive material.

The provisions of this section shall not apply to any fireworks to be used for purpose of public exhibitions or display under authorization of the Governing Body or to fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal. (*Ref. 17-556, 28-1241, 28-1244, 28-1245 RS Neb.*)

§17-91.51 FIREWORKS; THROWING FIRECRACKERS. It shall be unlawful for any person to throw any firecracker, or any object which explodes upon contact with another object; from or into a motor vehicle; onto any street, highway, or sidewalk; at or near any person; into any building; or into or at any group of persons. (*Ref. 17-556, 28-1242 RS Neb.*)

§17-91.52 FIREWORKS; SALE. (A) It shall be unlawful for any person to sell, hold for sale, or offer for sale as distributor, jobber, or retailer any fireworks without first obtaining a license from the State Fire Marshal for that calendar year. (*Ref. 28-1246 RS Neb.*)

(B) Licensees shall only sell fireworks that have been approved by the State Fire Marshal. (*Ref. 28-1247 RS Neb.*)

(C) Permissible fireworks may be sold at retail only between June 24 and July 5 of each year. (*Ref. 28-1249 RS Neb.*) (*Amended by Ord. Nos. 143, 12/14/99; 229, 1/11/05*)

§17-92.01 MUNICIPAL PROPERTY; IMPROVEMENT DISTRICT; LAND ADJACENT. Supplemental to any existing law on the subject, a Municipality may include land adjacent to such Municipality when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The Governing Body shall have power to

assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby, except as provided in section 8-314. *(Ref. 19-2427 RS Neb.)*

§17-92.02 MUNICIPAL PROPERTY; SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCEDURE.

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

Except as provided in sections 19-2428 to 19-2431 RS Neb., the Governing Body shall have power to assess, to the extent of such benefits, the costs of such improvements upon the properties found especially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the Governing Body shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law. *(Ref. 18-1751 RS Neb.)*

§17-92.03 SIDEWALKS; KEPT CLEAN. It shall be unlawful for the occupant of any lot or lots or the owner of any vacant lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substance to accumulate on the sidewalks or to remain upon said sidewalk. All sidewalks within the business district from Maple Street and Saunders Avenue to Grove Street and Saunders Avenue including all side businesses adjacent to these streets shall be cleaned within five (5) hours after the cessation of a storm, unless the storm or fall of snow shall have taken place during the night, in which case the sidewalk shall be cleaned before five-thirty o'clock (5:30) A.M.; provided, sidewalks within the residential areas of the Municipality shall be cleaned within twenty-four (24) hours after the cessation

of the storm. In the event that the occupants or owners of lot or lots, or lands abutting such sidewalks shall fail to remove such accumulation, within the time and in the manner as directed, after receiving notice to do so, they shall be liable for the removal of accumulation on any sidewalk. The Governing Body shall have the power to cause any removal of accumulation on sidewalks and assess the costs thereof against such property according to law. *(Ref. 17-557, 17-557.01 RS Neb.) (Amended by Ord. No. 3, 12/14/93)*

§17-92.04 SIDEWALKS; CONSTRUCTION BY PETITION. If the owners of the record title representing more than sixty (60%) percent of the front footage of the directly abutting property, subject to assessment for sidewalk improvements, petition the Governing Body to make the same, the Governing Body shall proceed in all things as though such construction had been ordered by it. Upon the petition of any freeholder who is an abutting owner in fee simple of property subject to assessment for sidewalk improvements, the Governing Body may order permanent sidewalks built in accordance with this Article upon the freeholder making, executing, and delivering to the Municipality an agreement to the effect that the petitioning freeholder will pay the engineering service fee and all other incidental construction costs until paid shall be a perpetual lien upon the real estate along which the freeholder desires such sidewalk to be constructed and that the petitioner gives and grants to the Municipality the right to assess and levy the costs of such construction against the freeholder's real estate abutting the sidewalk improvement and promises to pay such costs with interest. The total cost of such improvement shall be levied, allocated, financed, and specially assessed as provided by law. In the event the property owner is a nonresident of the county in which the property lies, the Municipality shall, before levying any special assessment against that

property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

§17-92.05 TREES; DEFINITIONS.

STREET TREES: "Street Trees" are defined as trees, shrubs, bushes, and all other woody vegetation on land lying between the property lines on either side of all streets and avenues within the City.

PARK TREES: "Park Trees" are defined as trees, shrubs, bushes and all other woody vegetation in public parks.

PUBLIC COMMUNITY FOREST: "Public community forest" is defined as all street and park trees, and other trees owned by the City as a total resource.

PRIVATE COMMUNITY FOREST: "Private community forest" is defined as all trees within municipal boundaries but not owned by the City.

COMMUNITY FOREST MANAGER: The "Community Forest Manager" is defined as the official (public employee) representative of the Tree Board and as such is responsible for administration of the community forestry program.

§17-92.06 TREES; STREET TREE SPECIES TO BE PLANTED. The City of Sutton, Nebraska shall maintain an extensive list of recommended trees

for planting in public areas. The purpose of this listing will be to maintain diversity in the total tree population. This list shall be available to residents of the City upon request to aid in the selection of trees for private and public properties. The list of recommended trees shall be updated periodically to reflect new developments or species that will affect the population of the community forest.

§17-92.07 TREES; DISTANCES AND CLEARANCES FOR PLANTING.

Street trees may be planted in the tree lawn where there is more than six feet between the edge of the sidewalk and the curb of the street. Street trees shall be planted no closer than three feet from a sidewalk, driveway, or street.

The spacing of street trees will be in three species size classes. No trees may be planted closer together than the following: Small trees, 30 feet; medium trees, 40 feet; and large trees, 50 feet; except in special plantings designed or approved by a landscape architect.

The distance trees may be planted from curbs or curblines and sidewalks will be in accordance with the three species sizes. No trees may be planted closer to any curb or sidewalk than the following: Small trees, 2 feet; medium trees, 3 feet; and large trees, 4 feet.

No street tree shall be planted closer than 35 feet from any street corner, measured from the point of the nearest intersection of curbs or curblines.

Every owner of any tree overhanging any street or right-of-way within the Municipality shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection.

No street tree shall be planted closer than 10 feet from any fireplug.

Special permission must be obtained from the Community Forest Manager when planting street trees within 10 feet of any point on a line on the ground immediately below any overhead utility wire.

§17-92.08 TREES; PUBLIC TREE CARE. The City shall have the right to plant, prune, maintain, and remove trees, plants and shrubs within the right-of-way or bounds of all streets, alleys, lanes, squares, and public grounds, as may be necessary to insure the public safety.

The City may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to electric power lines or other public improvements, or is seriously affected with any fatal disease.

The abutting property owners shall have the right to perform normal tree care on all street trees.

§17-92.09 TREES; PERMITS REQUIRED. No person shall plant a street tree without first obtaining a permit from the Community Forest Manager. There will be no fee for such permit.

§17-92.10 TREES; COMPENSATORY PAYMENTS. No person shall remove any public tree without replacing such tree with a tree or trees of equivalent dollars value in the vicinity of the removed tree. The value of trees shall be determined by the Community Forest Manager in accordance with regulations considering the species, location, size and condition of trees adopted by the Tree Board. If no suitable location exists in the vicinity of the tree removed or if the replacement tree is of lesser value, the person causing the tree to be removed shall make a compensatory payment to the City equal to the difference in value between the tree removed and any replacement tree. Such compensatory payment shall be paid into a fund

established by the Community Forest Manager and used solely for the purpose of enhancing the community forest.

§17-92.11 TREES; TREE TOPPING. It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or other tree on public property. Topping, rounding off or pollarding is defined as the systematic cutting back of limbs within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this section at the determination of the Community Forest Manager.

§17-92.12 TREES; CLEARANCE OVER STREETS AND WALKWAYS. Clearance over streets and walkways shall be the responsibility of the abutting property owner. A clearance of 8 feet must be maintained over walkways and a clearance of 1/3 the height of the tree must be maintained over streets and alleys. Property owners are responsible for trees on their own property as well as trees on the public way that abuts their property or as determined by the City Forester.

§17-92.13 TREES; DEAD OR HAZARD TREE REMOVAL. The City shall have the right to cause to be removed any tree within the City limits that is dead or has been declared a hazard. Hazard trees are defined as trees with severe structural defects or splits. The City will notify in writing the owners of such trees. Removal is the responsibility of the owners of such trees and shall be accomplished within time limits set by the Community Forest Manager. Said owners shall remove all broken or decayed limbs which constitute a menace to the safety of the public.

§17-92.14 TREES; REMOVAL OF STUMPS. All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

§17-92.15 TREES; INTERFERENCE WITH THE TREE BOARD. It shall be unlawful for any person to prevent, delay, or interfere with the Tree Board or any of its representatives or agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any trees within the public community forest.

§17-92.16 TREES; ACCESS TO PROPERTY. It shall be unlawful for any person to prevent, delay, or interfere with access to private property by the City or its representative in the legal performance of any section of this Article.

§17-92.17 TREES; ARBORIST CERTIFICATION AND INSURANCE. Persons or firms engaged in the business or occupation of pruning, treating, or removing any street tree, park tree, or other privately owned tree must be recognized by the Nebraska Arborists Association as a Certified Arborist or Tree Technician. Tree Technicians must carry evidence of liability insurance and workmen's compensation. No certification shall be required by any public employee doing such work in the pursuit of their public service endeavors.

§17-93.01 DOGS; LICENSE TAG. It shall be the duty of every owner of a dog to license the dog annually by or before January 1st each year, with the Municipal Clerk, and to secure and retain the license receipt and metallic tag furnished by the Municipal Clerk, upon payment of the license fee hereinafter provided. The tax shall be delinquent from and after January

10 each year. No person or persons occupying a residence or apartments shall have, own, maintain or keep more than two (2) dogs on their respective residence or apartment at any time. The receipt shall disclose his name and address and such description as may be required for the purpose of identification. The owner shall attach and maintain to a collar or harness of leather, or other durable material on the dog collar, the metallic tag of the current year, on which shall be engraved or marked in plain letters "Sutton Dog Tax", the number in figures and the month and year of issue. The Municipal Clerk shall keep a record of the person licensing a dog, his name, address and number of license and tag; also furnish receipts and such metallic tag of suitable design. *(Amended by Ord. No. 137, 8/10/99)*

§17-93.02 DOGS; TAX. The owner of any dog, in order to have the dog licensed, shall pay to the Municipal Clerk a fee as follows:

- For each spayed, or sterilized dog.....\$ 5.00
- For each dog not spayed or sterilized.....\$15.00

The person buying such dog license shall take the receipt of the Municipal Clerk therefore and the Municipal Clerk shall supply such person with a metal tag which must be attached to and worn on the leather collar or harness about the dog as hereinabove described. The dog licenses and metallic tag, properly attached to the collar or harness of the dog licensed, shall entitle such person to own, keep and harbor such dog. The dog tax so collected shall be credited to the general fund of the City and shall be due the following year on the month so stamped on the dog tag. The owner of any dog brought into, kept or harbored within the corporate limits shall be liable for the payment of the dog tax levied forthwith. *(Amended by Ord. No. 137, passed 8/10/99)*

§17-93.03 DOGS; IMPOUNDING. It shall be the duty of the Chief of Police or other officer designated by the City Council to capture, secure and remove any dogs in a humane manner to the City Animal Shelter and to destroy and bury any dog, male, spayed female, or unspayed female, harbored and found running at large within the corporate limits thereof. No dog so taken by the Chief of Police or other officer of the City shall be killed until at least forty-eight (48) hours shall have expired after its impounding, or until such officer after consulting the records in the office of the Municipal Clerk shall have satisfied himself that the tax herein levied on the dog is due and unpaid; nor until the Chief of Police or other officer shall have notified in writing or by word of mouth the owner of the dog, if known to him, forthwith to pay any delinquent tax and all fees and charges associated with such impoundment, as set by the City Council from time to time. A fifty dollar (\$50.00) impound fee shall be assessed for each dog. *(Amended by Ord. No. 137, passed 8/10/99)*

§17-93.04 ANIMALS; DISTANCE FROM RESIDENCE.

No person shall keep or maintain any goat, sheep, or swine within two hundred feet (200') or shall keep or maintain any horse, mule, or cow within one hundred feet (100') of any part of any building used by another as a residence or place of dwelling. A limit of two animals shall be enforced within the City limits. The foregoing restrictions shall not apply to the use or employment of any building or premises as a railroad stockyard, sale barn or animal pen if temporarily used for buying, selling, weighing, loading or unloading animals immediately preceding or during transportation. *(Amended by Ord. No. 160, 9/12/00)*

**§17-93.05 OFFENSES: VIOLENCE ON A SERVICE DOG;
INTERFERENCE WITH A SERVICE DOG.**

(1) A person commits the offense of violence on a service dog when he or she (a) intentionally injures, harasses, or threatens to injure or harass or (b) attempts to intentionally injure, harass, or threaten a dog that he or she knows or has reason to believe is a dog guide for a blind or visually impaired person, a hearing aid dog for a deaf or hearing-impaired person, or a service dog for a physically limited person.

(2) A person commits the offense of interference with a service dog when he or she (a) intentionally impedes, interferes, or threatens to impede or interfere or (b) attempts to intentionally impede, interfere, or threaten to impede or interfere with a dog that he or she knows or has reason to believe is a dog guide for a blind or visually impaired person, a hearing aid dog for a deaf or hearing-impaired person, or a service dog for a physically limited person.

(3) Evidence that the defendant initiated or continued conduct toward a dog as described in subsection (1) or (2) of this section after being requested to avoid or discontinue such conduct by the blind, visually impaired, deaf, hearing-impaired, or physically limited person being served or assisted by the dog shall create a rebuttable presumption that the conduct of the defendant was initiated or continued intentionally.

(4) For purposes of this section:

(a) Blind person means a person with totally impaired vision or with vision, with or without correction, which is so severely impaired that the primary means of receiving information is through other sensory input, including but not limited to braille, mechanical reproduction, synthesized speech, or readers;

(b) Deaf person means a person with totally impaired hearing or with hearing, with or without amplification, which is so severely impaired that

the primary means of receiving spoken language is through other sensory input, including but not limited to lip reading, sign language, finger spelling, or reading;

(c) Hearing-impaired person means a person who is unable to hear air conduction thresholds at an average of 40 decibels or greater in the person's better ear;

(d) Physically limited person means a person having limited ambulatory abilities, including but not limited to having a permanent impairment or condition that requires the person to use a wheelchair or to walk with difficulty or insecurity to the extent that the person is insecure or exposed to danger; and

(e) Visually impaired person means a person having a visual acuity of 20/200 or less in the person's better eye with correction or having a limitation to the person's field of vision so that the widest diameter of the visual field subtends an angular distance not greater than 20 degrees. (*Ref. 28-1009.01 RS Neb.) (Ord. No. 123, 7/14/98)*

§17-93.45(c) PROHIBITING THE POSSESSION OF A DANGEROUS DOG WITHIN CITY LIMITS.

It is hereby determined that Sections §17-93.45 through §17-93.61 for dealing with dangerous dogs, is necessary to provide procedures in dealing with dangerous dogs.

17.93.45. Authorization. This ordinance is enacted pursuant to the general police power, the authorities granted to cities and towns by the Nebraska State Constitution.

17.93.46. Purpose and Intent. The purposes of this ordinance are to promote the public health, safety, and general welfare of the citizens of the City of Sutton, Nebraska. It is intended to be applicable to

"dangerous" dogs, as defined herein, and to regulate dogs that are commonly referred to as "pit bulls," as defined herein, by ensuring responsible handling by their owners through registration, confinement, and liability insurance.

17.93.47. Definitions. When used in this ordinance, the following words, terms, and phrases, and their derivations shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1.) "Animal Control Officer" means any person employed or appointed by the City who is authorized to investigate and enforce violations relating to animal control or cruelty under the provisions of this ordinance.

(2.) "At Large" means that a dog is not under the direct control of the owner.

(3.) "Dangerous Dog" means any dog that, because of its aggressive nature, training or characteristic behavior, presents a risk of serious physical harm or death to human beings, or would constitute a danger to human life, physical well-being, or property if not kept under the direct control of the owner. This definition shall not apply to dogs utilized by law enforcement officers in the performance of their duties. The term "dangerous dog" includes any dog, that according to the records of either the city, animal shelter, or any law enforcement agency:

(a.) Has aggressively bitten, attacked, endangered, or inflicted severe injury on a human being on public or private property, or when

unprovoked, has chased or approached a person upon the street, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by any of the above referenced authorities;

(b.) Has more than once severely injured or killed a domestic animal while off the owner's property; or

(c.) Has been used primarily or in part for the purpose of dog fighting, or is a dog trained for dog fighting.

(4.) "Direct Control" means immediate, continuous physical control of a dog such as by means of a leash, cord, secure fence, or chain of such strength to restrain the dog and controlled by a person capable of restraint within a vehicle. If the controlling person is at all times fully and clearly within unobstructed sight and hearing of the dog, voice control shall be considered direct control when the dog is actually participating in training or in an official showing, obedience, or field event. Direct control shall not be required of dogs actually participating in a legal sport in an authorized area or to government police dogs.

(5.) "Director" means the animal control officer or any other city employee appointed to act as an animal control officer.

(6.) "Impoundment" means the taking or picking up and confining of an animal by any police officer, animal control officer, or any other public officer under the provisions of this ordinance.

(7.) "Muzzle" means a device constructed of a strong soft material or of

metal, designed to fasten over the mouth of an animal to prevent the animal from biting any person or other animal.

(8.) "Pit Bull Dog" means and includes any of the following dogs:

(a.) The Staffordshire Bull Terrier breed of dogs.

(b.) The American Staffordshire Terrier breed of dogs.

(c.) The American Pit Bull Terrier breed of dogs.

(d.) Dogs that have the appearance and characteristics of being predominately of the breeds of dogs known as Staffordshire Bull Terrier, American Pit Bull Terrier, or American Staffordshire Terrier.

(9.) "Owner" means any person, partnership, corporation or other legal entity owning, harboring or keeping any animal, or in the case of a person under the age of eighteen (18), that person's parent or legal guardian. An animal shall be deemed to be harbored if is fed or sheltered for three

(3) or more consecutive days. The definition shall not apply to any veterinary clinic or boarding kennel.

(10.) "Sanitary" Condition" means a condition of good order and cleanliness to minimize the possibility of disease transmission.

(11.) "Under Restraint" means that an animal is secured by leash, led under the control of a person physically capable of restraining the animal and obedient to that person 's commands, or securely enclosed within the real property limits of the owner's premises.

17.93.48. Procedure for Declaring a Dog Dangerous.

(1.) An animal control officer or any adult person may request under oath that a dog be classified as dangerous as defined in §17-93.47 by submitting a sworn, written complaint on a form approved by the animal control officer. Upon receipt of such complaint, the director shall notify the owner of the dog that a complaint has been filed and that an investigation into the allegations as set forth in the complaint will be conducted.

(2.) At the conclusion of an investigation, the director may:

(a.) Determine that the dog is not dangerous, and, if the dog is impounded, waive any impoundment fees incurred and release the dog to its owner; or

(b.) Determine that the dog is dangerous and order the owner to comply with the requirements for keeping dangerous dogs set forth in §17-93.52, and if the dog is impounded, release the dog to its owner after the owner has paid all fees incurred for the impoundment. If all impoundment fees have not been paid within ten (10) business days after a final determination that a dog is dangerous, the director may cause the dog to be humanely destroyed.

17.93.49. Notification of Dangerous Dog Declaration.

(1.) Within five (5) business days after the declaring a dog dangerous, the director shall notify the owner by certified mail of the dog's

designation as a dangerous dog and any specific restrictions and conditions for keeping the dog, as set forth in §17.93.52 of this ordinance. The animal control officer also shall notify the city administrator and the police chief of the designation of any dog as a dangerous dog and specify any particular requirements or conditions placed upon the dog owner.

(2.) The notice shall inform the dog owner that he may request, in writing, a hearing to contest the director's finding and designation within five (5) business days after delivery of the dangerous dog declaration notice.

(3.) If the director cannot with due diligence locate the owner of a dog that has been seized pursuant to this ordinance, the director shall cause the dog to be impounded for not less than five (5) business days. If after five (5) days, the owner fails to claim the dog, the director may cause the dog to be humanely destroyed.

17.93.50. Hearing on Dangerous Dog Declaration.

(1.) The city administrator shall hold a hearing within fifteen (15) business days after receiving the dog owner's written request for such a hearing. The city administrator shall provide notice of the date, time, and location of the hearing to the dog owner by certified mail and to the complainant by regular mail.

(2.) At a hearing, all interested persons shall be given the opportunity to present evidence on the issue of the dog's dangerousness. Criteria to be considered in a hearing required by this section shall be included but no

to be limited to the following.

- (a.) Provocation
- (b.) Severity of attack or injury to a person or a domestic animal
- (c.) Previous aggressive history of the dog
- (d.) Observable behavior of the dog
- (e.) Site and circumstance of the incident, and,
- (f.) Statements from interested parties

(3.) A determination at a hearing that the dog is in fact a dangerous dog as defined in §17.93.47 shall subject the dog and its owner to the provisions of this ordinance.

(4.) Failure of the dog owner to request a hearing shall result in the dog being finally declared a dangerous dog and shall subject the dog and its owner to the provisions of the ordinance.

17.93.51. Appeal from Dangerous Dog Declaration. If the city administrator determines that a dog is dangerous at the conclusion of a hearing conducted under §17.93.50, that decision shall be final unless the dog owner applies to a court of competent jurisdiction for any remedies that may be available within ten (10) days after receiving notice that the dog has been finally declared dangerous. The appeal must be a trial de novo and shall be a civil proceeding for the purpose of affirming or reversing the city administrator's determination of

dangerousness.

17.93.52. Keeping of Dangerous Dogs. The keeping of a dangerous dog as defined in §17.93.47 shall be subject to the following requirements:

(1.) Leash. No person having charge, custody, control or possession of a dangerous dog shall allow the dog to exit its kennel, pen, or other proper enclosure unless such dog is securely attached to a leash not more than four (4) feet in length. No such person shall permit a dangerous dog to be kept on a chain, rope, or other type of leash outside its kennel or pen unless a person capable of controlling the dog is in physical control of the leash.

(2.) Muzzle. It shall be unlawful for any owner or keeper of a dangerous dog to allow the dog to be outside of its proper enclosure unless it is necessary for the dog to receive veterinary care or exercise. In such cases, the dog shall wear a properly fitted muzzle to prevent it from biting humans or other animals. Such muzzle shall not interfere with the dog's breathing or vision.

(3.) Confinement. Except when leashed and muzzled as provided in this section, a dangerous dog shall be securely confined indoors or confined in a locked pen or other secure enclosure that is suitable to prevent the entry of children and is designed to prevent the dog from escaping. The enclosure shall include shelter and protection from the elements and shall provide adequate exercise room, light and ventilation. A privacy fence enclosure is NOT counted as an "enclosed structure" for a dangerous dog. The enclosed structure shall be kept in a clean and sanitary condition and

shall meet the following requirements:

(a.) The structure must have secure sides and a secure top, or all sides must be at least eight (8) feet high;

(b.) The structure must have a bottom permanently attached to the sides or the sides must be embedded not less than one (1) foot into the ground; and

(c.) The structure must be of such material and closed in such a manner that the dog cannot exit the enclosure on its own.

(4.) Indoor Confinement. No dangerous dog shall be kept on a porch, patio, or any part of a house structure that would allow the dog to exit such building on its own volition. In addition, no such dog shall be kept in a house or structure when the windows or screen doors are the only obstacle preventing the dog from exiting the structure.

(5.) Signs. All owners, keepers or harborers of dangerous dogs shall display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog".

(6.) Liability Insurance and Surety Bond. The owner of dangerous dog shall present to the animal control officer proof that he/she has procured liability insurance or a surety bond in the amount of not less than one hundred thousand dollars (\$100,000) covering any damages or injury that may be caused by such dangerous dog. The policy shall contain a provision requiring that the city be notified immediately by the insurance company issuing the policy in the event that the insurance policy is cancelled, terminated, or expires. The liability insurance or surety bond shall be obtained prior to the issuing of a permit to keep a dangerous dog.

The dog owner shall sign a statement attesting that he shall maintain and not voluntarily cancel the liability insurance policy during the twelve (12) month period for which a permit is sought, unless he ceases to own or keep the dog prior to the expiration date of the permit period.

(7.) Animals Born of Registered Dogs. All offspring born of dangerous dogs registered with the animal control officer also must be registered with the department within six (6) weeks of birth.

(8.) Notification of Escape. The owner or keeper of a dangerous dog shall notify the animal control officer immediately if such dog escapes from its enclosure or restraint and is at large. Such immediate notification shall also be required if the dog bites or attacks a person or domestic animal.

(9.) Failure to Comply. It shall be unlawful and a misdemeanor for any owner of a dangerous dog registered with the animal control officer to fail to comply with the requirements and conditions set forth in this section. Any dog found to be in violation of this section shall be subject to immediate seizure and impoundment. In addition, failure to comply with the requirements and conditions set forth in this ordinance shall result in the revocation of the dog's license and the permit providing for the keeping of such animal.

17.93.53. Permit and Tag Required for a Dangerous Dog.

(1.) The owner of a dangerous dog shall, within three (3) business days after the classification of the dog as dangerous or upon acquisition of

such a dog, obtain an annual permit from the animal control officer to harbor the dog. The fee for such permit shall be two hundred fifty dollars (\$250.00) per year. This fee shall include the tag and inspection fee for inspection of the structure for confinement of the animal.

(2.) Proof of current rabies vaccination shall be presented in order to obtain the permit.

(3.) At the time the permit is issued, a red circular tag shall be issued to the owner of the dangerous dog. The tag shall be worn at all times by the dog to clearly and easily identify it as a dangerous dog.

(4.) The permit for maintaining a dangerous dog shall be presented to an animal control officer upon demand.

(5.) A picture of the dog is required for said permit.

17.93.54. Pit Bull Presumed. There shall be an irrefutable presumption that any dog registered with the animal control officer as a pit bull is a dangerous dog and is therefore subject to the requirements of this ordinance.

17.93.55. Notification of Intent to Impound.

(1.) When the animal control officer or his designee intends to impound a dog declared to be dangerous for violation of §17.93.52 he shall notify the owner or custodian of the dog, by certified mail, of the intended impoundment at least five (5) business days prior to the intended impoundment , except as provided in §17.93.56.

(2.) The notice of intent to impound shall inform the owner or custodian of the dog that he may request in writing, within five (5) business days prior to the intended impoundment, a hearing to contest the intended impoundment and finding of violation.

(3.) Upon request by the owner or custodian of the dog for a hearing pursuant to subsection 2, a hearing shall be held within ten (10) business days after the request for a hearing. Notice of the date, time, and location of the hearing shall be provided by certified mail to the dog's owner or custodian requesting such hearing.

(4.) If the owner or custodian requests a hearing pursuant to subsection b, no impoundment shall take place until conclusion of the hearing, except as authorized in §17.93.56.

17.93.56 Immediate Impoundment.

(1.) A dog declared to be dangerous may be immediately impounded without a pre-impoundment hearing when the animal control officer or his designee determines such immediate impoundment is necessary for the protection of public health or safety. Such immediate impoundment may be ordered for violation of §17.93.52 or when a dog bites a person or domestic animal.

(2.) The owner or custodian of the dog immediately impounded pursuant to subsection 1 shall be notified of the impoundment by certified mail within five (5) business days after the dog's impoundment.

(3.) The notice of impoundment shall inform the owner or custodian of the dog that he may request, in writing, a hearing to contest the impoundment within five (5) business days after the mailing of the notice of impoundment.

(4.) Upon request by the owner or custodian of the dog for a hearing under subsection 3, a hearing shall be held within ten (10) business days after such request. Notice of the date, time, and location of the hearing shall be provided by certified mail to the dog owner requesting the hearing.

17.93.57 Impoundment Hearing.

(1.) If after a hearing on impoundment, the director or his designee finds no violation of §17.93.52, or that the dog has not bitten an individual, the dog shall be returned to its owner or custodian if already impounded, or shall not be impounded as intended.

(2.) Incident to the findings and conclusions made at the impoundment hearing, the director or his designee may impose reasonable restrictions and conditions for the maintenance of the dog to ensure the health and safety of the public and the animal. Such conditions may include, but shall not be limited to:

(a.) Posting of bond or other proof of ability to respond in damages;

(b.) Specific requirements as to size, construction and design of a kennel in which to house the dog;

- (c.) Requirements as to type and method of restraint and/or muzzling of the dog;
- (d.) Photo identification or permanent marking of the dog for purposes of identification; and
- (e.) Payment of reasonable fees to recover the costs incurred by the animal control officer in ensuring compliance with this ordinance.

17.93.58 Destruction.

- (1.) The animal control officer or his designee may order the destruction of a dog that it determines to be extremely dangerous to public health or safety, a dog that has made an extremely vicious attack upon an individual, or a dog declared dangerous whose owner is unable or unwilling to adequately restrain it.
- (2.) The director or his designee shall give written notice by certified mail of his intention to destroy such dog to the owner or custodian of the dog, who may request in writing, within ten (10) business days after delivery of such notice, a hearing to contest the intended destruction.
- (3.) If no hearing is requested pursuant to subsection 2, the dog shall be destroyed pursuant to applicable provisions of law.
- (4.) If a hearing is requested pursuant to subsection 2, such hearing shall be held within ten (10) business days after the request; and the dog shall not be destroyed prior to the conclusion of the hearing.

(5.) The dog owner shall be responsible for payment of all boarding costs and other fees as may be required for the city to humanely and safely keep the animal during any legal proceeding.

17.93.59 Appeal from Order of Humane Destruction. If the director or his designee orders a dangerous dog to be humanely destroyed pursuant to §17.93.58, that decision shall be final unless the dog owner applies to a court of competent jurisdiction for any remedies that may be available within ten (10) business days after receiving notice of the destruction order. If an appeal is timely filed, the director shall suspend the destruction order pending the final determination of the court. The appeal hearing must be a trial de novo and shall be a civil proceeding for the purpose of affirming or reversing the director's destruction order.

17.93.60. Change of Ownership.

(1.) Any owner of a dangerous dog who sells or otherwise transfers ownership, custody or residence of the dog shall, within ten (10) business days after such change of ownership or residence, provide written notification to the animal control officer of the name, address, and telephone number of the new owner. It also shall be the responsibility of the person transferring ownership or custody of the dog to provide written notification of the dog's classification as dangerous to the person receiving the dog. The previous owner shall furnish a copy of such notification to the animal control officer along with written acknowledgment by the new owner of his receipt of such notification. The animal control officer or his designee shall notify the city administrator and police chief of any changes of ownership, custody or residence of the dog within three (3)

business days after receiving the required information from the previous dog owner.

(2.) Any person receiving a dog classified as dangerous must obtain the required permit, tag, and enclosure prior to acquisition of the dog. The new owner shall comply fully with the provisions of this ordinance pertaining to obtaining liability insurance, payment of fees, and maintenance, control, and ownership of a dangerous dog.

17.93.61 Continuation of a Dangerous Dog Declaration. Any dog that has been declared dangerous by any agency or department of this city, another municipality, county, or state shall be subject to the provisions of this ordinance for the remainder of its life. The person owning or having custody of any dog designated as a dangerous dog by any municipality, county, or state government shall notify the animal control officer of the dog's address and conditions of maintenance within ten (10) days of moving the animal into the City of Sutton. The restrictions and conditions of maintenance of any dog declared dangerous by this city, another municipality, county, or state shall remain in force while the dog remains in the city.

(Ord. NO. 367, 6/27/2016)

REFERENCES: TITLE XI – BUSINESS REGULATIONS

§17-110.02 BINGO; TAX. *(Repealed by Ord. No. 134, passed 4/13/99)*

§17-110.03 BINGO; QUARTERLY REPORT. *(Repealed by Ord. No. 134, passed 4/13/99)*

§17-110.04 BINGO; INCORPORATED REGULATION.

All applicable State statutes as they now exist or may hereafter be amended shall be, and will constitute, a part of this Article as if repeated verbatim herein, and violation of any State statute will be a distinct and separate offense against the Municipality as well as against the State. Violators thereof shall be separately prosecuted by the Municipality for each of such offenses, and if convicted, shall be deemed to be guilty of a misdemeanor. *(Ref. 9-201 through 9-265 RS Neb.)*

§17-110.05 FRANCHISE; NATURAL GAS. The Governing Body has granted to the Kansas-Nebraska Natural Gas Company, Inc. the authority to construct, maintain, and operate a gas transmission, and distribution system within the Municipality. Actual details of the agreement, and the present gas rates, charges, and fees are available at the Municipal Clerk's office. *(Ref. 17-528.02 RS Neb.)*

§17-110.06 FRANCHISE; CABLE TV. The Governing Body has granted to Douglas Cable Communications, Inc., the authority to maintain and operate a cable television franchise within the Municipality. Actual details of the agreement, and the present rates, charges, and fees are available at the Municipal Clerk's office.

§17-110.07 OCCUPATION TAX; AMOUNTS. For the purpose of raising revenue an occupation tax is hereby levied on the following businesses:

Retail Liquor Licenses

Class C (On and Off Sale Alcoholic Liquor including Beer and Wine)	\$350.00
Class C (With restrictions)	50.00
Class D (Off Sale Alcoholic Liquor and Beer)	300.00
Class I	50.00
Peddlers and Hawkers	10.00

(Ref. 17-525 RS Neb.)

§17-110.08 Occupation tax; power to levy; exceptions. Second-class cities and villages shall have power to raise revenue by levying and collecting a license tax on any occupation or business within the limits of the city or village, and regulate the same by ordinance. All such taxes shall be uniform in respect to the classes upon which they are imposed; PROVIDED, all scientific and literary lectures and entertainments shall be exempt from such taxation, as well as concerts and other musical entertainments given exclusively by the citizens of the city or village. (Ref. 17-525 RS Neb.)

§17-110.09 Fire insurance companies; occupation tax; levy; collection. The municipal authorities of any city of the first or second class or village, shall have authority, by ordinance, to impose an occupation tax of not more than five dollars per annum on each fire insurance corporation, company or association, doing business in such city or village, for the use, support, and benefit of volunteer fire departments, regularly organized under the laws of the State of

Nebraska regulating the same. The municipal clerk shall collect with diligence the occupation tax so imposed. Upon the receipt of said tax the municipal clerk shall pay over the proceeds thereof to the municipal treasurer who shall credit the same to a fund to be known as special occupation tax fund for benefit of the volunteer fire department. Upon proper claim filed by the chief of the fire department and allowed by the local governing body of the municipality, the municipal treasurer shall pay over the proceeds of the tax in the fund from time to time for the use of the fire department, as hereinbefore provided.

(Ref. 35-106 RS Neb.)

§17-111.48 ALCOHOLIC BEVERAGES; HOURS OF SALE. For the purposes of this section, "on sale" shall be defined as alcoholic beverages sold at retail by the drink for consumption on the premises of the licensed establishment. "Off sale" shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

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

HOURS OF SALE

Alcoholic Liquors (except beer and wine)

Secular Days

Off Sale.....6:00 A.M. to 1:00 A.M.

On Sale.....6:00 A.M. to 1:00 A.M.

Sundays

Off Sale..... 12:00 Noon to 1:00 A.M.

On Sale..... 12:00 Noon to 1:00 A.M.

Beer and Wine

Secular Days

Off Sale.....6:00 A.M. to 1:00 A.M.

On Sale.....6:00 A.M. to 1:00 A.M.

Sundays

Off Sale.....6:00 A.M. to 1:00 A.M.

On Sale.....6:00 A.M. to 1:00 A.M.

Provided that such limitations shall not apply after twelve o'clock (12:00) Noon on Sunday to a licensee which is a nonprofit corporation holding a license pursuant to section 53-124(5)(C) & (H) Reissue Revised Statutes of Nebraska 1943.

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

Nothing in this section shall be construed to prohibit licensed premises from being open for business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section. *(Ref. 53-179 RS Neb.)*

§17-112.01 Peddlers; pawnbrokers; entertainers; licensing and regulation. A second-class city shall have power to license, tax, suppress, regulate and prohibit hawkers, peddlers, pawnbrokers, keepers of ordinaries, theatrical and other exhibitions, shows and other amusements, and to revoke such licenses at pleasure. (Ref. 17-134 RS Neb.)

§17-113.01 Regulate Sexually Oriented Businesses.

SECTION I. - Definitions.

- (1) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, videos, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specifies anatomical areas."
- (2) ADULT BOOKSTORE or ADULT VIDEO STORE means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form or consideration any one or more of the following:
- (A) book, magazines, periodicals or others printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas;" or
- (B) instruments, devices, or paraphernalia that are designed for use in connections with "specified sexual activities."

A principal business purpose exists if materials offered for sale or rental depicting or describing "specified sexual activities" or "specified anatomical area" generate 20% or more of total floor space. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as ADULT BOOKSTORE or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or

"specified anatomical areas."

- (3) ADULT CABARET means a nightclub, bar, restaurant, cafe, or similar commercial establishment that regularly, commonly, habitually, or consistently features:
- (A) persons who appear in a state of nudity or semi-nudity; or
 - (B) live performances that are distinguished or characterized by the exposure or "specified anatomical areas" or by "specified sexual activities"; or
 - (C) films, motions pictures, video cassettes, slides, photographic reproductions, or other image producing devices that are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" or
 - (D) persons who engage in "exotic" or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers
- (4) ADULT MOTEL means a hotel, motel, or similar commercial establishment that:
- (A) offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motions pictures, video cassettes, slides, or other photographic reproductions that are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; or
 - (B) offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or
 - (C) allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than twenty-four (24) hours.
- (5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown that are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- (6) ADULT THEATER means a theater, concert hall, auditorium, or similar

commercial establishment that regularly, commonly, habitually, or consistently features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are distinguished or characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

- (7) DIRECTOR means the chief of police and such employee(s) of the police department as he may designate to perform the duties of the director under this ordinance.
- (8) EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of good to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.
- (9) ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (10) ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
- (11) ESTABLISHMENT means and includes any of the following:
- (A) the opening or commencement of any sexually oriented business as a new business;
 - (B) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business.
 - (C) the additions of any sexually oriented business to any other existing sexually oriented business; or
 - (D) the relocation of any sexually oriented business; or
 - (E) a sexually oriented business or premises on which the sexually oriented business is located.
- (12) LICENSED DAY-CARE CENTER means a facility licensed by the State of Nebraska, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than twelve

- (12) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.
- (13) LICENSEE means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.
- (14) LIVE THEATRICAL PERFORMANCE means a play, skit, opera, ballet, concert, comedy, or musical drama.
- (15) NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.
- (16) NUDITY or a STATE OF NUDITY means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering, or a female breast with less than a full opaque covering of any part of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.
- (17) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (18) PREMISES means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to Section IV of this ordinance;
- (19) SEMI-NUDE OR SEMI-NUDITY means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.
- (20) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration;
- (A) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

- (B) activities between persons of the opposite sex and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

A principal business purpose existed is the services offered are intended to generate business income.

- (21) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.
- (22) SPECIFIED ANATOMICAL AREAS means:
- (A) the human male genitals in a discernibly turgid state, even if fully and opaquely covered;
- (B) less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the tip of the areola.
- (23) SPECIFIED CRIMINAL ACTIVITY means any of the following offenses:
- (A) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of the state, other states, or other countries.
- (B) for which;
- (1) less than two (2) years have elapsed since the since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
- (2) less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction whichever is the later date. If the conviction is of a felony offense;
- (3) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses or

combination of misdemeanor offenses occurring within any twenty-four (24) month period;

(C) the fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

(24) SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

(A) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;

(B) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(C) masturbation, actual or simulated; or

(D) excretory functions as part of or in connection with any of the activities set forth in (A) through (C) above.

(25) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas existed on January 1, 2008.

(26) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

(A) the sale, lease, or sublease of the business;

(B) the transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or

(C) the establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for the transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

SECTION II. Classification.

Sexually oriented business uses are classified as either non-live entertainment, or live entertainment, as follows:

(1) Non-live entertainment shall include:

(a) adult arcades; or

(b) adult bookstores or adult video stores; or

(c) adult motels; or

(d) adult motion picture theaters.

(2) Live entertainment shall include:

- (a) adult theaters; or
- (b) adult cabarets; or
- (c) escort agencies; or
- (d) nude model studios; or
- (e) sexual encounter centers

SECTION III. License Required.

(A) It shall be unlawful:

- (1) for any person to operate a sexually oriented business without a valid sexually oriented business operator's license ("operator's license") issued by the Director pursuant to this ordinance; or
- (2) for any person who operated a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license ("employee license") issued to such employee by the Director pursuant to this ordinance; or
- (3) for any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the Director pursuant to this ordinance.
- (4) It shall be a defense to subsections (2) and (3) of this Section if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment, or the premises.

Violation of any provision within the Subsection shall constitute a misdemeanor.

(B) An application for a sexually oriented business operator's license must be made on a form provided by the City. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions or the ulterior of the premises to an accuracy of plus or minus six inches. Prior to issuance of an operator's license, the premises must be inspected by the health department, building department, and zoning department. Prior inspection by the health department and building department shall be required only when the provisions set forth in Sections XVI and or XVII are applicable. (See *Schultz v. City of Cumberland*, 26 F. Supp. 2d 1128, 1144 (W.D. Wise. 1998)).

- (C) An application for a sexually oriented business employee license must be made on a form provided by the City.
- (D) All applicants for a license must be qualified according to the provisions of this ordinance. The application may request, and the applicant shall provide, such information reasonably necessary (including fingerprints) to enable the City to determine whether the applicant meets the qualifications established under this ordinance. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date that application was deemed completed.
- (E) If a person who wishes to own or operate a sexually oriented business is an individual, he/she must sign the application for an operator's license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10%) percent, or greater interest in the business must sign the application for an operator's license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, all corporate officers and directors must sign the application for an operator's license as applicant.
- (F) Applications for an operator's license, whether original or renewal, must be made to the Director by the intended operator of the enterprise. Applications must be submitted to the office of the Director or the Director's designee during regular working hours. Application forms shall be supplied by the Director. The following information shall be provided on the application form:
- (1) The name, street address (and mailing address if different) of the applicant(s);
 - (2) The applicant's Social Security number and/or his/her state or federally issued tax identification number;
 - (3) The name under which the establishment is to be operated and a general description of the services to be provided;
 - (a) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state 1) the sexually oriented business's fictitious name and 2) submit the required registration documents;
 - (4) Whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in Section I, subsection 23, and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each:

- (5) Whether the applicant has had a previous license under this ordinance or other similar sexually oriented business ordinance from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is or was licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;
- (6) Whether the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses;
- (7) The single classification of license, as found in Section II, for which the applicant is filing;
- (8) The telephone number of the establishment;
- (9) The address and legal description of the tract of land on which the establishment is to be located;
- (10) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;
- (11) If the establishment is not in operation, the expected startup date (which shall be expressed in number of day from the date of issuance of the business license). If the expected startup date is to be more than ten (10) days following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same;
- (12) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirement set forth in Section XVII hereunder.

(G) Each application for an operator's license shall be accompanied by the following;

- (1) Payment of the application fee in full;
- (2) If the establishment is a [State of Nebraska] corporation, a certified copy of the articles of incorporation, together with all amendments thereto;
- (3) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;
- (4) If the establishment is limited partnership formed under the laws of the State of Nebraska, a certified copy of the certificate of limited partnership, together with all amendments thereto;
- (5) If the establishment is a foreign limited partnership, a certified copy of the certificate or limited partnership and the qualification documents, together with all amendments thereto;
- (6) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the rescored deed.
- (7) If the persons identified as the fee owner(s) of the tract of land in item (6) is not also the owner of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease options contract or other document(s) evidencing the legally enforceable right of the owner(s) or proposed owner(s) of the sexually oriented business to have or obtain the use and possession of the tract or portion thereof that is to be used for the sexually oriented business;
- (8) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 500 feet of the property to be certified; and the property lines of any established religious institution/synagogue, school public park or recreation area within 500 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted;
- (9) Any of items (2) through (8) above shall not be required for a renewal application if the applicant states that the documents previously furnished to the Director with the original application or previous renewals thereof remain correct and current.

- (H) Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the Director by the person to who the employee license shall issue. Each application for an employee license shall be accompanied by payment of the application fee in full. Application forms shall be supplied by the Director. Applications must be submitted to the office of the Director or the Director's designee during regular working hours. Each applicant shall be required to give the following information on the application form;
- (1) The applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases;
 - (2) Age, and date and place of birth;
 - (3) Height, weight, hair color, and eye color;
 - (4) Present residence address and telephone number;
 - (5) Present business address and telephone number;
 - (6) Date, issuing state, and number of photo driver's license, or other state issued identification card information;
 - (7) Social Security Number; and
 - (8) Proof that the individual is a least eighteen (18) years old.

The personal information provided in this subsection shall be confidential, and shall not be disclosed to the public except to the extent required by the state or federal law. (See *N.W. Enterprises v. City of Houston*, 27 F. Supp. 2d 754, 842-43 (S.D. Tex. 1998); *Schultz v. City of Cumberland*, 26F.Supp 2d 1128 (W.D. Wise. 1998)).

- (I) Attached to the application form for any license under this ordinance shall be the following:
- (1) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.
 - (2) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing or the application, including whether such applicant, in this or any other city, county, state, or country, has ever had any license, permit, or authorization to do business denied, revoked, or suspended, or had any

professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and describe in full the reason(s) for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

- (3) A statement whether the applicant has, within the past five (5) years, been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in Section I, subsection 23 and, if so, the "specified criminal activity": involved, the date, place and jurisdiction of each. (*See N. W. Enterprises v. City of Houston*, 27F. Supp. 2d754,841 (S.D.Tex. 1998)).
- (J) Every application for a license under this ordinance shall contain a statement under oath that:
- (1) The applicant has personal knowledge of the information contained in the application, and that the information contained therein and furnished therewith is true and correct; and,
 - (2) The applicant has read the provisions of this article
- (K) A separate application and operator's license shall be required for each sexually oriented business classification as set forth in Section n.
- (L) The fact that a person possesses other typed of state or city permits and/or licenses does not exempt him/her from the requirement of obtaining a sexually oriented business operator or employee license.

SECTION IV. Issuance of License.

- (A) Upon the filing of an application for a sexually oriented business employee license, the Director shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of the complete application. After the investigation, the Director shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following finding is true:
- (1) The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
 - (2) The applicant is under the age of eighteen (18) years;

- (3) The applicant has been convicted of a "specified criminal activity" as defined in Section I, subsection (23) of this ordinance;
- (4) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule, or regulation, or prohibited by a particular provision of this ordinance;
or
- (5) The applicant has had a sexually oriented business employee license revoked by the City within two (2) years of the date of the current application.

If the sexually oriented business employee license is denied, the temporary license previously issued is immediately rendered null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as forth in subsection (I) of this Section.

- (B) A license issued pursuant to subsection (A) of this Section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. While engaged hi employment or performing service on the sexually oriented business premises, an employee shall, at all times, possess the license in such manner as to be available for the immediate inspection upon lawful request.
- (C) A license issued pursuant to subsection (A) of this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the Director that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be ground to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section V. Non-renewal of a license shall be subject to appeal as sent fourth in subsection (I) of this Section.
- (D) If application is made for a sexually oriented business operator's license, the Director shall approve or deny issuance of the license within thirty (30) days of receipt of the complete application. The Director shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
 - (1) An applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
 - (2) An applicant is under the age of eighteen (18) years;

- (3) An applicant has been denied a license by the City to operate a sexually oriented business within the preceding twelve (12) months, or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;
- (4) An applicant is overdue in payment to the City for taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to the sexually oriented business for which license is sought, or the property on which the sexually oriented business is located or will be located;
- (5) An applicant has been convicted of a "specified criminal activity" as defined in Section I, subsection 23;
- (6) The premises to be used for the sexually oriented business have not been approved by the health department, building department, and zoning department as being in compliance with applicable laws and ordinances, if such approval is required under other sections of this ordinance;
- (7) The license fee required under this ordinance has not been paid;
- (8) An applicant of the proposed establishment is in violation of or is not in compliance with one or more of the provisions of this ordinance.
- (E) A license issued pursuant to subsection (D) of this Section, if granted shall state on its face the name of the person or person to whom it is granted, the expiration date, the address of the sexually oriented business, and the Section II classification for which the license is issued. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.
- (F) If so required under other sections of this ordinance, the health department, building department, and zoning department shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the completed application by the Director. The certification shall be promptly presented to the Director. Failure of an appropriate department to timely certify its inspection shall not be grounds for refusing to issue a license within the mandatory time period prescribed in subsection D. (*See Nightclubs, Inc. v. City of Paducah*, 2000 WL 122184 at 5 (6th Cir.2000); *Baby Tarn v. City of Las Vegas*, 199F.3d 1111,1114-15 (9th Cir.2000)). In the event the Director fails to render a decision on the application within the time specified herein, the operator shall be permitted to commence operation of the business. *Redner v. Dean*, 29F.3d 1495, 1500-01 (11th Or. 1994), *cert. denied*, 514 U.S. 1066(1995).
- (G) A sexually oriented business license shall issue for only one classification, as set forth in Section II.

- (H) In the event that the Director determines that an applicant is not eligible for a sexually oriented operator's license, the applicant shall be given notice in writing of the reasons for the denial within thirty (30) days of the receipt of the completed application by the Director, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10) days in order to make modifications necessary to comply with this ordinance.
- (I) An applicant may appeal the decision of the Director regarding a denial to the City Council by filing a written notice of appeal with the city secretary within ten (10) days after service of notice upon the applicant of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the ground for such appeal and all arguments in support thereof. The Director may, within fifteen (15) days of service upon him of the applicant's memorandum, submit a responsive memorandum to the City Council. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the City Council shall vote either to uphold or overrule the Director's decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the city secretary received the notice of appeal. The *status quo* immediately prior to denial of the license shall be maintained during the pendency of the appeal. (*See Nightclubs, Inc., v. City of Paducah*, 2000 WL 122184 at 6 (6th Cir.2000); *4805 Convoy, Inc., v. City of San Diego* 183 F.3d 108,1114(9th Cir. 1999)). Judicial review of a denial by the Director and City Council may be made pursuant to Section DC of this ordinance. The *status quo* shall continue to be maintained during the pendency of judicial review.
- (J) A license issued pursuant to subsection (D) of this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the Director that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during this existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) day of the completed application. The renewal of a license shall be subject to the fee as set forth in Section V.

SECTION V. Fees.

The annual fee for a sexually oriented business operator's license, whether new or renewal, is \$500.00 (Five Hundred Dollars). The annual fee for a sexually oriented business employee license, whether new or renewal, is \$50.00 (Fifty dollars). These fees are to be used to pay for the cost of the administration and enforcement of this ordinance.

SECTION VI. Inspection.

- (A) The City shall regularly inspect the premises of the sexually oriented business in order to ensure compliance with the provisions of this ordinance. An applicant or licensee shall permit representatives of the Police Department and/or Health Department to inspect the premises at any time the establishment is open for business. Such inspection shall be limited to visual assessment of the activities conducted in areas to which patrons have access or are allowed access; to requests for inspection of the licenses required under this ordinance; and to requests for identification of those individuals who reasonably appear to be under the age of 18. (*See New York v. Burger*, 482 U.S.691, 02-03, 711-12 (1987); *Deja vu of Cincinnati, L.L.C. v. Union Twp. Bd. Of Trs.*, 326 F.3d 791, 804-06 (6th Cir. 2003) (holding that inspections must be "carefully limited in time, place, and scope: in order to withstand constitutional scrutiny)).
- (B) When the Director denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. Notwithstanding the provisions of this section, in the event a licensee appeals the non-renewal of a license, the *status quo* immediately prior to non-renewal shall be maintained throughout the pendency of the appeal, up to and including judicial review on the merits as set forth in Section IX.

SECTION VII. Suspension.

The Director shall suspend a license for a period not to exceed thirty (30) days if he determines that licensee or an employee of licensee has:

- (1) violated or is not in compliance with any section of this ordinance;
- (2) operated or performed services in a sexually oriented business while intoxicated by the use of alcoholic beverages or controlled substances;
- (3) refused to allow prompt inspection of the sexually oriented business premises as authorized by this ordinance;
- (4) with knowledge, permitted gambling by any person on the sexually oriented business premises.

A licensee may appeal the revocation of a license to the City Council in accordance with the procedure set forth in Section II(I). Notwithstanding any other provisions of this section, in the event a licensee appeals the suspension of a license, the status quo immediately prior to suspension shall be maintained throughout the pendency of the appeal, up to and including judicial review on the merits as set forth in Section IX. (*See Nightclubs, Inc., v. City of Paducah*, 2000 WL 122184 at 5 (6th Cir.2000); *4805 Convoy, Inc., v. City of San Diego*, 183 F.3d 1108,114 (9th Cir. 1999)).

SECTION VIII. Revocation.

- (A) The Director shall revoke a license if a cause of suspension in Section VII occurs and the license has been suspended within the proceeding twelve (12) months.
- (B) The Director shall revoke a license if he determines that:
 - (1) a licensee gave materially false or misleading information in the material submitted during the application process;
 - (2) a licensee was convicted of a "specified criminal activity" on a charge that was pending prior to the issuance of the license;
 - (3) a licensee has, with knowledge, permitted the possession, use, or sale of controlled substances on the premises;
 - (4) a licensee has, with knowledge, permitted the sale, use, or consumption of alcoholic beverages on the premises;
 - (5) a licensee has, with knowledge, permitted prostitution on the premises;
 - (6) a licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (7) a licensee has, with knowledge, permitted any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises;
 - (8) a licensee is delinquent in payment to the City or State for any taxes, fees, fines, or penalties relating to the sexually oriented business or the premises thereon;
 - (9) a licensee has, with knowledge, permitted a person under eighteen (18) years of age to enter or remain in the establishment; or
 - (10) a licensee has attempted to sell his business license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a non-licensee of the establishment;
 - (11) a licensee has, with knowledge, permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business.

- (C) When the Director revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a license for one (1) year from the date revocation became effective. A licensee may appeal the revocation of a license to the City Council in accordance with the procedure set forth in Section IV(I). Notwithstanding any other provisions of the section, in the event the licensee appeals the revocation of a license, the status quo immediately prior to revocation shall be maintained throughout the pendency of the appeal up to and including judicial review on the merits as set forth in Section DC (*See Nightclubs, Inc., v. City of Paducah*, 2000 WL 122184 at 5(6th Cir.2000); *4805 Convoy, Inc., v. City of San Diego*, 183 F.3d 1108, 1114(9th Cir.1999)).

SECTION IX. Judicial Review.

Within fourteen (14) days of denial of an initial or renewal application by the Director and City Council, or suspension or revocation of a license by the director, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. Upon notification by summons of the filing of a complaint seeking judicial review of the City's administrative action, the City shall transmit the record of the administrative action to the court no later than five (5) business days after receipt of said summons, and shall answer the complaint no later than ten (10) days after receipt of the summons. In addition, the City shall submit its response brief within fourteen (14) days of receipt of the petitioner's brief. The administrative actions shall then be promptly reviewed by the court. (*See Steakhouse, Inc. v. City of Raleigh*, 166 F.3d 634, 641 (4th Cir.1999)).

SECTION X. No Transfer of License.

- (A) A licensee shall not transfer his/her license to another, nor shall a licensee operate sexually oriented business under the authority of a license at any place other than the address designated hi the application and set forth in the operator's license.
- (B) An operator's license shall not be transferable from one location to another. (*See, e.g., Peterson v. South Salt Lake City*, 987 P.2d 57,60 (Utah. 1999)).

SECTION XI. Location Restrictions.

Sexually oriented businesses shall be permitted in any commercial district provided that:

- (A) the sexually oriented business may not be operated within:
- (1) 500 feet of a church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;

- (2) 500 feet of a public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education school, junior colleges, and universities; school includes the school ground, but does not include the facilities used primarily for another purpose and only incidentally as a school;
 - (3) 500 feet of a public park or recreational area which has been designated for a park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, skating rink, pedestrian/bicycle paths, wilderness areas, or other similar public land within the village which is under the control, operation, or management of the village park and recreation authorities;
 - (4) 100 feet of the property line of a lot zoned for residential use and devoted to a residential use as defined in the zoning code; or
 - (5) 1,500 feet of another sexually oriented business.
- (B) A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business that is classified in accordance with Section III.
- (C) For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structure or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot, or licensed day care center.
- (D) For purposes of subsection (C) of this section, the distance between any two sexually oriented business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

SECTION XII. Non-Conforming Uses: Amortization.

- (A) Any business lawfully operating on the effective date of this ordinance that is in violation of the location or structural configuration requirements of this ordinance shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be

increased, enlarged, extended or altered except that the use may be changed to by conforming use. If two or more sexually oriented business are within 1,500 feet of one another and otherwise in a permissible locations, the sexually oriented business that was first established and continually operated at a particular location is the conforming use and the later-established business(es) is non-conforming.

- (B) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park within 500 feet of the sexually oriented business, or residential district within 100 feet of the sexually oriented business. This provision applies only to the renewal of a valid business license, and does not apply when an application for a business license is submitted after an operator's license has expired or has been revoked.

SECTION XIII. Additional Regulations for Adult Motels.

- (A) Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this chapter.
- (B) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have a sexually oriented business license rents or sub rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or sub rents the same sleeping room again.
- (C) For purposes of subsection (B) of this section, the terms "rent" or "sub rent" mean the act of permitting a room to be occupied for any form of consideration.
- (D) Violation of subsection (B) of this Section shall constitute a misdemeanor.

SECTION XIV. Additional Regulations for Escort Agencies.

- (A) An escort agency shall not employ any person under the age of 18 years.
- (B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.
- (D) Violation of this Section shall constitute a misdemeanor.

SECTION XV. Additional Regulations for Nude Model Studios

- (A) A nude model studio shall not employ any person under the age of 18 years.
- (B) A person under the age of 18 years commits a misdemeanor if the person appears seminude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to the public view or visible by any other person.
- (C) A person commits a misdemeanor if the person appears in a state of nudity, or with knowledge, allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.
- (D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

SECTION XVI. Additional Regulations Concerning Public Nudity

Section 1. Article 134.02 of the Codified Ordinances of the City of Sutton (Public Indecency) is hereby repealed and replaced in its entirety by a new Article 134.02 entitled Public Indecency, to read as follows:

- 1. A person who knowingly or intentionally, in a public place:
 - a. engages in sexual intercourse
 - b. engages in deviate sexual intercourse as defined by the Nebraska Crimes Code
 - c. appears in a state of nudity, or
 - d. fondles the genitals of himself, herself or another person commits Public Indecency, a Summary Offense.
- 2. "Nudity" means the showing of the human male or female genital, pubic area or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola.
- 3. "Public Place" includes all outdoor places owned by or open to the general public, and all buildings and enclosed places owned by or open to the general public, including such places of entertainment, taverns, restaurants, clubs, theaters, dance halls, banquet halls, party rooms or halls limited to specific

members, restricted to adults or to patrons invited to attend, whether or not an admission charge is levied.

4. The prohibition set forth in subsection 1 (c) shall not apply to:

- a. Any child under ten (10) years of age; or
- b. Any individual exposing a breast in the process of breastfeeding an infant under two (2) years of age.

5. In addition to the specific penalties provided in this ordinance, it is hereby declared that any building, portion of a building, or enclosed place regularly used for the prohibited display of public nudity is a public nuisance, subjecting the owner, proprietor or other operator thereof to any and all actions authorized by the Commonwealth of Nebraska for the abatement of public nuisances, including, but not limited to the procedures set forth in Article 91.21 of the Codified Ordinances.

6. CONSTRUCTION AND SEVERABILITY - It is the intention of the City of Sutton that the provisions of this ordinance be construed, enforced and interpreted in such a manner as will cause the least possible infringement of the constitutional rights of free speech, free expression, due process, equal protection or other fundamental rights consistent with the purposes of this ordinance. Should a court of competent jurisdiction determine that any part of this ordinance, or any application or enforcement of it is excessively restrictive of such rights or liberties, then such portion of the ordinance, or specific application of the ordinance, shall be severed from the remainder, which shall continue in full force and effect.

7. PENALTY - Whoever violates this ordinance, either by commission of a public indecency, or by the promotion or maintenance of public indecency as property owner, proprietor or manager of a business, shall be guilty of a summary offense, and, upon conviction, shall be sentenced to pay a fine of not more than \$1,000, or be imprisoned for not more than 90 days, or both. Each day such violation continues is a separate offense.

- (A) It shall be a misdemeanor for a person who, with knowledge and intent, appears in person in a state of nudity in a sexually oriented business.
- (B) It shall be a misdemeanor for a person who, with knowledge and intent, appears in person in a semi-nude condition on the sexually oriented business premises, unless the person is an employee who, while semi-nude, is at least ten (10) feet from any patron or customer and on a stage at least two (2) feet from a floor.
- (C) It shall be a misdemeanor for an employee, while semi-nude on the sexually oriented business premises, to solicit any pay or gratuity from any patron or customer, or for any patron or customer to pay

or give any gratuity to any employee, while said employee is semi-nude.

(D) It shall be a misdemeanor for an employee, while semi-nude, to touch a patron or the clothing of a patron to touch a semi-nude employee or the clothing of a semi-nude employee, while said employee is on the premises of the sexually oriented business.

SECTION XVII. Regulations Pertaining to Exhibition of Sexually Explicit Films and Videos.

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction, that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since said diagram was prepared.
2. The application shall be sworn to be true and correct by the applicant.
3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Director or his designee.
4. It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from manager's station of the entire area of the premises to which any patron is permitted access for any purpose,

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excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

6. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (5) of this section remains unobstructed at all times. No doors, walls, partitions, curtains, merchandise, display racks, or other objects(s) shall obstruct from view of the manager's station any portion of the premises to which patrons have access. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the application filed pursuant to subsection (1) of this section.
7. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candle as measured at the floor level.
8. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
9. No viewing room or booth may be occupied by more than one person at any time.
10. No opening of any kind shall exist between viewing rooms or booths.
11. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no more than one person at a time occupies a viewing booths or rooms, and to ensure that no person attempts to make an opening of any kind between the viewing booths or rooms.
12. The operator of the sexually oriented business shall, each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.
13. The operator of the sexually oriented business shall cause all floor coverings in the viewing booths to be nonporous, easily cleanable

surfaces, with no rugs or carpeting.

14. The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches to the floor.
- (B) A person having a duty under Subsections (1) through (14) of this Section commits a misdemeanor if he/she, with knowledge, fails to fulfill that duty.

SECTION XVIII. Exterior Portions of Sexually Oriented Businesses.

- (A) It shall be unlawful for any owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.
- (B) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this ordinance.
- (C) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to sexually oriented business if the following conditions are met:
- (1) The establishment is a part of a commercial multi-unit center; and
- (2) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.
- (D) Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.
- (E) A violation of any provision of this Section shall constitute a misdemeanor.

SECTION XIX. Signage.

- (A) Notwithstanding any other city ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the (1) primary sign and one (1) secondary sign, as provided herein.
- (B) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:
 - 1. not contain any flashing lights;
 - 2. be flat plane, rectangular in shape
 - 3. not exceed seventy-five (75) square feet in area; and
 - 4. not exceed ten (10) feet in height or ten (10) feet in length.
- (C) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.
- (D) Each letter forming a work on a primary sign shall be of solid color, and each such letter shall be the same print-type size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.
- (E) Secondary signs shall have only (1) display surface. Such display surface shall:
 - 1. be a flat plane, rectangular in shape;
 - 2. not exceed twenty (20) square feet in area;
 - 3. not exceed five (5) feet in height and four (4) feet in width; and
 - 4. be affixed or attached to any wall or door of the enterprise.
- (F) The provisions of item (1) of subsection (B) and subsection (C) and (D) shall also apply to secondary signs.
- (G) Violation of any provisions of this Section shall constitute a misdemeanor.

SECTION XX. Sale, Use, or Consumption of Alcoholic Beverages Prohibited.

- (A) The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.
- (B) Any violation of this Section shall constitute a misdemeanor.

SECTION XXI. Person Younger Than Eighteen Prohibited From Entry; Attendant Required.

- (A) It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.
- (B) It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented business's regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:
 - 1. a valid operator's, commercial operator's, or chauffeur's driver's license; or
 - 2. a valid personal identification certificate issued by the State of Nebraska reflecting that such person is eighteen (18) years of age or older.
- (C) Violation of this Section shall constitute a misdemeanor.

SECTION XXII. Massages or Baths Administered by Person of Opposite Sex.

It shall be unlawful for any sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex. Violation of this Section shall constitute a misdemeanor.

SECTION XXIII. Hours of Operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of ten o'clock (10:00) P.M. and eleven o'clock (11:00) A.M. on weekdays and Saturdays. No sexually oriented business shall open for business or remain open for business on Sunday or any legal holiday recognized by the State of Nebraska. (An equal protection claim may arise unless all types of SOB's are treated similarly.

SECTION XXIV. Exemptions.

- (A) It is a defense to prosecution under this ordinance that a person appearing in a state of nudity did so in a modeling class operated:
 - 1. by a proprietary school, licensed by the State of Nebraska, a college, junior college, or university supported entirely or partly by taxation.

2. by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

(B) Notwithstanding any other provision hi this ordinance, movies rated G, PG, PG-13, or R, by the Motion Picture Association of America (MPAA), or live theatrical performances with serious artistic, social, or political value, that depict or describe specified anatomical areas or specified sexual activities, are expressly exempted from regulation under this ordinance.

SECTION XXV. Notices.

(A) Any notice required or permitted to be given by the Director or any other city office, division, department or other agency under this ordinance to any applicant, operator or owner of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the Director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the Director or his designee shall cause it to be posted at the principal entrance to the establishment.

(B) Any notice required or permitted to be given to the Director by any person under this ordinance shall not be deemed given until and unless it is received in the office of the Director.

(C) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the Director in writing of any change or residence or mailing address.

SECTION XXVI. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid operator's license, or in violation of Section XIII of this ordinance, is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation. (Adopted by Ord. NO 278- 1/8/2008)

§17-114.01 LOTTERY; SALES OUTLET LOCATIONS; APPROVAL REQUIRED; QUALIFICATION STANDARDS.

- (A) The lottery operator with whom the Sutton City Council contracts to conduct its lottery shall not operate the lottery as a sales outlet location other than the location of the lottery operator without prior approval of the sales outlet location by the Sutton City Council. The Sutton City Council shall approve or disapprove each sales outlet location and individual, sole proprietorship, partnership, limited liability company, or corporation which desires to conduct the lottery at its sales outlet location solely on the basis of the qualification standards prescribed in division (B) of this section.

- (B) Any individual, sole proprietorship, partnership, limited liability company, or corporation which seeks to have its location approved as an authorized sales outlet location for conducting a lottery shall:
 1. Obtain a retail liquor license for consumption on the premises pursuant to Neb. RS Chapter 53, Article 1;
 2. Not have been convicted of, forfeited bond upon a charge of, or pleaded guilty to forgery, larceny; extortion, conspiracy to defraud, willful failure to make required payments or reports to a governmental agency at any level, filing false reports with any such agency, or any similar offense or offenses or any crime, whether felony or misdemeanor, involving gambling activity or moral turpitude;
 3. Not have had a gaming license revoked or canceled under the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska County and City Lottery Act; and
 4. Be fit, willing, and able to properly provide the service proposed in conformance with all provisions and requirements of the Nebraska County and City Lottery Act and rules and regulations adopted and promulgated pursuant to the act.

- (C) If the person seeking to have its location approved as an authorized sales outlet location is a partnership, limited liability company, or corporation, the qualification standards shall apply to every partner of such partnership, every member of such limited liability company, every officer of such corporation, and every stockholder owning more than ten percent of the stock of such corporation.

- (D) The City of Sutton shall notify the Department of Revue of all approved lottery locations within 30 days of approval. (Neb. RS 9-642.01)

SECTION 2. Any other ordinance or section passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions is repealed.

SECTION 3. This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law. (Adopted by Ordinance NO. 333 5/14/2013)

§114.02 LOTTERY; PARTICIPATION; RESTRICTIONS.

SECTION 1. No person under 19 years of age shall play or participate in any way in the lottery established and conducted by the municipality.

SECTION 2. No owner or officer of a lottery operator with whom the municipality contracts to conduct its lottery shall play the lottery conducted by the municipality. No employee or agent of the municipality, lottery operator, or authorized sales outlet location shall play the lottery of the municipality for which he or she performs work during such time as he or she is actually working at such lottery while on duty.

SECTION 3. Nothing shall prohibit the following persons from playing the lottery conducted by the municipality as long as such person is 19 years of age or older:

- a) Any Member of the governing Body, a municipal official, or the immediate family member or official; or
- b) An owner or officer of an authorized sales outlet location for the municipality.

SECTION 4. No person, or employee or agent of any person or municipality, shall knowingly permit an individual under 19 years of age to play or participate in any way in the lottery conducted by the municipality.

SECTION 5. For purposes of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

**IMMEDIATE FAMILY OF A MEMBER OF THE GOVERNING BODY OR A
MUNICIPAL OFFICIAL.**

- a) A person who is related to the member or official by blood, marriage, or adoption and resides in the same household; or
- b) A person who is claimed by the member or official, or the spouse of the member or official, as a dependent for federal income tax purposes. (Adopted by Ordinance NO. 334 5/14/2013)

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REFERENCES: TITLE XIII – GENERAL OFFENSES

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REFERENCES: TITLE XV – LAND USAGE**§17-150.01 BUILDING REGULATIONS; BACKFLOW/BACKSIPHONAGE PREVENTION; INCORPORATED BY REFERENCE.**

In order to protect the public potable water supply of the City of Sutton from contamination or pollution, the Governing Body has adopted backflow/backsiphonage prevention regulations through enactment of Ordinance No. 336, passed the tenth (10th) day of November, 1992. Such regulations are incorporated herein by reference, and available for public inspection during reasonable hours in the office of the Municipal Clerk.

§17-150.02 BUILDING REGULATIONS; PROHIBITION OF LEAD PIPES, SOLDER, AND FLUX. Any pipe, solders or flux used in the installation or repair of any residential or non-residential facility which is connected to the public water supply system shall be lead free.

For purposes of this section, lead free shall mean:

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

(Ref. 71-5301 RS Neb.)

§17-150.03 LIQUEFIED PETROLEUM GAS CODE; ADOPTED BY REFERENCE. (1) The NFPA 58, Liquefied Petroleum Gas Code, 1998 Edition, published in book form by the National Fire Protection Association, is hereby adopted by reference as if fully set forth herein, as the Liquefied Petroleum Gas Code of the City.

(2) Three (3) copies of the NFPA 58 Liquefied Petroleum Gas Code shall be kept on file in the office of the City Clerk for public use and inspection.

(3) Wherever the words "name of the Jurisdiction" appear in the NFPA 58 Liquefied Petroleum Gas Code they shall mean the City of Sutton, Nebraska.

(4) Any person violating the NFPA 58 Liquefied Petroleum Gas Code herein adopted shall be subject to the penalty provided for violation of this Code. *(Ord. No. 216, 5/11/04)*

§17-150.05 COMPREHENSIVE DEVELOPMENT PLAN; INCORPORATED BY REFERENCE.

In order to accommodate anticipated long-range future growth, the Comprehensive Development Plan for the City of Sutton, Nebraska, as prepared by the City of Sutton, and adopted by Ordinance No. 24, November 1994, including any amendments thereto as may be made therein from time to time, are hereby incorporated by reference herein as if set out in full. One (1) copy of the adopted plan shall be kept on file with the Municipal Clerk and available for public inspection during regular office hours. *(Ref. 18-132, 19-922 RS Neb.) (Ord. No. 24, 11/8/94)*

§17-150.06 ZONING REGULATIONS; INCORPORATED BY REFERENCE.

For the purpose of setting minimum standards to promote the public health, safety, morals, convenience, order, prosperity, and general welfare of the community, and to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public improvements, the Zoning Regulations for the City of Sutton, as prepared by the City of Sutton, and adopted by Ordinance No. 22, November 1994, including any amendments thereto as may be made therein from time to time, are hereby incorporated by reference herein as if set out in full. One (1) copy of the Zoning Regulations shall be kept with the Municipal Clerk and available for public inspection during regular office hours. *(Ref. 18-132, 19-922 RS Neb.) (Ord. No. 22, 11/8/94)*

§17-150.07 SUBDIVISION REGULATIONS; INCORPORATED BY REFERENCE. To provide for harmonious development of the Municipality and its environs; for the integration of new subdivision streets with other existing or planned streets or with other features of the Comprehensive Plan; for adequate open spaces for traffic, recreation, light and air; for the distribution of population and traffic in a manner which will tend to create conditions favorable to health, safety, convenience, or prosperity; to insure conformance of subdivision plans with the capital improvement program of the Municipality; and, to secure equitable handling of all subdivision plats by providing uniform procedures and standards for observance by subdividers and the Planning Commission and Governing Body, the Subdivision Regulations for the City of Sutton, Nebraska, as prepared by the City of Sutton, and adopted by Ordinance No. 23, November 1994, including any amendments thereto as may be made therein from time to time, are hereby incorporated by reference herein as if set out in full. One (1) copy of the Subdivision Regulations shall be kept on file with the Municipal Clerk and available for public inspection during regular office hours. (*Ref. 18-132, 19-922 RS Neb.*) (*Ord. No. 23, 11/8/94*)

§17-150.08 SUBDIVISION REGULATIONS; APPROVAL OF FURTHER SUBDIVISION. The City Administrator shall have authority to approve further subdivision of existing lots and blocks whenever all required public improvements have been installed, no new dedication of public rights-of-way or easements is involved, and such subdivision complies with the ordinance requirements concerning minimum areas and dimensions of such lots and blocks. (*Ref. 19-916 RS Neb.*) (*Ord. No. 53, 5/14/96*)

§17-150.09 VIOLATION; PENALTY. (1) Any person, or any person's agent or servant, who violates any of the provisions of this chapter, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars (\$500.00) A new violation shall be deemed to have been

committed every twenty-four (24) hours of failure to comply with the provisions of this chapter.

(2) (a) Whenever a nuisance exists as defined in this chapter, the Municipality may proceed by a suit in equity to enjoin, abate, and remove the same in the manner provided by law.

(b) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (*Ref. 17-505, 18-1720, 18-1722 RS Neb.*) (*Amended by Ord. No. 156, 5/9/00*)

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REFERENCES: TITLE XVI – MUNICIPAL PLANNING

§17-160.01 2017 SUTTON COMPREHENSIVE PLAN; INCORPORATED BY REFERENCE. In order to accommodate anticipated long-range future growth, the 2017 Sutton Comprehensive Plan for the City of Sutton, is hereby adopted and shall constitute the City of Sutton comprehensive development plan, including any amendments thereto as may be made therein from time to time, are hereby incorporated by reference herein as if set out in full. One (1) copy of the 2017 Comprehensive Plan shall be kept on file with the Municipal Clerk and available for public inspection during regular office hours. (Ref. §18-132, §19-903, §19-922 RS Neb.)

That Ordinance NO. 24 and the 2004 Sutton Comprehensive plan, and any other ordinance or section passed and approved prior to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby repealed. (Ord. No. 376, 10/9/2017)

