

CHAPTER 32: DEPARTMENTS, BOARDS, AND COMMISSIONS

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BOARDS AND COMMISSIONS**§ 32.01 LIBRARY BOARD.**

(A) When the City Council has decided by ordinance to establish and maintain a public library and reading room under Neb. RS 51-201 through 51-219, and except as otherwise provided by the Council pursuant to Neb. RS 51-202, the Library Board shall have five appointed members, who shall be residents of the city and who shall serve terms of four years. The Board members shall be appointed by a majority vote of the members of the City Council. Neither the Mayor nor any member of the City Council shall be a member of the Library Board. The terms of members serving on the effective date of a change in the number of members shall not be shortened, and any successors to those members shall be appointed as the terms of those members expire. In cases of vacancies by resignation, removal, or otherwise, the City Council shall fill the vacancy for the unexpired term. No member shall receive any pay or compensation for any services rendered as a member of the Library Board.

(Neb. RS 51-202)

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

(Neb. RS 51-204)

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

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

Cross-reference:

Library provisions, see Chapter 90

§ 32.02 PLANNING COMMISSION.

(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 five, seven, or nine 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, one 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. The term of each regular member shall be three years, except that one-third or fewer of the regular members of the first Commission to be so appointed shall serve for terms of one year, one-third or fewer for terms of two years, and the remaining members for terms of three years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before the 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.

(2) The Mayor may, with the approval of a majority vote of the elected members of the Council, appoint one alternate member to the Planning Commission. The alternate member shall serve without compensation. The term of the alternate member shall be three years, and he or she shall hold office until his or her successor is appointed and approved. The alternate member may be removed from office in the same manner as a regular member. If the alternate member position becomes vacant other than through the expiration of the term, the vacancy shall be filled for the unexpired portion of the term by the Mayor with the approval of a majority vote of the elected members of the Council. The alternate member may attend any meeting and may serve as a voting and participating member of the Commission at any time when less than the full number of regular Commission members is present and capable of voting.

(3) A regular or alternate member of the Planning Commission may hold any other municipal office except:

(a) Mayor;

(b) A member of the City Council;

(c) A member of any community redevelopment authority or limited community redevelopment authority created under Neb. RS 18-2102.01; or

(d) A member of any citizen advisory review committee created under Neb. RS 18-2715.
(Neb. RS 19-926)

(B) The Commission shall elect its Chairperson from its members and create and fill such other of its offices as it may determine. The term of the Chairperson shall be one year, and he or she shall be

eligible for reelection. The Commission shall hold at least one regular meeting in each calendar quarter, except as provided in this section. The City Council may require the Commission to meet more frequently, and the Chairperson of the Commission may call for a meeting when necessary to deal with business pending before the Commission. If no business is pending before the Commission, the Chairperson may cancel a quarterly meeting, but not more than three quarterly meetings may be cancelled per calendar year. The Commission shall adopt rules and regulations for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which shall be a public record.

(Neb. RS 19-927)

(C) No member of the Commission shall serve in the capacity of both the Chairperson and Secretary of the Commission. The Secretary shall keep the full and correct minutes and records of all meetings and file them with the City Clerk, where they shall be available for public inspection during office hours.

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

(Neb. RS 19-928)

(E) (1) (a) Except as provided in Neb. RS 19-930 through 19-933, the Planning Commission shall:

1. Make and adopt plans for the physical development of the city, including any areas outside its boundaries which, in the Commission's judgment, bear relation to the planning of such city, and including a comprehensive development plan as defined by Neb. RS 19-903;

2. Prepare and adopt such implemental means as a capital improvement program, subdivision regulations, building codes, and a zoning ordinance in cooperation with other interested city departments; and

3. Consult with and advise public officials and agencies, public utilities, civic organizations, educational institutions, and citizens with relation to the promulgation and implementation of the Comprehensive Development Plan and its implemental programs. The Commission may delegate authority to any such group to conduct studies and make surveys for the Commission, make preliminary reports on its findings, and hold public hearings before submitting its final reports.

(b) The City Council shall not take final action on matters relating to the Comprehensive Development Plan, capital improvements, building codes, subdivision development, the annexation of territory, or zoning until it has received the recommendation of the Planning Commission, provided that the Planning Commission shall make its recommendation so that it is received by the City Council within

60 days after the Commission begins consideration of a matter, or within such other number of days as the City Council has set by ordinance.

(c) A recommendation from the Planning Commission shall not be required for the 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 if the City Council has designated, by ordinance, an agent pursuant to Neb. RS 19-916.

(2) (a) The Commission may, with the consent of the City Council, in its own name;

1. Make and enter into contracts with public or private bodies;
2. Receive contributions, bequests, gifts, or grant funds from public/private sources;
3. Expend the funds appropriated to it by the city;
4. Employ agents and employees; and
5. Acquire, hold, and dispose of property.

(b) The Commission may on its own authority make arrangements consistent with its program, conduct or sponsor special studies or planning work for any public body or appropriate agency, receive grants, remuneration, or reimbursement for such studies or work, and at its public hearings, summon witnesses, administer oaths, and compel the giving of testimony.

(3) (a) The Commission may grant conditional uses or special exceptions to property owners for the use of their property if the City Council has, through a zoning ordinance or special ordinance, generally authorized the Commission to exercise such powers and has approved the standards and procedures adopted by the Commission for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the zoning ordinance as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized.

(b) The power to grant conditional uses or special exceptions shall be the exclusive authority of the Commission, except that the City Council may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the zoning ordinance. The Council may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable and will promote the public interest.

(c) An appeal of a decision by the Commission or Council regarding a conditional use or special exception shall be made to the District Court.

(Neb. RS 19-929)

Statutory reference:

Other provisions on planning commissions, see Neb. RS 19-925 through 19-933

§ 32.03 BOARD OF ADJUSTMENT.

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

(Neb. RS 19-907)

(B) If the county has adopted a comprehensive development plan, as defined by Neb. RS 23-114.02, and is enforcing zoning regulations based upon such a plan, the Zoning Board of Adjustment of the county shall, upon request of the City Council, serve as the Zoning Board of Adjustment for the city. If the city is located in more than one county, it shall be served, by request or otherwise, only by the county zoning board of adjustment of the county in which the greatest area of the city is located, and the jurisdiction of such county zoning board of adjustment shall include all portions of the city and its extraterritorial control, regardless of county lines.

(Neb. RS 19-912.01)

(C) (1) The Board of Adjustment shall consist of five regular members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by such member shall also result in his or her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment. The first vacancy occurring on the Board of Adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city at such time as more than 200 persons reside within such area if the Board does not already include such a person. Thereafter, at all times, at least one member of the Board of Adjustment shall reside outside of the corporate boundaries of the city but within its extraterritorial zoning jurisdiction.

(2) The Board of Adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to Neb. RS 19-901 through 19-914. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as the Board may determine. Such

Chairperson, or in his or her absence the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

(Neb. RS 19-908)

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

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

(Neb. RS 19-909)

(F) (1) The Board of Adjustment shall, subject to such appropriate conditions and safeguards as may be established by the City Council, have only the following powers:

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

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

(c) When, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under Neb. RS 19-901 and 19-903 through 19-904.01 and division (C) above and this division (F) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution.

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

1. The strict application of the zoning regulation would produce undue hardship;
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
3. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
4. The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.

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

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

(Neb. RS 19-910)

(G) Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the city, may present to the District Court a petition duly verified setting forth that such decision is illegal, in whole or in part, and specifying the grounds of such illegality. Such petition must be presented to the Court within 15 days after the filing of the decision in the office of the Board. Upon the filing of such petition, a summons shall be issued and be served upon the Board of Adjustment, together with a copy of the petition. Return of service shall be made within four days after the issuance of the summons. Within ten days after the return day of such summons, the Board of Adjustment shall file an answer to the petition which shall admit or deny the substantial averments of the petition and shall state the contentions of the Board with reference to the matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing the answer, the Court shall proceed to hear and determine the cause without delay and shall render judgment thereon according to the forms of law. If, upon the hearing, it appears to the Court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the Court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made. The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. The appeal to the District Court shall not stay proceedings upon the decision appealed from, but the Court may, on application, on notice to the Board, and on due cause shown, grant a restraining order. Any appeal from such judgment of the District Court shall be prosecuted in accordance with the general laws of the state regulating appeals in actions at law.

(Neb. RS 19-912)

§ 32.04 BOARD OF HEALTH.

(A) (1) The Board of Health shall consist of four members: the Mayor, who shall be Chairperson, the President of the City Council, and two other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the Board's medical advisor. If the Mayor has appointed a Chief of Police, the Chief of Police shall serve on the Board as Secretary and Quarantine Officer.

(2) A majority of the Board of Health shall constitute a quorum and shall enact rules and regulations, which shall have the full force and effect of law, to safeguard the health of the people of the city, may enforce them, and may provide fines and punishments for the violation of such rules and regulations. The Board shall have the power to and shall make all needful rules and regulations relating to matters of the sanitation of the city, including the removal of dead animals, the sanitary condition of the streets, alleys, vacant grounds, stockyards, cattle and hog pens, wells, cisterns, privies, waterclosets, cesspools, stables, and all buildings and places not specified where filth, nuisances, or offensive matter is kept or is liable to or does accumulate. It may regulate, suppress, and prevent the occurrence of

nuisances and enforce all laws of the state and ordinances of the city relating to nuisances or to matters of sanitation of the city. The Board shall also have control of hospitals, dispensaries, places for treatment of the sick, and matters relating to the same under such restrictions and provisions as may be provided by ordinance of the city.

(Neb. RS 17-121)

(B) The members of the Board of Health other than the Mayor, President of the Council, and Chief of Police shall serve terms of office of the length specified by the City Council and may be reappointed.

(C) The Board of Health shall reorganize at its meeting after appointments are regularly considered by the City Council and, if necessary, select a member to serve as secretary. No member of the Board of Health shall hold more than one Board of Health position. The Secretary shall keep full and correct minutes and records of all meetings and file the same with the City Clerk, where they shall be available for public inspection during office hours.

(D) The Board shall meet at such times as the City Council may designate. Special meetings may be held upon the call of the Chairperson or any two members of the Board of Health.

(E) The members of the Board of Health shall serve without compensation. The Board of Health shall be funded by the City Council from time to time out of the General Fund.

(F) The Board of Health shall regularly inspect such premises and businesses as the City Council may direct.

(G) All members of the Board of Health shall be responsible for making such reports and performing such other duties as the City Council may, from time to time, designate.

Cross-reference:

Health and safety regulations, see Chapter 91

§ 32.05 BOARD OF PARK COMMISSIONERS.

(A) If the Mayor and City Council have provided for the creation of a Board of Park Commissioners or Board of Park and Recreation Commissioners pursuant to Neb. RS 17-952, the Board shall be composed of not less than three members, who shall be residents of the city and who shall have charge of all parks and recreational facilities belonging to the city, and shall have the power to establish rules for the management, care, and use of the same.

(Neb. RS 17-952)

(B) Neither the Mayor nor any member of the City Council shall serve as a member of the Board while serving a term of office as Mayor or member of the City Council. The members of the Board shall serve terms of office of the length specified by the City Council and may be reappointed.

(C) The Board shall organize at its meeting after appointments are regularly considered by the City Council and select members to serve as chairperson and secretary. No member of the Board shall hold more than one Board position. The Secretary shall keep full and correct minutes and records of all meetings and file the same with the City Clerk, where they shall be available for public inspection during office hours.

(D) The Board shall meet at such times as the City Council may designate. Special meetings may be held upon the call of the Chairperson or any two members of the Board. A majority of the Board members shall constitute a quorum for the transaction of business.

(E) The members of the Board shall serve without compensation. The Board shall be funded by the City Council from time to time out of the General Fund.

(F) All members of the Board shall be responsible for making such reports and performing such other duties as the City Council may, from time to time, designate.

§ 32.06 BOARD OF PUBLIC WORKS.

(A) Whenever the city has or is about to establish or acquire any system of waterworks, power plant, ice plant, gas plant, sewerage, heating or lighting plant, or distribution system and the City Council has created a Board of Public Works, the Board shall consist of not less than three nor more than six members, residents of the city, to be appointed by the Mayor subject to the approval of the City Council. The members may be removed by the Mayor and a majority of the members elected to the City Council at any time. The term of the first members of the Board shall be one, two, three, or four years in the manner designated by the Mayor, as the case may be, after which the term of each member shall be four years, and the terms of not more than two members shall expire at any one time.
(Neb. RS 17-801)

(B) The Board of Public Works shall have the active direction and supervision of any or all of the utility systems owned or operated by the city as conferred on it by the City Council. The City Council shall approve the budget of each proprietary function as provided in the Municipal Proprietary Function Act, Neb. RS 18-2801 et seq. The Board shall have the power to operate any utility referred to it and to exercise all powers conferred by law upon the city for the operation and government of such utility to the same extent, in the same manner, and under the same restrictions as the City Council could do if no such Board of Public Works existed, except that the Board of Public Works shall not make any expenditure or contract any indebtedness, other than for ordinary running expenses, exceeding the amount established by the City Council without first obtaining the approval of the City Council. The Board of Public Works shall report to the City Council at regular intervals as it may require.
(Neb. RS 17-802)

(C) If so authorized and empowered by the Mayor and Council, the Board of Public Works may cooperate and participate in a plan of insurance designed and intended for the benefit of the employees of any public utility operated by the city. For that purpose the Board of Public Works may make contributions to pay premiums or dues under such plan, authorize deductions from the salaries of employees, and take such other steps as may be necessary to effectuate such plan of insurance.
(Neb. RS 17-802.01)

(D) The members of the Board of Public Works shall organize as soon as practicable after their appointment by electing a chairperson and secretary, who shall serve until the first meeting in June next following; and thereafter, the Board shall elect a chairperson and secretary at the first meeting in June each year. In the absence of the regular officers, temporary officers to serve in their places may be chosen by the members present at any meeting. They shall establish regular times for meeting and may adopt such rules as may be necessary or desirable for the conduct of their business. They shall keep a record of their proceedings, and if there is a legal newspaper published in or of general circulation in the city, shall publish therein the minutes of each meeting within 30 days after it is held.
(Neb. RS 17-805)

(E) Each of the members of the Board of Public Works shall take an oath to discharge faithfully the duties of the office before entering upon the discharge thereof. Each of the members of the Board before entering upon the duties of the office shall be required to give bond to the city with corporate surety. Such bond shall be in the sum of \$5,000 and shall be conditioned for the faithful performance of the duties of member of the Board of Public Works, and the surety on such bond shall be approved by the Mayor and Council and shall be filed with the City Treasurer, provided that the premium on the bond shall be paid out of any public utility fund designated by the Mayor and Council.
(Neb. RS 17-806)

(F) No member of the Board of Public Works shall ever be financially interested, directly or indirectly, in any contract entered into by them on behalf of such city for more than \$10,000 in one year.
(Neb. RS 17-807)

(G) If the Board determines that the best interests of the city and the patrons of the utility will be better or more economically served, they may employ the duly elected City Clerk as ex officio bookkeeper and collector for the utility or utilities, and he or she may be paid a reasonable salary for the extra services required of him or her in such position in addition to his or her salary as the City Clerk.
(Neb. RS 17-808)

(H) Rates or charges for service may be fixed or changed by resolution duly adopted by the Board of Public Works.
(Neb. RS 17-810)

FIRE DEPARTMENT

§ 32.20 OPERATION AND FUNDING.

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

(B) The city shall have the power to procure fire engines, hooks, ladders, buckets, and other apparatus, to organize fire engine, hook and ladder, and bucket companies, to prescribe rules of duty and the government of the Fire Department with such penalties as the City Council may deem proper, not exceeding \$100, and to make all necessary appropriations for the Fire Department.
(Neb. RS 17-147)

(C) If the city has only a voluntary Fire Department or companies, the City Council may levy a tax annually of not more than \$0.07 on each \$100 upon the taxable value of all the taxable property within the city for the maintenance and benefit of the Fire Department or companies. The amount of such tax shall be established at the beginning of the year and shall be included in the adopted budget statement. Upon collection of such tax, the City Treasurer shall disburse the same upon the order of the Fire Chief with the approval of the City Council.
(Neb. RS 17-718)

Statutory reference:

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

§ 32.21 FIRE CHIEF.

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

§ 32.22 MEMBERSHIP.

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

(B) The volunteer Fire Department shall not have upon its rolls at one time more than 25 persons for each engine and hose company in the Fire Department, and no hook and ladder company shall have upon its rolls at any one time more than 25 members. No organization shall be deemed to be a bona fide fire or hook and ladder company until it has procured for active service apparatus for the extinguishment or prevention of fires, in case of a hose company, to the value of \$700, and of a hook and ladder company, to the value of \$500.

(Neb. RS 35-102)

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

(Neb. RS 35-103)

(D) (1) Volunteer firefighters of the Fire Department shall be deemed employees of the city while in the performance of their duties as members of the Department. Members of the volunteer Fire Department, before they are entitled to benefits under the State Workers' Compensation Act, Neb. RS 48-101 et seq., shall be recommended by the Fire Chief or some person authorized to act for the Chief for membership therein to the Mayor and City Council and, upon confirmation, shall be deemed employees of the city. Members of the Fire Department after confirmation to membership may be removed by a majority vote of the City Council, and thereafter, shall not be considered employees of the city.

(2) Firefighters of the Fire Department shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of the city, but only if directed to do so by the Fire Chief or some person authorized to act for the Chief.

(Neb. RS 48-115)

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

(Neb. RS 35-108)

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

(Neb. RS 33-139.01)

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

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

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

§ 32.23 RECORDS.

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

§ 32.24 FIRES.

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

§ 32.25 DISTANT FIRES.

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

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

§ 32.26 INSPECTIONS.

(A) The Fire Chief, where a Fire Department is established, or the Mayor where no Fire Department exists, at all reasonable hours may enter into all buildings and upon all premises within his or her jurisdiction for the purposes of examination in harmony with Neb. RS 81-501.01 through 81-531, the State Natural Gas Pipeline Safety Act of 1969, Neb. RS 81-542 et seq., the Petroleum Products and Hazardous Substances Storage and Handling Act, Neb. RS 81-15,117 et seq., and any other statutory duties imposed upon the State Fire Marshal.

(Neb. RS 81-512)

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

§ 32.27 NOTICE OF VIOLATION.

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

(B) Any such order shall be immediately complied with by the owner, occupant, or manager of the premises or building. The owner, occupant, or manager may, within five days after the order by the Fire Chief or his or her agent, appeal the order with the City Council requesting a review, and it shall be the duty of the City Council to hear the same within not less than five days nor more than ten days from the time when the request was filed in writing with the City Clerk. The City Council shall then affirm, modify, or rescind the order as safety and justice may require, and the decision shall then be final, subject only to any remedy which the aggrieved person may have at law or equity. The order shall be

modified or rescinded only where it is evident that reasonable safety exists and that conditions necessitate a variance due to the probable hardship in complying literally with the order of the Fire Chief. A copy of any decision so made shall be sent to both the Fire Chief and the owner, occupant, or manager making the appeal.

§ 32.28 POWER OF ARREST.

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

§ 32.29 FIRE INVESTIGATION.

(A) The Fire Chief shall investigate or cause to be investigated the cause, origin, and circumstances of every fire occurring in the city by which property has been destroyed or damaged. All fires of unknown origin shall be reported, and such officer shall especially make an investigation and report as to whether the fire was the result of carelessness, accident, or design.

(B) The investigation shall begin immediately after the occurrence of the fire, and the State Fire Marshal shall have the right to supervise and direct the investigation whenever he or she deems it expedient or necessary. The officer making the investigation of fires occurring in the city shall forthwith notify the State Fire Marshal and shall, within one week of the occurrence of the fire, furnish to him or her a written statement of all the facts relating to the cause and origin of the fire and such further information as he or she may call for.

(Neb. RS 81-506)

POLICE DEPARTMENT

§ 32.40 DUTIES.

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

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

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

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

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

Penalty, see § 10.99

Cross-reference:

Refusing to aid a police officer, see § 132.03

§ 32.41 RESERVE OFFICER BOND.

No appointment of a law enforcement reserve officer shall be valid until a bond in the amount of \$2,000, payable to the city, has been filed with the City Clerk by the individual appointed or a blanket surety bond arranged and paid for by the City Council and bonding all such officers of the City Council, has been filed. These bonds shall be subject to the provisions of Neb. RS Chapter 11, Article 1.
(Neb. RS 81-1444)

§ 32.42 ARREST AND ENFORCEMENT JURISDICTION.

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

(Neb. RS 17-118)

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

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

LAW ENFORCEMENT OFFICER IN NEED OF ASSISTANCE.

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

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

1. Will not be apprehended unless immediately arrested;

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

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

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

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

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

(2) Any city law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow that person anywhere in an area within 25 miles of the boundaries of the officer's primary jurisdiction and there arrest and detain that person and return that person to the officer's primary jurisdiction;

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

(4) If the city, under the provisions of the Interlocal Cooperation Act, Neb. RS 13-801 et seq., or the Joint Public Agency Act, Neb. RS 13-2501 et seq., enters into a contract with any other city or county for law enforcement services or joint law enforcement services, law enforcement personnel may have this enforcement authority within the jurisdiction of each of the participating political subdivisions if provided for in the agreement. Unless otherwise provided in the agreement, the city shall provide liability insurance coverage for its own law enforcement personnel as provided in Neb. RS 13-1802.

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

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

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

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

(Neb. RS 29-215)

(F) If city law enforcement personnel are rendering aid in their law enforcement capacity outside the limits of the city in the event of disaster, emergency, or civil defense emergency, or in connection with any program of practice or training for a disaster, emergency, or civil defense emergency when that program is conducted or participated in by the State Emergency Management Agency or with any other

related training program, the law enforcement personnel have the power and authority to enforce the laws of this state or any legal ordinances or resolutions of the local government where they are rendering aid or otherwise perform the functions of their office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within their primary jurisdiction. The city shall self-insure or contract for insurance against any liability for personal injuries or property damage that may be incurred by it or by its personnel as the result of any movement made pursuant to this division.

(Neb. RS 81-829.65)

§ 32.43 OFFICERS; DISCIPLINE OR REMOVAL FROM DUTY.

(A) (1) The City Council shall by ordinance adopt rules and regulations governing the removal or discipline of any police officer, including the Chief of Police. The ordinance shall include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted.

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

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

(4) Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this division, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(Neb. RS 17-107)

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

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

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

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

- (a) Respond in person to the charges and to present witnesses and documentary evidence;
- (b) Confront and cross-examine available adverse witnesses; and
- (c) Be represented by counsel.