

## **CHAPTER I – CIVIL ADMINISTRATION**

### **ARTICLE I - MAYOR AND CITY COUNCIL**

- 1-101 CORPORATE EXISTENCE
- 1-102 CITY COUNCIL; NUMBER AND QUALIFICATIONS OF MEMBERS
- 1-103 ELECTION OF CITY OFFICIALS
- 1-104 MAYOR; DUTIES AND POWERS
- 1-105 MAYOR; VACANCY
- 1-106 PRESIDENT OF COUNCIL; ACTING PRESIDENT
- 1-107 SUCCESSION OF CONTROL
- 1-108 VACANCIES IN CITY OFFICES
- 1-109 RESIGNATIONS
- 1-110 CITY COUNCIL; POWERS
- 1-111 OFFICERS' SALARIES
- 1-112 COMPENSATION; CONFLICT OF INTEREST
- 1-113 ELECTED OFFICIALS; QUALIFICATIONS; RESTRICTIONS ON OTHER EMPLOYMENT OR ELECTIVE OFFICE

### **ARTICLE II - APPOINTIVE OFFICERS**

- 1-201 APPOINTIVE OFFICERS
- 1-202 MERGER OF OFFICES
- 1-203 CLERK-TREASURER POSITION CREATED
- 1-204 CITY CLERK; DUTIES
- 1-205 CITY TREASURER; DUTIES
- 1-206 CITY TREASURER; MONTHLY REPORT
- 1-207 CITY TREASURER; ANNUAL REPORT
- 1-208 CITY ATTORNEY; DUTIES
- 1-209 CITY POLICE CHIEF; DUTIES
- 1-210 UTILITIES SUPERINTENDENT
- 1-211 SEWER COMMISSIONER
- 1-212 WATER COMMISSIONER
- 1-213 STREET COMMISSIONER
- 1-214 SPECIAL ENGINEER
- 1-215 CITY PHYSICIAN

### **ARTICLE III - ADMINISTRATION**

- 1-301 CORPORATE SEAL
- 1-302 OFFICERS, BONDS
- 1-303 OATH OF OFFICE
- 1-304 MEETINGS; PUBLIC
- 1-305 SPECIAL MEETINGS
- 1-306 MEETINGS; CLOSED SESSIONS
- 1-307 MEETINGS; NOTICE TO NEWS MEDIA
- 1-308 MEETINGS; PUBLIC PARTICIPATION
- 1-309 MEETINGS; CITY COUNCIL
- 1-310 MEETINGS; ORDER OF BUSINESS

- 1-311 MEETINGS; PARLIAMENTARY PROCEDURE
- 1-312 MEETINGS; CHANGE IN OFFICE
- 1-313 MEETINGS; ORGANIZATIONAL
- 1-314 MEETINGS; VIDEOCONFERENCING, WHEN ALLOWED
- 1-315 MEETINGS; MINUTES
- 1-316 APPOINTMENT OF COMMITTEES

#### **ARTICLE IV - ORDINANCES**

- 1-401 GRANT OF POWER
- 1-402 TITLE
- 1-403 STYLE
- 1-404 INTRODUCTION
- 1-405 RESOLUTIONS AND MOTIONS
- 1-406 READING AND PASSAGE; MAYOR'S VETO
- 1-407 SUSPENSION OF RULES
- 1-408 CERTIFICATE OF PUBLICATION OR POSTING
- 1-409 EFFECTIVE DATE
- 1-410 AMENDMENTS AND REVISIONS
- 1-411 EMERGENCY ORDINANCES

#### **ARTICLE V - FISCAL MANAGEMENT**

- 1-501 FISCAL YEAR
- 1-502 BUDGET PROCEDURE
- 1-503 BUDGET STATEMENT; FILING
- 1-504 BUDGET HEARING
- 1-505 BUDGET FILING
- 1-506 ANNUAL AUDIT
- 1-507 ALL-PURPOSE LEVY
- 1-508 CONTRACTS
- 1-509 CLAIMS
- 1-510 WARRANTS
- 1-511 TRANSFER OF FUNDS
- 1-512 SPECIAL ASSESSMENT FUND
- 1-513 SINKING FUNDS
- 1-514 DEPOSIT OF FUNDS
- 1-515 INVESTMENT OF FUNDS
- 1-516 EXPENDITURES
- 1-517 BOND ISSUES
- 1-518 RETURNED PAYMENT; FEE

#### **ARTICLE VI - ELECTIONS**

- 1-601 ELECTION OF OFFICERS; CERTIFICATION
- 1-602 PRIMARY ELECTION; NUMBER OF CANDIDATES FILING
- 1-603 TIE VOTES
- 1-604 FILING FEE
- 1-605 VOTER QUALIFICATIONS
- 1-606 PETITION CANDIDATES
- 1-607 NOMINATION BY WRITE-IN VOTES
- 1-608 SPECIAL JOINT ELECTIONS

- 1-609 CERTIFICATE OF NOMINATION OR ELECTION
- 1-610 INABILITY TO ASSUME OFFICE
- 1-611 RECALL PROCEDURE
- 1-612 BALLOTS
- 1-613 WARDS
- 1-614 EXIT POLLS

#### **ARTICLE VII - POLICE DEPARTMENT**

- 1-701 POWER, DUTIES, RESPONSIBILITIES
- 1-702 ARREST JURISDICTION
- 1-703 DISCHARGE OR DISCIPLINE OF POLICE MEMBERS
- 1-704 APPEAL PROCEDURE FOR DISCHARGED OR DISCIPLINED  
POLICE OFFICERS

#### **ARTICLE VIII - PLANNING COMMISSION**

- 1-801 MEMBERS; OFFICERS; DUTIES; ALTERNATE

#### **ARTICLE IX - BOARD OF HEALTH**

- 1-901 MEMBERS
- 1-902 POWERS AND DUTIES
- 1-903 DEPOSITING OR PERMITTING DEPOSIT OR ACCUMULATION  
OF ANY SUBSTANCE DETRIMENTAL TO HEALTH OR  
OFFENSIVE TO SMELL; PENALTY

#### **ARTICLE X - TREE BOARD**

- 1-1001 CREATION AND ESTABLISHMENT OF TREE BOARD
- 1-1002 DEFINITIONS
- 1-1003 TERM OF OFFICE
- 1-1004 COMPENSATION
- 1-1005 DUTIES AND RESPONSIBILITIES
- 1-1006 OPERATION
- 1-1007 STREET TREE SPECIES TO BE PLANTED
- 1-1008 SPACING
- 1-1009 DISTANCE FROM CURB AND SIDEWALK
- 1-1010 DISTANCE FROM STREET CORNERS AND FIREPLUGS
- 1-1011 UTILITIES
- 1-1012 PUBLIC TREE CARE
- 1-1013 CONSENT OF PROPERTY OWNER
- 1-1014 TREE TOPPING
- 1-1015 PRUNING; CORNER CLEARANCE
- 1-1016 DEAD OR DISEASED TREE REMOVAL ON PRIVATE  
PROPERTY
- 1-1017 REMOVAL OF STUMPS
- 1-1018 INTERFERENCE WITH TREE BOARD
- 1-1019 REVIEW BY CITY COUNCIL

#### **ARTICLE XI - BOARD OF PARK COMMISSIONERS**

- 1-1101 MEMBERS; TERMS; COMPENSATION
- 1-1102 ORGANIZATION; DUTIES
- 1-1103 PARKS; OPERATION AND FUNDING
- 1-1104 PARKS; HOURS; PENALTY
- 1-1105 PARKS; INJURY TO PROPERTY
- 1-1106 SWIMMING POOL; OPERATION AND FUNDING
- 1-1107 SWIMMING POOL; ADMISSION CHARGE
- 1-1108 SWIMMING POOL; RENTALS
- 1-1109 SWIMMING POOL; RULES AND REGULATIONS

## **ARTICLE XII - LIBRARY BOARD**

- 1-1201 LIBRARY BOARD
- 1-1202 OPERATION AND FUNDING
- 1-1203 BOOKS
- 1-1204 RULES AND REGULATIONS
- 1-1205 COST OF USE
- 1-1206 DAMAGED AND LOST BOOKS
- 1-1207 BOOK REMOVAL
- 1-1208 MONEY COLLECTED
- 1-1209 BOOK LABELING
- 1-1210 REPORTS

## **ARTICLE XIII - BOARD OF ADJUSTMENT**

- 1-1301 MEMBERS; OFFICERS; DUTIES AND POWERS

## **ARTICLE XIV - HOUSING AGENCY**

- 1-1401 RIGHTS AND DUTIES
- 1-1402 HOUSING AGENCY BOARD
- 1-1403 RESIDENT COMMISSIONER
- 1-1404 REMOVAL OF COMMISSIONERS
- 1-1405 STATUS OF AGENCY
- 1-1406 HOUSING AGENCY ACT ADOPTED
- 1-1407 POLICIES AND PROCEDURES
- 1-1408 RULES AND REGULATIONS
- 1-1409 ANNUAL REPORTS
- 1-1410 FILING OF PLANS

## **ARTICLE XV – CEMETERY BOARD**

- 1-1501 MEMBERS; VACANCIES
- 1-1502 OFFICERS
- 1-1503 DUTIES
- 1-1504 SEXTON
- 1-1505 CEMETERY OPERATION AND FUNDING; PERPETUAL CARE
- 1-1506 CEMETERY; FEES
- 1-1507 CEMETERY; SALE OF LOTS
- 1-1508 CEMETERY; FORFEITURE OF LOTS; RECLAMATION
- 1-1509 CEMETERY; LOT TRANSFER

- 1-1510 CEMETERY; INTERMENT AND DISINTERMENT PREREQUISITES
- 1-1511 CEMETERY; INTERMENT
- 1-1512 CEMETERY; PLACEMENT OF MONUMENTS AND MARKERS
- 1-1513 CEMETERY; INDIGENTS
- 1-1514 CEMETERY; DESTRUCTION OF PROPERTY
- 1-1515 CEMETERY; IMPROVEMENT
- 1-1516 CEMETERY; MONUMENTS, MARKERS, AND VASES
- 1-1517 CEMETERY; ESTABLISHMENT OF FEES
- 1-1518 CEMETERY; GRAVE LINER
- 1-1519 CEMETERY; MONUMENT REQUIREMENTS
- 1-1520 CEMETERY; SHRUBS AND TREES

## **ARTICLE XVI – COMMUNITY DEVELOPMENT AGENCY**

- 1-1601 CREATION; OPERATION

## **ARTICLE XVII - PENAL PROVISION**

- 1-1701 VIOLATION; PENALTY

# **CHAPTER I – CIVIL ADMINISTRATION**

## **ARTICLE I - MAYOR AND CITY COUNCIL**

### **SECTION 1-101: CORPORATE EXISTENCE**

The City of Atkinson, Nebraska, is hereby declared to be a City of the Second Class and shall be governed in all respects by the laws regulating cities of the second class.

### **SECTION 1-102: CITY COUNCIL; NUMBER AND QUALIFICATIONS OF MEMBERS**

The elected officials of the City shall consist of a mayor and six City Council members; said council members shall be citizens of the United States and residents of the City and registered voters; provided, a council member's term shall expire and the office become vacant upon removal or change of residence from the City. The council members shall qualify and meet on the first regular meeting in December following their election. (Neb. Rev. Stat. §17-103)

### **SECTION 1-103: ELECTION OF CITY OFFICIALS**

The term of office of the mayor and City Council is four years. The elected mayor and council members shall take office on the date of the first regular meeting of the council held in December following the statewide general election. The members of the City Council elected in the general election in 2008 shall continue to hold their office until December, 2012. The mayor and members of the council elected in 2010 shall continue to hold their offices until December, 2014. Thereafter, three council members' terms shall expire every two years. The election of the mayor and council members shall be held on the date of the statewide general election. (Am. by Ord. No. 1036, 11/7/11)

### **SECTION 1-104: MAYOR; DUTIES AND POWERS**

1. The mayor shall have the general and immediate control over all property and officials of the City. He/she shall preside at all meetings of the City Council, and may vote when his/her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the City Council on any pending matter, legislation, or transaction, and the mayor shall, for the purpose of such vote, be deemed to be a member of the council. His/her signature must appear on the city clerk's minutes of all meetings, he/she must sign all resolutions which have been passed, and warrants for the payment of money when ordered by the City Council; provided, the mayor shall have power to veto or sign any ordinance passed by the council and to approve or veto any order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim, as provided in Section 1-404 herein. He/she shall from time to time communicate to the council such information and recommendations as, in his/her opinion, may improve the City.

2. The mayor may require at reasonable intervals any city official to exhibit his/her accounts and make reports to the council on any subject pertaining to his/her office. He/she may remove at any time an appointed police officer of the City. His/her territorial authority shall extend over all places within five miles of the corporate limits of the City for the enforcement of any health ordinance, and one-half mile in all matters vested in him/her except taxation. He/she shall also have such other duties as the City Council may by resolution confer upon him/her.

3. Any candidate for mayor must be a registered voter and resident of the City prior to filing for the said office.  
(Neb. Rev. Stat. §17-107, 17-110 through 17-117) (Am. Ord. Nos. 1064, 1/6/14; 1084, 5/4/15))

#### SECTION 1-105: MAYOR; VACANCY

1. Whenever a vacancy occurs in the office of mayor, or in case of his/her disability or absence, the president of the City Council shall exercise the office of mayor until such vacancy is filled or such disability is removed, or in the case of temporary absence, until the mayor returns.

2. When the successful candidate for mayor shall be prevented from assuming office, the incumbent mayor shall not be entitled to hold over the term but such office shall automatically become vacant and the president of the council shall exercise the office of mayor until such vacancy is filled.

3. If the president of the council shall for any cause assume the office of mayor for the remainder of the unexpired term, there shall be a vacancy on the council which shall be filled as provided herein.  
(Neb. Rev. Stat. §17-107)

#### SECTION 1-106: PRESIDENT OF COUNCIL; ACTING PRESIDENT

In case of any vacancy in the office of mayor, or in case of his/her disability or absence, the president of the City Council shall exercise the office of mayor until such vacancy is filled or such disability is removed, or in case of temporary absence, until the mayor returns. In the absence of the president, the council shall elect one of its own body to occupy his/her place temporarily, who shall be styled "acting president of the council." The president and acting president, when occupying the place of the mayor, shall have the

same privileges as other members of the council; and all acts of the president or acting president, while so acting, shall be as binding upon the council and upon the City as if done by the mayor. (Neb. Rev. Stat. §17-148)

## SECTION 1-107: SUCCESSION OF CONTROL

1. In order to designate the succession of control of the City and to declare and control a disaster or emergency when the mayor is not present or is unable to act as the principal executive officer of the City, then the following is the procedure used to determine who is next in line to fulfill those duties and responsibilities:

2. If the mayor is not present or is incapable of performing his/her duties in order to declare a disaster or emergency and/or act as principal executive officer in a disaster or emergency situation, then the president of the City Council shall perform those functions and duties. Should the president of the council not be present or is unable to perform those functions and duties, then the next most senior elected official shall perform those duties and functions. The line of succession for the remaining elected officials shall follow by seniority from the date originally elected. If more than one council member has the same date of seniority, then the most senior in age shall assume control.

## SECTION 1-108: VACANCIES IN CITY OFFICES

1. Except as otherwise provided in subsection (3) or (4) of this section, vacancies in elected offices shall be filled by the City Council for the balance of the unexpired term. Notice of a vacancy, except a vacancy resulting from the death of the incumbent, shall be in writing and presented to the City Council at a regular or special meeting and shall appear as a part of the minutes of such meeting. The City Council shall at once give public notice of the vacancy by causing to be published in a newspaper of general circulation within the City or by posting in three public places in the City the office vacated and the length of the unexpired term.

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

3. The City Council may, in lieu of filling a vacancy in the elected office as provided in subsection (1) or (2) of this section or Neb. Rev. Stat. §32-568(3), call a special city election to fill such vacancy.

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

#### SECTION 1-109: RESIGNATIONS

All resignations of the mayor and council members shall be in writing and submitted to the City Council for acceptance. Resignations shall not be effective until accepted by formal action of the City Council. No resignations shall be accepted unless a quorum for conducting business will remain after such acceptance of such resignation.

#### SECTION 1-110: CITY COUNCIL; POWERS

The council shall have all powers granted under the laws of the State of Nebraska, including but not limited to the following: power to pass ordinances to prevent and remove nuisances; to prevent, restrain and suppress gambling and disorderly houses; to license and regulate amusements; to establish and provide for police protection; to prevent the spread of contagious diseases; to regulate business; to erect, repair, construct and regulate public ways and property; to maintain good government, public welfare and domestic tranquility; and to enforce all ordinances by inflicting penalties upon inhabitants or other persons for violation thereof not exceeding the amount permitted by Nebraska law for each offense, recoverable with costs, together with enforcement by injunction where necessary.

#### SECTION 1-111: OFFICERS' SALARIES

1. All elected officers shall receive such compensation as the council shall fix by resolution. The emoluments of appointive and elective officers of this city shall be neither increased nor decreased during the term for which elected or appointed, except by merger of offices or when there are other officers elected or appointed to the council and the terms of one or more members commence and end at different times; the compensation of all members of such council may be increased or diminished at the beginning of the full term of any member thereof. The officers' salaries shall be set by ordinance of the City Council and will be available for public inspection at the office of the city clerk.

2. No person who shall have resigned or vacated any office shall be eligible to the same during the time for which he/she was elected or appointed, if during the same time the emoluments thereof have been increased. In addition to the salaries herein provided, the various officers shall be entitled to mileage and expenses, if and when claims therefor are filed, audited and allowed. The mayor and council may by resolution authorize clerical assistance in one or more offices when the same may be needed, and claims therefor out of the proper funds may be presented, allowed, audited and paid. All fees earned by an officer of this city in the performance of his/her duties as such shall be considered the property of this city, and shall be promptly paid over to the city treasurer and by him/her credited to the appropriate fund.

(Neb. Rev. Stat. §17-108.02, 17-612)

#### SECTION 1-112: COMPENSATION; CONFLICT OF INTEREST

For purposes of this section, "officer" shall mean any member of any board or commission of the City; or any appointed official if such official (a) serves on a board or com-



mission which spends and administers its own funds, and (b) is dealing with a contract made by such board or commission; or any elected city official.

Unless specified otherwise, volunteer firefighters and ambulance drivers shall not be considered officers for purposes of this section, with respect to their duties as firefighters and ambulance drivers.

No officer of the City shall be permitted to benefit from any contract to which the City is a party. The existence of such an interest in any contract renders the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment thereof with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the City or by any resident thereof and must be brought within one year after the contract is signed or assigned. Any such decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor or services furnished under the contract, to the extent that the City has benefited thereby. The prohibition in this section shall apply only when the officer or his or her parent, spouse, or child:

1. Has a business with which the individual is associated or business association which shall mean a business:

- A. In which the individual is a partner, director or officer; or
- B. In which the individual or a member of the individual's immediate family is a stockholder of a closed corporation stock worth \$1,000.00 or more at fair market value or which represents more than 5% equity interest, or is a stockholder of publicly traded stock worth \$10,000.00 or more at fair market value or which represents more than 10% equity interest; or

2. Will receive a direct pecuniary fee or commission as a result of the contract; provided, however, if such officer is (a) an employee of the business involved in the contract, and (b) has no ownership interest or will not receive pecuniary fee, such officer shall not be deemed to have an interest within the meaning of this section.

The provisions of this section shall not apply if the interested officer:

- A. Makes a declaration on the record to the governmental body responsible for approving the contract regarding the nature and extent of his/her interest, prior to official consideration of the contract;
- B. Does not vote on the matter of granting the contract, except that if the number of members of the council declaring an interest in the contract would prevent the council, with all members present, from securing a quorum on the issue, then all members may vote on the matter; and
- C. Does not act for the City as to inspection or performance under the contract in which he/she has an interest.

The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of any city by a financial institution shall not be considered a contract under the provisions of this section. The ownership of less than 5% of the out-

standing shares of a corporation shall not constitute an interest within the meaning of this section. Notwithstanding the provisions of subsections (A) through (C) above, if an officer's parent, spouse or child is an employee of the City, the officer may vote on all issues of the contract which are generally applicable to all employees or all employees within a classification and do not single out his/her parent, spouse or child for special action. If an officer has the power to employ personnel and he/she hires his/her parent, spouse or child, such officer shall disclose the hiring pursuant to subsections 1 through 5 below, except that if the parent, spouse or child is already employed in the position at the time the officer takes office and such position does not change, no disclosure need be made. Notwithstanding any other provision of this section, any contract entered into with an interested officer shall be subject to applicable competitive bidding requirements and shall be fair and reasonable to the City.

The city clerk shall maintain, separately from other records, a ledger containing the information listed in subsections (1) through (5) of this subsection about every contract entered into by the City in which an officer has an interest as specified above for which disclosure is made as provided in subsections (A) through (C) above. Such information shall be kept in the ledger for five years from the date of the officer's last day in office and shall include the:

1. Names of the contracting parties;
2. Nature of the interest of the officer in question;
3. Date that the contract was approved by the City involved;
4. Amount of the contract; and
5. Basic terms of the contract.

The information supplied relative to the contract shall be provided to the clerk not later than ten days after the contract has been signed by both parties. The ledger kept by the clerk shall be available for public inspection during the normal working hours of the office in which it is kept.

An open account established for the benefit of any city or entity thereof, with a business in which an officer has an interest, shall be deemed a contract subject to the provisions of this section. The statement required to be filed pursuant to this section shall be filed within ten days after such account is opened. Thereafter, the clerk shall maintain a running account of all amounts purchased on the open account. Purchases made from petty cash or a petty cash fund shall not be subject to the provisions of this section.

Any officer who knowingly violates the provisions of this section shall be guilty of a Class III misdemeanor. Any officer who negligently violates this section shall be guilty of a Class V misdemeanor.

The City may enact ordinances exempting from the provisions of this section contracts involving \$100.00 or less in which an officer of such city may have an interest.

No officer, including volunteer firefighters and ambulance drivers, shall receive any pay or perquisites from the City other than his/her salary. The City Council shall not pay or appropriate any money or other valuable thing to pay a person who is not an officer for the performance of any act, service or duty, which shall come within the proper scope of the duties of any officer of the City.

(Neb. Rev. Stat. §17-611, 18-305 through 18-312, 49-14,103.01 through 49-14,103.03, 70-624.04)

SECTION 1-113: ELECTED OFFICIALS; QUALIFICATIONS; RESTRICTIONS  
ON OTHER EMPLOYMENT OR ELECTIVE OFFICE

Elected officials shall be residents and registered voters of the City.

A. The mayor and members of the council shall hold no other elective or appointive office or employment with the City.

B. For purposes of this section, (1) "elective office" means any office which has candidates nominated or elected at the time of a statewide primary election; any office which has candidates nominated at the time of a statewide primary election and elected at the time of a statewide general election; any office which has candidates elected at the time of a statewide general election; any office which has candidates nominated or elected at a city election; and any office created by an act of the Legislature which has candidates elected at an election and includes an office which is filled at an election held in conjunction with the annual meeting of a public body created by an act of the Legislature; and (2) "high elective office" means a member of the Legislature, an elective office described in Article IV, Sections (1) or (20), or Article VII, Sections (3) or (10), of the Constitution of Nebraska, or a county, city or school district elective office.

C. No candidate for member of the Legislature or an elective office described in Article IV, Sections (1) or (20), or Article VII, Sections (3) or (10), of the Constitution of Nebraska shall be eligible to file as a candidate, to petition on the ballot as a candidate, to accept nomination by a political party or by party convention, caucus or committee to file a vacancy or to be declared a write-in candidate for more than one elective office to be filled at the same election, except for the position of delegate to a county, state or national party convention. No candidate for any other high elective office shall be eligible to file as a candidate, to petition on the ballot as a candidate, to accept a nomination by a political party or by party convention, caucus or committee to fill a vacancy or to be declared write-in candidate for more than one elective office to be filled at the same election.

D. Except as provided in subsection (E) or (G) of this section, no person shall be precluded from being elected or appointed to or holding an elected office for the reason that he/she has been elected or appointed to or holds another elected office.

E. No person serving as a member of the Legislature or in an elective office described in Article IV, Sections (1) or (20), or Article VII, Sections (3) or (10), of the Constitution of Nebraska shall simultaneously serve in another elective office which is filled at an election held in conjunction with the annual meeting of a public body.

F. Whenever an incumbent serving as a member of the Legislature or in an elective office described in Article IV, Sections (1) or (20), or Article VII, Sections (3) or (10), of the Constitution of Nebraska assumes another elective office, except an elective office filled at an election held in conjunction with the annual meeting of a public body, the office first held by the incumbent shall be deemed vacant.

G. No person serving in a high elective office shall simultaneously serve in any other high elective office.

H. Notwithstanding subsections (E) through (G) of this section, any person holding more than one high elective office on September 13, 1997, shall be entitled to con-

tinue to serve the remainder of all terms for which he/she was elected or appointed.  
(Neb. Rev. Stat. §17-108.02, 32-109, 32-603, 32-604)

## **ARTICLE II - APPOINTIVE OFFICERS**

### **SECTION 1-201: APPOINTIVE OFFICERS**

The mayor, at the first regular meeting of the City Council held after he/she takes office or as soon thereafter as he/she can reasonably do so, may appoint, with the advice and consent of the council, a city clerk, city treasurer, city engineer, city attorney, city police chief, sewer commissioner, water commissioner and street commissioner. Such appointments shall continue until the end of the mayor's term of office and until their successors are appointed and qualified, unless sooner removed. The mayor shall also appoint whatever other officials of the City that he/she deems necessary, which officers shall serve at the pleasure of the City Council. (Neb. Rev. Stat. §17-208, 17-541) (Am. by Ord. No. 1036, 11/7/11)

### **SECTION 1-202: MERGER OF OFFICES**

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

### **SECTION 1-203: CLERK-TREASURER POSITION CREATED**

The appointive offices of city clerk and city treasurer are hereby combined and merged, in accordance with the authority granted to the City Council by Section 1-202. The office so merged and combined shall always be construed to be separate, and the effect of the combination or merger shall be limited to a consolidation of official duties only.

### **SECTION 1-204: CITY CLERK; DUTIES**

1. The city clerk shall have custody of all laws and ordinances. He/she shall attend the meetings of the City Council and shall keep a correct journal of its proceedings. After the period of time specified by the state records administrator pursuant to the Records Management Act, the city clerk may transfer such journal of the proceedings of the council to the state archives of the Nebraska State Historical Society for permanent preservation. He/she shall take possession of all books, papers and all other official records of the City and shall maintain said records in a safe place for the City. He/she shall have custody of the seal of the City and all written official papers of the City.

2. The city clerk shall maintain an account of all of the appropriations of the several funds of the City. He/she shall draw, sign and attest all warrants ordered for the payment of money on a particular fund from which the same is payable, and at the end of each month make a report of the amount appropriated to each fund and the amount

of warrants drawn thereon.

3. The city clerk shall further attest to the mayor's signature to be attested and shall attach the city seal to all official documents. Whenever any claim presented by any person has been disallowed by the City Council, the city clerk shall notify said claimant of said disallowance by the council within five days after such disallowance.

4. The city clerk shall account for all money received by him/her in the normal course of city business and shall keep a proper record of all monies received by him or her, issuing a proper receipt to those parties making payment to him/her to the account of the City.

5. The city clerk shall publish all notices required in the performance of his/her duties and shall keep a record of all published notices issued by him/her, and shall keep a record of the publisher's affidavit of said publication if said notices are published in a legal newspaper.

6. He/she shall maintain all books and public records of the City for public inspection for any resident of the City during normal business hours. He/she shall make a notation on all correspondence received by him/her of the date of its receipt and shall, as soon as possible, convey said correspondence to the appropriate official of the City. The city clerk shall keep and maintain all other legal papers required to be maintained by him/her by these ordinances or by Nebraska state law, and shall maintain a proper minute book wherein shall be recorded all of the formal and informal actions of the mayor and City Council, and shall maintain an ordinance record which shall record the various ordinances and resolutions passed by the council.

7. The duties of the city clerk will be those set forth herein and as set forth specifically in the job description separately adopted by the mayor and City Council.

(Neb. Rev. Stat. §17-605, 19-1102, 19-1104, 84-1201 through 84-1220, 84-712) (Am. Ord. No. 1061, 12/2/13)

## SECTION 1-205: CITY TREASURER; DUTIES

1. The city treasurer shall deposit, and at all times keep on deposit, for safe-keeping, in banks, institutions of approved and responsible standing, all money collected, received or held by him/her as treasurer. Such deposits shall be subject to all regulations imposed by law or adopted by the City for the receiving and holding thereof. A bond or pledged securities shall be required from all banks or financial institutions in which municipal funds are deposited in any amount exceeding that amount insured by the Federal Deposit Insurance Corporation.

2. The treasurer shall keep a separate account of each and every fund or appropriation and the debits and credits belonging to the City; he/she shall provide a receipt for anyone paying money into the city treasury if such person requests a receipt, specifying the date of payment and on what account paid, and also file copies of said receipts with his/her monthly reports made to the mayor and City Council; he/she shall, at the end of each month and as often as may be required, render a report to the mayor and City Council showing, under oath, the condition of the various accounts of the treasury at the time of such reports and the balance of money in the treasury; he/she shall accompany such accounts with a statement of all receipts and disbursements, together with all warrants paid by him or her, which warrants with any and all vouchers held by

him or her shall be filed with his or her accounts in the city clerk's office. He or she shall keep a record, in a book suitable for that purpose, of each and every warrant paid and from what fund paid.

3. The treasurer shall keep a record of all outstanding bonds against the City, showing the number and amount of each bond, for and to whom the bonds were issued, and the date upon which any bond is purchased, paid, or canceled. He or she shall accompany the annual statement submitted pursuant to Neb. Rev. Stat. §19-1101 with a description of the bonds issued and sold in that year and the terms of sale, with every item of expense thereof.

4. The treasurer shall also procure and keep a warrant register which shall show in columns arranged for that purpose the number, date and amount of each warrant presented and registered, as hereinafter provided, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person in whose name the same is registered, the date of payment, the amount of interest, and the total amount paid thereon, with the date when the notice to such person in whose name such warrant is registered is mailed as hereinafter provided. It shall be the duty of the treasurer, upon presentation of any warrant for payment, in the presence of such person to enter such warrant in the warrant register for payment in the order of its presentation and, upon every warrant as presented and registered, he or she shall endorse, "Registered for Payment" with the date of such registration and register number; and he/she shall sign such endorsement, whereupon such warrant shall draw interest at the legal rate from the date of registration until notice of payment shall be given to the holder as provided by law.

5. If the treasurer neglects or fails, for a period of 20 days from the end of each and every month, to render his/her account, the office shall be declared vacant pursuant to Neb. Rev. Stat. §17-606 and the mayor and City Council shall fill the vacancy by appointment until the next election of city officials.

6. The treasurer is also required to publish or cause to be published in a legal weekly newspaper published in or of general circulation in said city within 60 days following the end of each fiscal year a report of the activities of his/her office, which said report shall show in detail all receipts, disbursements, warrants outstanding, and the debit or credit balance of the City.

7. The duties of the city treasurer will be those set forth herein and as set forth specifically in the job description separately adopted by the mayor and City Council. (Neb. Rev. Stat. §17-606 through 17-609, 19-1101) (Am. Ord. Nos. 916, 5/4/04; 1061, 12/2/13)

## SECTION 1-206: CITY TREASURER; MONTHLY REPORT

He/she shall, at the end of each month and as often as may be required, render a report to the mayor and City Council showing, under oath, the condition of the various accounts of the treasury at the time of such reports and the balance of money in the treasury; he/she shall accompany such accounts with a statement of all receipts and disbursements, together with all warrants paid by him/her, which warrants with any and all vouchers held by him/her shall be filed with his/her accounts in the city clerk's office. He/she shall keep a record, in a book suitable for that purpose, of each and every warrant paid and from what fund paid. He/she shall also produce depository evidence that all city money is in a solvent and going bank in the name of the City. If the city treasurer

neglects or fails, for a period of ten days from the end of each and every month, to render his/her account, the City Council shall by resolution declare the office vacant, and the mayor and City Council shall fill the vacancy by appointment. (Neb. Rev. Stat. §17-606)

#### SECTION 1-207: CITY TREASURER; ANNUAL REPORT

The city treasurer is also required to publish or cause to be published in a legal weekly newspaper published in or of general circulation in said city within 60 days following the end of each fiscal year a report of the activities of his/her office, which said report shall show in detail all receipts, disbursements, warrants outstanding, and the debit or credit balance of the City. (Neb. Rev. Stat. §19-1101)

#### SECTION 1-208: CITY ATTORNEY; DUTIES

The city attorney when appointed shall be legal advisor to the mayor and the City Council and shall undertake all legal matters of the City as set forth by Nebraska statutes. He/she shall commence, prosecute and defend all suits and actions necessary to be commenced, prosecuted or defended on behalf of the City, or that may be ordered by the council. When requested, he/she shall attend meetings of the council and give them his/her opinion upon any matters submitted to him/her either orally or in writing as may be required. He/she shall draft or review for legal correctness ordinances, contracts, franchises and other instruments as may be required, and he/she shall perform such other duties as may be imposed upon him/her by general law or ordinance. The City Council shall have the right to pay the city attorney compensation for legal services performed by him/her for it on such terms as the City Council and attorney may agree, and to employ additional legal assistance and to pay for such legal assistance out of the funds of the City. (Neb. Rev. Stat. §17-610)

#### SECTION 1-209: CITY POLICE CHIEF; DUTIES

1. It shall be the duty of the city police chief, and he/she is hereby authorized and empowered, to diligently inquire into any and all violations of the city ordinances and state statute. In the event that he/she determines that a violation of city ordinance or state statute has occurred he/she shall issue a written complaint and cause the arrest of such person violating the ordinance or state law.

2. The city police chief shall have general control over motor vehicular traffic, and said police chief, together with such special officers detailed to assist him/her as traffic officers by the mayor and City Council, shall direct the movement of traffic at intersections and elsewhere; and it shall be unlawful for any person to violate any order or signal of the city police or of any special traffic officer.

3. The city police chief shall bring all prisoners who are under arrest for the violation of any city ordinances or state laws before the County Court whenever required to do so by rule or order of the county judge, and he/she shall make or cause to be made the necessary written complaint against such person or persons when arrested.

4. He/she shall perform such other duties as may be required of him/her by resolution or by order of the mayor and City Council.

5. The duties of the city police chief will be those set forth herein and as set forth specifically in the job description separately adopted by the mayor and City Council.

(Neb. Rev. Stat. §17-107, 17-121)

## SECTION 1-210: UTILITIES SUPERINTENDENT

1. The City Council shall have the power to appoint a utilities superintendent supervising the city water system and sewer system. If appointed, the utilities superintendent shall have the general control and supervisory authority over all the city utilities. When requested, he/she shall make a detailed report to the council of the condition of said water and sewer system, all mains, pipes, hydrants, reservoirs, and machinery and such improvements, repairs and extensions thereof as he/she may think proper.

2. The duties of the utilities superintendent will be those set forth herein and as set forth specifically in the job description separately adopted by the mayor and City Council. He/she may be removed for good cause by a two-thirds vote of the City Council.

(Neb. Rev. Stat. §17-107, 17-541, 17-543)

## SECTION 1-211: SEWER COMMISSIONER

The City Council shall have the power to appoint a sewer commissioner to maintain immediate control and supervision over all employees and property that make up the city sewer system, subject to the general control and direction of the council. He/she shall, when requested, make a detailed report to the City Council on the condition of the sewer system and direct its attention to such improvements, repairs, extensions, additions and additional employees as he/she may believe are needed, along with estimates of the costs thereof. He/she shall issue permits for all connections to the city water system and inspect and supervise all repairs made to said system. He or she shall have such other duties as the City Council may designate. (Neb. Rev. Stat. §17-107)

## SECTION 1-212: WATER COMMISSIONER

1. There is hereby created the office of water commissioner in and for the City. The mayor shall nominate and by and with the advice and consent of the City Council shall appoint some competent person as water commissioner. The water commissioner shall be liable upon his/her official bond for the faithful performance of his/her duties. It shall be the duty of the water commissioner to have the general management and control of the waterworks of the City, except for billing for water consumption and collections of money therefor. The salary of the water commissioner shall be fixed and determined annually at the beginning of the fiscal year by the City Council. The council shall employ such laborers as deemed necessary upon the written recommendation of the water commissioner.

2. The water commissioner shall make detailed reports to the City Council, when requested, concerning the condition of the water system. The water commissioner shall not purchase any material or supplies for the use of the department nor employ any help in the department except upon the authority of the City Council, unless it be for repairs in cases of emergency. The water commissioner, who may be removed at any time by a two-thirds vote of the council, shall perform such additional duties as may be prescribed by the council.

(Neb. Rev. Stat. §17-107, 17-541, 17-543)

## SECTION 1-213: STREET COMMISSIONER



1. The council shall have the power to appoint a city street superintendent who shall have general charge, direction and control of all work on the streets, sidewalks, culverts and bridges of the City, and shall perform such other duties as the council may require. It shall be his/her responsibility to see that gutters and drains therein function properly and that the same are kept in good repair. He or she shall, at the request of the council, make detailed reports on the condition of the streets, sidewalks, culverts, alleys and bridges of the City, and direct their attention to such improvements, repairs, extensions, additions and additional employees as he or she may believe or need to maintain a satisfactory street system in the City, along with an estimate of the cost thereof. It shall be the special duty of the street superintendent to supervise and direct the snow and tree removal work in the City.

2. The duties of the street superintendent will be those set forth herein and as set forth specifically in the job description separately adopted by the mayor and City Council.

(Neb. Rev. Stat. §17-107, 17-119)

#### SECTION 1-214: SPECIAL ENGINEER

The City Council may employ a special engineer to make or assist the city engineer in making any particular estimate, survey or other work. The special engineer shall make a record of the minutes of his or her surveys and all other work done for the City. He or she shall, when directed by the City Council, accurately make all plats, sections, profiles and maps as may be necessary in the judgment of the council. He or she shall, upon request of the council, make estimates of the costs of labor and material which may be done or furnished by contract with the City, and make all surveys, estimates and calculations necessary for the establishment of grades, bridges, building of culverts, sewers, electric systems, waterworks, power plants, public heating system, curbing and gutters, and the improvement of streets and erection and repair of buildings, and shall perform such other duties as the City Council may require. All records of the special engineer shall be public records which shall belong to the City and shall be turned over to his/her successor. (Neb. Rev. Stat. §17-405, 17-568, 17-568.01, 17-919)

#### SECTION 1-215: CITY PHYSICIAN

The city physician shall be a member of the Board of Health and perform the duties devolving upon him/her as the medical advisor of said board. In all injuries where a liability may be asserted against the City, the city physician shall immediately investigate the said injuries, the extent thereof, and the circumstances. He/she shall then report the results of his/her investigation with the name of the party injured, and all other persons who may have personal knowledge of the matter. He/she shall make all physical examinations and necessary laboratory tests incident thereto, and issue such health certificates as are required by ordinance. For the purpose of making examinations of the sanitary conditions of the property and the state of health of the inhabitants therein, he/she shall have the right at all reasonable hours to go upon and enter all premises, buildings or other structures in the City. He or she shall perform such other duties as may be required of him/her by the laws of the State and the ordinances of the City. When ordered to do so by the City Council, he/she shall disinfect or fumigate the premises or persons in or about the premises, when the premises are quarantined, and to call upon indigent sick persons and perform other professional services at the direction of the City Council. The city physician shall receive as compensation for his/her services

such sum as the council may from time to time set. He/she shall receive no compensation for his/her services as a member of the Board of Health.

## **ARTICLE III - ADMINISTRATION**

### **SECTION 1-301: CORPORATE SEAL**

There shall be owned by the City, in the office of the city clerk, a common seal of the corporation, having engraved thereon the words "City of Atkinson, Nebraska, Seal." The city clerk shall affix an impression of said seal on all papers or documents executed by him/her in his/her official capacity. (Neb. Rev. Stat. §17-502)

### **SECTION 1-302: OFFICERS; BONDS**

1. The officers of the City, before entering upon their duties, shall give bonds for the faithful performances of their duties in an amount set by resolution of the City Council, which said bonds shall be executed with a corporate surety and approved by the City Council. Said bonds shall be filed in the office of the city clerk.

2. All surety and other bonds required by city ordinances or by Nebraska law for city officials may be provided by the purchase of a blanket bond, undertaking or equivalent insurance. The bond or insurance coverage shall be, at a minimum, an aggregate of the amounts fixed by the law or the City Council requiring such bond or undertaking and on such terms and conditions as may be required. Premiums on said bonds or insurance shall be paid out of the general funds or other proper funds of the City. (Neb. Rev. Stat. §11-104[2]) (Ord. No. 979, 11/5/07)

3. In the event that sureties on the official bond of any officer of the City, in the opinion of the City Council, become insufficient, the council may require by resolution a reasonable time within which such officer may give a new bond or additional sureties thereon as directed. In the event that this officer shall fail, refuse or neglect to give a new bond or additional sureties to the satisfaction and approval of the council, then the office shall by such failure, refuse or neglect, become vacant and it shall be the duty of the City Council to appoint a competent and qualified person to fill this said office. Any official who is re-elected to office shall be required to file a new bond after each election.

### **SECTION 1-303: OATH OF OFFICE**

All officers of the City, whether elected or appointed, shall before entering upon the duties of their respective offices declare and subscribe the following oath or affirmation:

"I, \_\_\_\_\_, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Nebraska against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely and without mental reservation or for the purpose of evasion; and that I will faithfully and impartially perform the duties of the office of \_\_\_\_\_ according to law and to the best of my ability. And I do further swear that I do not advocate nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am in this posi-

tion I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence. So help me God."

This oath or affirmation so subscribed shall be filed in the office of the city clerk.  
(Neb. Rev. Stat. §11-101)

#### SECTION 1-304: MEETINGS; PUBLIC

1. All public meetings as defined by law shall be held in a public building located within the City which shall be open to attendance by the public. All meetings shall be held in the public building in which the City Council usually holds such meetings unless the publicized notice hereinafter required shall designate some other public building or other specified place. The advance publicized notice of all public, convened meetings shall be transmitted to all members of the council and to the public by a method designated by the council. Such notice shall contain the time and specific place for each meeting and either an enumeration of the agenda subjects known at the time of the notice or a statement that such an agenda, kept continually current, shall be available for public inspection at the office of the city clerk. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. The City shall have the right to modify the agenda at the public meeting when convened. The minutes of the city clerk shall include a record of the manner by which the advance publicized notice was given, the time and specific place of each meeting and the names of each member of the council present or absent at each convened meeting.

2. The City Council shall make available at least one current copy of the Open Meetings Act, to be posted in the meeting room at a location accessible to members of the public. At the beginning of each meeting, the public shall be informed about the location of the posted information.

3. In order to address any item on the agenda of any public meeting, no member of the public shall be required to be named on the agenda prior to such meeting, nor shall such members of the public be required to identify themselves by signing in prior to such meeting. However, prior to addressing the City Council on any agenda item, members of the public shall be required to identify themselves.

4. Any official action on any question or motion duly moved and seconded shall be taken only by roll call vote of the City Council in open session. The record of the city clerk shall show how each member voted or that a member was absent and did not vote.

5. Any formal actions taken at any public meeting not in conformity with the provisions of this section shall be deemed to be void. Any official who shall violate the provisions of this section shall be deemed to be guilty of a misdemeanor.

6. This section does not apply to chance meetings or to attendance at or travel to conventions or workshops of the City Council at which there is no meeting of the council then intentionally convened, if there is no vote or other action taken regarding any matter over which the council has supervision, control, jurisdiction or advisory power.

(Neb. Rev. Stat. §84-1411, 84-1412) (Am. Ord. No. 998, 11/3/08)

#### SECTION 1-305: SPECIAL MEETINGS

1. Special meetings may be called by the mayor or by three members of the City Council, the object of which shall be submitted to the council in writing. The call and object, as well as the disposition thereof, shall be entered upon the journal by the city clerk. On filing the call for a special meeting, the city clerk shall notify the council members of the special meeting, stating the time and its purpose. Notice of a special meeting need not be given to a councilmember known to be out of the state or physically unable to be present. A majority of the members of the City Council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day and compel the attendance of the absent members. Whether a quorum is present or not, all absent members shall be sent for and compelled to attend.

2. At the hour appointed for the meeting, the city clerk shall proceed to call the roll of members and announce whether a quorum is present. If a quorum is present, the council shall be called to order by the mayor, if present, or if absent, by the president of the council. In the absence of both the mayor and the president of the council, the City Council members shall elect a president pro tempore. All ordinances passed at any special meeting shall comply with procedures set forth in Chapter I, Article IV.  
(Neb. Rev. Stat. §17-106)

#### SECTION 1-306: MEETINGS; CLOSED SESSIONS

1. The council may hold a closed session by an affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

2. Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to the council.

3. The vote to hold a closed session shall be taken in open session. The entire motion to close, the vote of each member on the holding of a closed session and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion passes, then the mayor shall, immediately prior to the closed session, restate on the record the limitation of the subject matter of the closed session. In holding such a closed session, the council shall restrict its consideration of matters during the closed portion to only those purposes set forth in the motion to close as the reason for the closed session.

4. Any member of the council shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session. Such challenge shall be overruled only by a majority of the members of the council. Such challenge and its disposition shall be recorded in the minutes.  
(Neb. Rev. Stat. §84-141)

#### SECTION 1-307: MEETINGS; NOTICE TO NEWS MEDIA

The city clerk, secretary or designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the sub-

jects to be discussed at that meeting. (Neb. Rev. Stat. §84-1411)

## SECTION 1-308: MEETINGS; PUBLIC PARTICIPATION

1. Subject to the provisions of this article, the public shall have the right to attend and the right to speak at meetings of public bodies and all or any part of a meeting of a public body, except for closed meetings called pursuant to Section 1-306, may be videotaped, televised, photographed, broadcast or recorded by any person in attendance by means of a tape recorded, camera, video equipment or any other means of pictorial or sonic reproduction or in writing.

2. It shall not be a violation of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings. No public body shall require members of the public to identify themselves as a condition for admission to the meeting. The body may require any member of the public desiring to address the body to identify him- or herself. No public body shall for the purpose of circumventing the provisions of this article hold a meeting in place known by the body to be too small to accommodate the anticipated audience. No public body shall be deemed in violation of this section if it holds its meetings in its traditional meeting place which is located in this state. An agency which contracts with cities outside the State of Nebraska may hold meetings of any committee outside the State of Nebraska if such meetings are held only in such contracting cities. Final action on any agenda items shall only be taken by the agency at a meeting in the State of Nebraska, which meeting shall comply with Neb. Rev. Stat. §84-1408 to 84-1414. The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting. Public bodies shall make available at the meeting, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting.

(Neb. Rev. Stat. §84-1412, 18-2438)

## SECTION 1-309: MEETINGS; CITY COUNCIL

1. The meetings of the City Council shall be held at the council chambers or other location set by the council by resolution. Regular meetings shall be held on the first Monday of each month at the hour of 7:30 p.m. Special meetings may be called by the mayor or by a majority of the council for those purposes of which shall be submitted in writing to the council members prior to said meeting. The call and object of said meeting shall be entered upon the journal by the city clerk as well as the disposition of said meeting.

2. A majority of the members of the City Council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day and compel the attendance of the absent members. At the hour appointed for the meeting, the city clerk shall proceed to call the roll of members and announce whether a quorum is present. If a quorum is present the council shall be called to order by the mayor. In the absence of the mayor, the council shall have the power to appoint a mayor pro tempore, who shall exercise and have the powers and perform the same duties as the regular mayor.

(Neb. Rev. Stat. §17-105, 17-106)

## SECTION 1-310: MEETINGS; ORDER OF BUSINESS

All meetings of the City Council shall be open to the public. Promptly at the hour set by law on the day of each regular meeting, the council members, the city clerk, the mayor, and such other city officials that may be required shall take their regular stations in the city hall, and the business of the City shall be taken up for consideration and disposition in the following order:

- Roll call
- Reading and approval of the minutes of the previous meeting
- Consideration of petitions and other communications
- Reports of officers, boards and committees
- Unfinished business of the preceding meeting
- Introduction of ordinances and resolutions; first reading
- Second reading of ordinances
- Third reading of ordinances
- Final passage of ordinances
- New business
- Miscellaneous business
- Appropriations and consideration of claims
- Adjournment

## SECTION 1-311: MEETINGS; PARLIAMENTARY PROCEDURE

The mayor shall preserve order during meetings of the City Council and shall decide all questions of order, subject to an appeal to the City Council. When any person is called to order, he/she shall be seated until the point is decided. When the mayor is putting the questions, no person shall leave the meeting room. Every person present, previous to speaking, shall rise from his/her seat and address himself/herself to the presiding officer, and while speaking shall confine him- or herself to the question. All resolutions or motions shall be reduced to writing before being acted upon, if requested by the city clerk or any member of the council. Every member of the council who is present when a question is voted upon shall cast his/her vote, unless excused by a majority of the City Council present. No motion shall be put or debated unless seconded. When seconded, it shall be stated by the mayor before being debatable. In all cases where a motion or resolution is entered on the minutes, the name of the member of the council making the motion or resolution shall be entered also. After each vote, a roll call vote shall be taken and entered in the minutes upon the request of any member of the council. Before the vote is actually taken, any resolution, motion or proposed ordinance may be withdrawn from consideration by the sponsor thereof with the consent of the member of the council seconding the said resolution, motion or ordinance. When any question is under debate, no motion shall be made, entertained or seconded except the previous question, a motion to table, and to adjourn. Each of the said motions shall be decided without debate. Any of the rules of the City Council for meeting may be suspended by a two-thirds vote of the members present. In all cases in which provisions are not made by these rules, *Robert's Rules of Order* is the authority by which the City Council shall decide all procedural disputes that may arise.

## SECTION 1-312: MEETINGS; CHANGE IN OFFICE

The change in office shall be made as follows: the mayor and council shall meet on the first regular meeting date in December of each year in which a city election is held and the outgoing officers and the outgoing members of the council shall present their reports; and upon the old council having completed its business up to the said time, the outgoing members of the council shall surrender their offices to the incoming members; and, the outgoing officers shall thereupon each surrender to his/her successor in office all property, records, papers and monies belonging to the same.

#### SECTION 1-313: MEETINGS; ORGANIZATIONAL

The newly elected council members shall convene in the council chambers on the first regular meeting in December of each year in which a city election is held immediately after the prior council adjourns and proceed to organize themselves for the ensuing year. The mayor elected for the new municipal year shall call the meeting to order. The council shall then proceed to examine the credentials of its members and other elective officers of the City to see that each has been duly and properly elected, and to see that such oaths and bonds have been given as are required. After ascertaining that all members are duly qualified, the council shall then elect one of its own body who shall be styled as "president of the council." The mayor shall then nominate his/her candidates for appointive offices. He/she shall then proceed with the regular order of business. It is hereby made the duty of each and every member of the council or his/her successor in office, and of each officer elected to any office, to qualify prior to the first regular meeting in December following his/her election. All appointive officers shall qualify within two weeks following their appointments. Qualification for each officer who is not required to give bond shall consist in his/her subscribing and taking an oath to support the Constitution of the United States, the Constitution of the State of Nebraska, the laws of the City and to perform faithfully and impartially the duties of his/her office, said oath to be filed in the office of the city clerk. Each officer who is required to give a bond shall file the required bond in the office of the city clerk with sufficient sureties, conditioned on the faithful discharge of the duties of his/her office, with the oath endorsed thereon.

#### SECTION 1-314: MEETINGS; VIDEOCONFERENCING, WHEN ALLOWED

1. A meeting of an organization created under the Interlocal Cooperation Act or the Municipal Cooperative Financing Act or of the governing body of a risk management pool or advisory committee organized in accordance with the Intergovernmental Risk Management Act may be held by means of videoconferencing if:

- A. Reasonable advance publicized notice is given;
- B. Reasonable arrangements are made to accommodate the public's right to attend, hear and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing was not used;
- C. At least one copy of all documents being considered is available to the public at each site of the videoconference;
- D. At least one member of the governing body or advisory committee is present at each site of the videoconference; and

E. No more than one-half of the governing body's or advisory committee's meetings in a calendar year are held by videoconference.

2. Videoconferencing shall not be used to circumvent any of the public government purposes established in this article.

3. For purposes of this section, "videoconferencing" shall mean conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

(Neb. Rev. Stat. §84-1409, 84-1411)

#### SECTION 1-315: MEETINGS; MINUTES

The minutes of any meeting of the City Council shall be written and available for public inspection within ten working days of the meeting or prior to the next convened meeting, whichever occurs earliest, except that an additional ten days shall be allowed the city clerk in writing and making available for inspection such minutes in the event of the clerk's serious illness or an emergency which prevents him/her from writing such minutes and making them available to the general public within ten working days as set forth herein. (Ord. No. 943, 1/9/06)

#### SECTION 1-316: APPOINTMENT OF COMMITTEES

At the organizational meeting of the City Council, the mayor may appoint members of such committees as may be necessary from time to time, which committees shall serve at the pleasure of the City Council. The membership of such standing committees may be changed at any time by the mayor. The mayor shall be a member ex officio of each standing committee. The members of the standing committees shall serve a term of office of one year, unless reappointed.

### **ARTICLE IV - ORDINANCES**

#### SECTION 1-401: GRANT OF POWER

The City Council shall have the responsibility of making all ordinances, by-laws, rules, regulations and resolutions, not inconsistent with the laws of the State of Nebraska, as may be necessary and proper for maintaining the peace, good government and welfare of the City and its trade, commerce and security. (Neb. Rev. Stat. §17-505)

#### SECTION 1-402: TITLE

No ordinance shall contain a subject not clearly expressed in its title. (Neb. Rev. Stat. §17-614)

#### SECTION 1-403: STYLE



The style of all city ordinances shall be: "Be it ordained by the Mayor and City Council of the City of Atkinson, Nebraska." (Neb. Rev. Stat. §17-613)

#### SECTION 1-404: INTRODUCTION

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

1. With the recognition of the mayor, a council member may, in the presence and hearing of a majority of the members elected to the council, read aloud the substance of his/her proposed ordinance and file a copy of the same with the city clerk for future consideration; or

2. With the recognition of the mayor, a council member may present his or her proposed ordinance to the city clerk, who, in the presence and hearing of a majority of the members elected to the council, shall read aloud the substance of the same and shall file the same for future consideration.

#### SECTION 1-405: RESOLUTIONS AND MOTIONS

Resolutions and motion shall be introduced in one of the methods prescribed for the introduction of ordinances. After their introduction, they shall be fully and distinctly read one time in the presence and hearing of a majority of the members elected to the council. The issue raised by said resolutions or motions shall be disposed of in accordance with the usage of parliamentary law adopted for the guidance of the council. A majority vote shall be required to pass any resolution or motion. The vote on any resolution or motion shall be by roll call vote.

#### SECTION 1-406: READING AND PASSAGE; MAYOR'S VETO

1. Ordinances of a general or permanent nature shall be read by title on three different days unless three-fourths of the City Council votes to suspend this requirement, except that such requirement shall not be suspended for any ordinance for the annexation of territory. In case such requirement is suspended, the ordinance shall be read by title and then moved for final passage. A reading of any ordinance in full may be required by three-fourths of the council before enactment under either procedure set out in this section.

2. All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of the City Council. The mayor may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the council, and the mayor shall, for the purpose of such vote, be deemed to be a member of the council.

3. The mayor shall have power to veto or sign any ordinance passed by the City Council and to approve or veto any order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim. If the mayor approves the ordinance, order, bylaw, resolution, contract, or claim, he or she shall sign it and it shall become effective. If the mayor vetoes the ordinance, order, bylaw, resolution, contract, or any

item or items of appropriations or claims, he or she shall return it to the City Council, stating that the measure is vetoed. The mayor may issue the veto at the meeting at which the measure passed or within seven calendar days after the meeting. If the mayor issues the veto after the meeting, he or she shall notify the city clerk of the veto in writing. The clerk shall notify the City Council in writing of the mayor's veto.

4. Any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim vetoed by the mayor may be passed over his or her veto by a vote of two-thirds of the members of the council. If the mayor neglects or refuses to sign any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim but fails to veto the measure within the time required by this section, the measure shall become effective without his or her signature. The mayor may veto any item or items of any appropriation bill or any claims bill and approve the remainder thereof, and the item or items vetoed may be passed by the council over the veto as in other cases.

(Neb. Rev. Stat. §17-614) (Am. Ord. Nos. 1064, 1/6/14; 1084, 5/4/15)

#### SECTION 1-407: SUSPENSION OF RULES

In the event that three-fourths of the members of the council present vote to dispense with the rule that ordinances of a general or permanent nature be fully read on three different days, such ordinances may be passed by reading the title one time when introduced, read by title a second time after the rule has been dispensed with, read at large a third time, and then put upon final passage.

#### SECTION 1-408: CERTIFICATE OF PUBLICATION OR POSTING

The passage, approval and publication or posting of all ordinances shall be sufficiently proven by a certificate under the city seal from the city clerk showing that the said ordinance was passed and approved, and when, and in what paper the same was published, or when, and by whom, and where the same was posted. (Neb. Rev. Stat. §17-613)

#### SECTION 1-409: EFFECTIVE DATE

The city clerk shall, within 15 days after the passage of any ordinances, publish the same in a legal newspaper of general circulation in the City, or post the ordinance in the normal three public places. The ordinance shall then become effective upon publication or posting. (Neb. Rev. Stat. §17-613)

#### SECTION 1-410: AMENDMENTS AND REVISIONS

No ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended, and the ordinance or section so amended shall be repealed. (Neb. Rev. Stat. §17-614)

#### SECTION 1-411: EMERGENCY ORDINANCES

In the case of riot, infectious or contagious diseases, or other impending danger, failure of a public utility, or other emergency requiring its immediate operation, such ordinance shall take effect upon the proclamation of the mayor, and the posting thereof in at least three of the most public places in the City. Such emergency notice shall recite the emergency and be passed by a three-fourths vote of the council, and entered upon the city

clerk's minutes. (Neb. Rev. Stat. §17-613, 19-3701)

## **ARTICLE V - FISCAL MANAGEMENT**

### **SECTION 1-501: FISCAL YEAR**

The fiscal year of the City shall commence on October 1 and extend through the following September 30. (Neb. Rev. Stat. §17-701)

### **SECTION 1-502: BUDGET PROCEDURE**

The *Manual of Instructions for City/Village: Budgets*, prepared by the auditor of public accounts, Lincoln, Nebraska 68509 is incorporated by reference for the purpose of proper budget preparation and shall be followed wherever practicable.

### **SECTION 1-503: BUDGET STATEMENT; FILING**

1. The City Council shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed "The Annual Appropriation Bill," in which the council shall appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the City. Such budget statement shall be prepared on forms prescribed and furnished by the Nebraska Auditor of Public Accounts and shall contain that information required by the *Manual of Instructions for City/Village: Budgets*, prepared by the state auditor.

2. The annual appropriation bill shall not be amended without a majority vote of the City Council after a public hearing. Notice of the time and place of the hearing shall be published at least five days prior to the date set for hearing in a newspaper of general circulation within the City. The income arising from the operation of proprietary functions shall be deemed especially appropriated to the payment of the current expenses of and to the cost of improvements, extensions and additions to such functions and shall not be included in the annual appropriation bill.  
(Neb. Rev. Stat. §13-504)

### **SECTION 1-504: BUDGET HEARING**

Subsequent to the filing of the proposed budget statement, the City Council shall publish a proposed budget and conduct a public hearing on the proposed budget statement. Notice of the place and time of the said hearing, as well as a copy of the proposed budget, shall be published at least five days prior to the date set for the hearing in a newspaper of general circulation in the City. After such hearing, the statement shall be adopted or amended, and adopted as amended, and a written record shall be made of such hearing. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of such changes shall be published within 20 days after its adoption. (Neb. Rev. Stat. §13-506)

### **SECTION 1-505: BUDGET FILING**

The City Council shall file with and certify to the levying board and file with the state auditor a copy of the adopted budget statement, together with the amount of the tax to be levied and proof of publication. Such filing shall be made on or before September 20.

The City Council shall not certify any tax that exceeds the maximum levy prescribed by state law, provided, in certifying the amount to be so levied, allowance may be made for delinquent taxes not exceeding five percent of the amount to be levied plus the actual percentage of delinquent taxes for the preceding tax year. (Neb. Rev. Stat. §13-508)

#### SECTION 1-506: ANNUAL AUDIT

The City Council shall cause an audit of the city accounts to be made by a qualified accountant or shall prepare an unaudited statement of cash receipts and disbursements, in lieu of an audit, as expeditiously as possible following the close of the fiscal year. If an audit is authorized by the City Council, it shall be made on a cash or accrual method at the discretion of the council and shall be completed within six months of the close of the fiscal year. In the event the City elects not to have an audit performed, the city treasurer shall prepare an unaudited statement of cash receipts and disbursements in a form prescribed by the state auditor and shall submit not less than three copies of the unaudited report to the council. (Neb. Rev. Stat. §19-2901 through 19-2909)

#### SECTION 1-507: ALL-PURPOSE LEVY

The City Council has determined that the amount of money to be raised by taxation shall be certified to the county clerk in the form of one all-purpose levy instead of certifying a schedule of levies for specific purposes added together. Said all-purpose levy shall not exceed an annual levy in excess of the legal maximum as prescribed by state law upon the assessed valuation of all taxable property in the City, except intangible property. (Neb. Rev. Stat. §17-702)

#### SECTION 1-508: CONTRACTS

1. Except as provided in Neb. Rev. Stat. Section 18-412.01, for a contract with a public power district to operate, renew, replace or add to the electric distribution, transmission, or generation system of the City, no contract for enlargement or general improvements, such as water extensions, sewer, public heating system, bridges, work on streets, or any other work or improvement costing over \$30,000.00 shall be made when such cost is assessed to the property, unless it is first approved by the City Council.

2. Except as provided in Neb. Rev. Stat. Section 18-412.01, before the City Council makes any contract in excess of \$30,000.00 for enlargement or general improvements such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the city engineer and submitted to the council. In advertising for bids, the City Council may publish the amount of the estimate.

A. Advertisements for bids shall be required for any contract costing over \$30,000.00 entered into:

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

2. For the purchase of equipment used in the construction of such enlargement or general improvements.
- B. The city electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement without advertising for bids if the price is:
1. \$30,000.00 or less;
  2. \$60,000.00 or less and the electric utility has gross annual revenue from retail sales in excess of \$1,000,000.00;
  3. \$90,000.00 or less and the electric utility has gross annual revenue from retail sales in excess of \$5,000,000.00; or
  4. \$100,000.00 or less and the electric utility has gross annual revenue from retail sales in excess of \$10,000,000.00.

(Neb. Rev. Stat. §16-321) (Am. Ord. No. 997, 11/3/08)

#### SECTION 1-509: CLAIMS

All claims against the City shall be presented to the City Council in writing with a full account of the items, and no claim or demand shall be audited or allowed unless presented as provided for in this section. No costs shall be recovered against the City in any action brought against it for an unliquidated claim which has not been presented to the council to be audited, nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed, with the interest due. No order or warrant shall be drawn in excess of 85% of the current levy for the purpose for which it is drawn unless there shall be sufficient money in the city treasury for the appropriate fund against which it is to be drawn; provided that in the event there exist obligated funds from the federal and/or state government for the general purpose of such warrant, then such warrant may be drawn in excess of 85%, but not more than 100% of the current levy for the purpose for which said warrant is drawn. (Neb. Rev. Stat. §17-714, 17-715)

#### SECTION 1-510: WARRANTS

All warrants drawn upon the city treasury must be signed by the mayor and countersigned by the city clerk, stating the particular fund to which the warrant is chargeable, the person to whom it is payable, and the purpose of the expenditure. No money shall be otherwise paid than upon warrants so drawn. Each warrant shall specify the amount included of such fund. (Neb. Rev. Stat. §17-711)

#### SECTION 1-511: TRANSFER OF FUNDS

Whenever during the current fiscal year it becomes apparent due to unforeseen emergencies that there is temporarily insufficient money in a particular fund to meet the requirements of the adopted budget of expenditures for that fund, the City Council may by a majority vote transfer money from other funds to such fund. No expenditure during any fiscal year shall be made in excess of the amounts indicated in the adopted budget statement except as authorized herein. If, as the result of unforeseen circumstances, the revenue of the current fiscal year shall be insufficient, the council may propose to

supplement the previously adopted budget statement and shall conduct a public hearing at which time any taxpayer may appear or file a written statement protesting the application for additional money. A written record shall be kept of all such hearings. Notice of a place and time for the said hearing shall be published at least five days prior to the date set for the hearing in a newspaper of general circulation in the City. The published notice shall set forth the time and place of the proposed hearing, the amount of additional money required, the purpose of the required money, a statement setting forth the reasons why the adopted budget of expenditures cannot be reduced to meet the need for additional money, and a copy of the summary of the originally adopted budget previously published. Upon the conclusion of the public hearing on the proposed supplemental budget and approval by the City Council, said council shall file with the county clerk and the state auditor a copy of the supplemental budget and shall certify the amount of additional tax to be levied. The council may then issue warrants in payment for expenditures authorized by the adopted supplemental budget. The said warrants shall be referred to as "registered warrants" and shall be repaid during the next fiscal year from funds derived from taxes levied therefor.

#### SECTION 1-512: SPECIAL ASSESSMENT FUND

All money received on special tax assessments shall be held by the city treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made. (Neb. Rev. Stat. §17-710)

#### SECTION 1-513: SINKING FUNDS

1. The City Council, subject to the limitations set forth herein, shall have the power to levy a tax not to exceed that prescribed by state law in addition to the amount of tax which may be annually levied for the purposes of the adopted budget statement of the City, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension or repair of the approved uses as authorized by state law. To initiate the said sinking fund, the City Council shall declare its purpose by resolution to submit to the qualified electors of the City the proposition to provide the improvement at the next general city election. The resolution shall set forth the improvement, the estimated cost, the amount of the annual levy, the number of years required to provide the required revenue, the name of the sinking fund proposed, and the proposition as it will appear on the ballot. Notice of the said proposition shall be published in its entirety three times on successive weeks before the day of the election in a legal newspaper of general circulation in the City.

2. The sinking fund may be established after the election if a majority or more of the legal votes were in favor of the establishment of the fund. The City Council may then proceed to establish the said fund in conformity with the provisions of the proposition and applicable state law. The funds received by the city treasurer shall, as they accumulate, be immediately invested with the written approval of the council in the manner provided by state law. No sinking fund so established shall be used for any purpose or purposes contrary to the purpose as it appeared on the ballot unless the City Council is authorized to do so by 60% of the qualified electors of the City voting at a general election favoring such a change in the use of the sinking fund.  
(Neb. Rev. Stat. §19-1301 through 19-1304, 77-2337, 77-2339)

#### SECTION 1-514: DEPOSIT OF FUNDS

The City Council, at its first meeting in each fiscal year, shall designate one or more banks of approved and responsible standing in which the city treasurer shall keep at all times all money held by him/her; provided, if more than one bank in the City meets the requirements for approved banks as herein defined, the said funds shall be deposited in each of them and the treasurer shall not give a preference to any one or more of them in the money he/she shall deposit. A bond shall be required from all banks so selected in a penal sum which equals the maximum amount on deposit at any time less the amount insured by the Federal Deposit Insurance Corporation or a pledge of sufficient assets of the bank to secure the payment of all such deposits. (Neb. Rev. Stat. §17-607, 77-2362 through 77-2364)

## SECTION 1-515: INVESTMENT OF FUNDS

1. The City Council may, by resolution, direct and authorize the city treasurer to invest surplus funds in the outstanding bonds or registered warrants of the City and other approved bonds and obligations as provided by law. The interest on such bonds or warrants shall be credited to the fund out of which the said bonds or warrants were purchased.

2. Notwithstanding any other provision of law, to the extent that the funds of the City may be invested or deposited by the city treasurer in certificates of deposit or time interest-bearing deposits with banks, capital stock financial institutions, or qualifying mutual financial institutions, such authorization shall may include the investment or deposit of funds in certificates of deposit and time interest-bearing deposits in accordance with the following conditions as an alternative to the furnishing of securities or the providing of a deposit guaranty bond pursuant to the Public Funds Deposit Security Act:

- A. The bank, capital stock financial institution, or qualifying mutual financial institution in this state through which the investment or deposit of funds is initially made arranges for the deposit of a portion or all of such funds in one or more certificates of deposit or time interest-bearing deposits with other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States;
- B. Each such certificate of deposit or time interest-bearing deposit is fully insured or guaranteed by the Federal Deposit Insurance Corporation;
- C. The bank, capital stock financial institution, or qualifying mutual financial institution through which the investment or deposit of funds was initially made acts as a custodian for the City with respect to any such certificate of deposit or time interest-bearing deposit issued for the account of the state; and
- D. At the same time that the funds are deposited into and such certificates of deposit or time deposits are issued by other banks, capital stock financial institutions, or qualifying mutual financial institutions, the bank, capital stock financial institution, or qualifying mutual financial institution through which the investment or deposit of funds in certificates of deposit or time interest-bearing deposits was initially made receives an amount of deposits from customers of other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States which is equal to or greater than the amount of the investment or deposit of funds in

certificates of deposit or time interest-bearing deposits initially made by the City.

(Neb. Rev. Stat. §17-608, 17-609, 72-1259, 77-2341, 77-2365.02) (Am. Ord. No. 1050, 11/5/12)

#### **SECTION 1-516: EXPENDITURES**

No city official shall have the power to appropriate, issue or draw any order or warrant on the city treasury for money, unless the same has been appropriated or ordered by ordinance, or the claim for the payment of such order or warrant has been allowed according to Nebraska law and funds for the claim or out of which said claim is payable had been included in the adopted budget statement according to law.

#### **SECTION 1-517: BOND ISSUES**

The City Council may, after meeting all the requirements of state law, issue bonds, fund bonds, and retire bonds for such purposes as may be permitted by state law. The City Council shall have the authority to levy special assessments for the payment of interest and principal on such bonds, and may spread the payments up to the maximum number of years permitted by state law. (Neb. Rev. Stat. §10-201 through 10-411, 10-606 through 10-612, 12-1001, 17-529.08, 17-534, 17-905, 17-908, 17-911, 17-939, 17-958, 17-968, 18-1801 through 18-1805, 23-3513, 39-836)

#### **SECTION 1-518: RETURNED PAYMENT; FEE**

The City shall impose a charge, as set by the City Council and filed in the office of the city clerk, to be assessed against any entity or individual issuing a check or any type of pre-authorized or electronic payment payable to the City, through any department or representative, that is returned by the drawee bank for the reason that the account does not exist or the account has insufficient funds to satisfy the amount of the check. (Ord. No. 1022, 11/1/10)

### **ARTICLE VI - ELECTIONS**

#### **SECTION 1-601: ELECTION OF OFFICERS; CERTIFICATION**

All general and special elections shall be held in conjunction with the statewide primary or general election and shall be governed by the provisions of the Nebraska Election Act. No later than July 1 of each even-numbered year, the City Council shall certify to the election commissioner/county clerk, on forms provided by the Nebraska Secretary of State, the name of the City, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office. (Am. Ord. No. 926, 12/6/04) (Neb. Rev. Stat. §16-302.01, 32-401, 32-404, 32-532, 32-556)

#### **SECTION 1-602: PRIMARY ELECTION; NUMBER OF CANDIDATES FILING**

If the number of candidates properly filed for nomination at the primary election does not exceed two for each vacancy to be filled, all candidates properly filed shall be considered nominated, and no primary election for their nomination shall be required.

#### **SECTION 1-603: 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/her 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. (Neb. Rev. Stat. §32-1122)

#### SECTION 1-604: FILING FEE

Prior to the filing of any nomination papers, there shall be paid to the city treasurer a filing fee which shall amount to 1% of the annual salary for the office for which the candidate will file; provided there shall be no filing fee for any candidate filing for an office in which a per diem is paid rather than a salary, or an office for which there is a salary of less than \$500.00 per year. No nominating papers shall be filed until the proper city treasurer's receipt, showing payment of the filing fee, shall be presented to the election officer with whom the nomination papers are to be filed. (Neb. Rev. Stat. §32-608)

#### SECTION 1-605: VOTER QUALIFICATIONS

"Elector" shall mean a person of the constitutionally prescribed age or upwards, who shall have the right to vote for all officers to be elected to public office, and upon all questions and proposals, lawfully submitted to the voters at any and all elections authorized or provided for by the Constitution or the laws of the State of Nebraska, except school elections; provided, no person shall be qualified to vote at any election unless such person shall be a resident of the state and shall have been properly registered with the election official of the county. (Neb. Rev. Stat. §17-602, 32-110)

#### SECTION 1-606: PETITION CANDIDATES

1. Any registered voter who was not a candidate in the primary election may have his/her name placed on the general election ballot for a partisan office by filing petitions as prescribed in this section and Neb. Rev. Stat. §32-621, or by nomination by political party convention or committee.

2. Any candidate who was defeated in the primary election and any registered voter who was not a candidate in the primary election may have his/her name placed on the general election ballot if a vacancy exists on the ballot under Neb. Rev. Stat. §32-626(1) and the candidate files for the office by petition as prescribed in this section.

3. The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be at least 10% of the total number of registered voters voting for governor or president of the United States at the immediately preceding general election in the City.

4. The number of signatures of registered voters needed to place the name of a candidate upon the partisan ballot for the general election shall be at least 20% of the total vote for governor or president of the United States at the immediately preceding general election within the City, not to exceed 2000.

5. Petitions for nomination shall conform to the requirements of Neb. Rev. Stat. §32-628. Petitions shall state the office to be filled and the name and address of the candidate. Petitions for partisan office shall also indicate the party affiliation of the candidate. Petitions shall be signed by registered voters residing in the City and shall be

filed with the filing officer in the same manner as provided for candidate filing forms in Neb. Rev. Stat. §32-607. Petition signers and circulators shall conform to the requirements of Neb. Rev. Stat. §32-629 and 32-630. No petition for nomination shall be filed unless there is attached thereto a receipt showing payment of the required filing fee. The petitions shall be filed by September 1 in the year of the general election. (Neb. Rev. Stat. §32-616 through 32-618)

#### SECTION 1-607: NOMINATION BY WRITE-IN VOTES

Candidates for elected office may be nominated by write-in; however, when the name of a candidate who did not file or become a petition candidate for nomination is written in and voted for as a candidate for a councilmember, such person shall not be entitled to a certificate of nomination at a statewide primary election or have his/her name placed on the general election ballot unless he/she shall have received not less than 20% of the total vote cast for the candidate receiving the greatest number of votes in the precinct or ward at the preceding election in which candidates were elected to serve the precinct or ward.

#### SECTION 1-608: SPECIAL JOINT ELECTIONS

1. Any issue to be submitted to the registered voters at a special election by the City shall be certified by the city clerk to the election commissioner or county clerk at least 50 days prior to the election. A special election may be held by mail as provided in Neb. Rev. Stat. §32-952 through 32-959. No special election to be conducted by the election commissioner or county clerk shall be held within 30 days prior to or 60 days after the statewide primary election, and no special election to be conducted by the election commissioner or county clerk shall be held within 30 days prior to or 60 days after the statewide general election.

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

3. After the election commissioner or county clerk has received the certification of the issue to be submitted, he/she shall be responsible for all matters relating to the submission of the issue to the registered voters, except that the city clerk shall be responsible for the publication or posting of any required special notice of the submission of such issue other than the notice required to be given of the statewide election issues. The election commissioner or county clerk shall prepare the ballots and issue absentee ballots and shall also conduct the submission of the issue, including the receiving and counting of the ballots. The election returns shall be made to the election commissioner or county clerk. The ballots, including absentee ballots, shall be counted and canvassed at the same time and in the same manner as the other ballots. Upon completion of the canvass of the vote by the County Canvassing Board, the election commissioner or county clerk shall certify the election results to the City Council. The canvass by the Canvassing Board shall have the same force and effect as if made by the City Council. (Neb. Rev. Stat. §32-559)

#### SECTION 1-609: CERTIFICATE OF NOMINATION OR ELECTION

The city clerk shall, within 40 days after the election, prepare, sign and deliver a certificate of nomination or certificate of election to each person whom the canvassing board has declared to have received the highest vote for each municipal office. A certificate of election prepared by the city clerk shall be in the form as nearly as possible prescribed in Neb. Rev. Stat. §32-1033 and shall be signed by the mayor under the seal of the City and countersigned by the city clerk. (Neb. Rev. Stat §19-3041, 32-558, 32-1033)

#### SECTION 1-610: INABILITY TO ASSUME OFFICE

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

#### SECTION 1-611: RECALL PROCEDURE

1. Any or all of the elected officials of the City may be removed from office by recall pursuant to Neb. Rev. Stat. §32-1301 to 32-1309.

2. Petition circulators shall conform to the requirements of the Election Act. The petition papers shall be procured from the city clerk. Each petition paper shall conform to the requirements of state law. Prior to the issuance of such petition papers, an affidavit shall be signed and filed with the city clerk by at least one registered voter. Such voter or voters shall be deemed to be the principal circulator(s) of the recall petition. The affidavit shall state the name and office of the official sought to be removed and shall request that the city clerk issue initial petition papers to the principal circulator for circulation. The city clerk shall notify the principal circulator that the necessary signatures must be gathered within 30 days from the date of issuing petitions.

3. The city clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his/her office, the name of the principal circulator to whom the papers were issued, the date of issuance, and the number of papers issued. The city clerk shall certify on the papers the name of the principal circulator to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator who checks out petitions from the city clerk may distribute such petitions to registered voters residing in the City who may act as circulators of such petitions.

4. Petition signers shall conform to the requirements of the Election Act. Each signer of a recall petition shall be a registered voter and qualified by his/her place of residence to vote for the office in question on the date of the issuance of the initial petition papers.

5. A petition demanding that the question of removing a member of the City Council be submitted to the registered voters shall be signed by registered voters equal in number to at least 35% of the total vote cast for the person receiving the most votes for that office in the last general election.

6. The principal circulator shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the city clerk within 30 days after the city clerk issues the initial petition papers to the principal circulator. Within 15 days after the filing of the petition, the city clerk shall ascertain whether or not the petition is signed by the requisite number of registered voters. No new signatures may be added after the initial filing of the petition papers. No signatures may be removed unless the city clerk receives an affidavit signed by the person requesting his/her signature be removed before the petitions are filed with the city clerk for signature verification. If the petition is found to be sufficient, the city clerk shall attach to the petition a certificate showing the result of such examination. If the requisite number of signatures has not been gathered, the city clerk shall file the petition in his/her office without prejudice to the filing of a new petition for the same purpose.

7. If the recall petition is found to be sufficient, the city clerk shall notify the official whose removal is sought and the City Council that sufficient signatures have been gathered. If the official does not resign within five days after receiving the notice, the council shall order an election to be held not less than 30 nor more than 45 days after the expiration of the five-day period, except that if any other election is to be held in the City within 90 days of the expiration of the five-day period, the council shall provide for the holding of the removal election on the same day. After the City Council sets the date for the recall election, the recall election shall be held regardless of whether the official whose removal is sought resigns before the recall election is held.

8. If a majority of the votes cast at a recall election are against the removal of the official named on the ballot or the election results in a tie, the official shall continue in office for the remainder of his/her term but may be subject to further recall attempts as provided in subsection (10) of this section. If a majority of the votes cast at a recall election are for the removal of the official named on the ballot, he/she shall, regardless of any technical defects in the recall petition, be deemed removed from office unless a recount is ordered. If the official is deemed removed, the removal shall result in a vacancy in the office which shall be filled as otherwise provided in this code and state law. If the election results show a margin of votes equal to 1% or less between the removal or retention of the official in question, the secretary of state, election commissioner or county clerk shall order a recount of the votes cast unless the official named on the ballot files a written statement with the city clerk that he/she does not want a recount. If there are vacancies in the offices of a majority or more of the members of the City Council at one time due to the recall of such members, a special election to fill such vacancies shall be conducted as expeditiously as possible by the secretary of state, election commissioner or county clerk.

9. No official who is removed at a recall election or who resigns after the initiation of the recall process shall be appointed to fill the vacancy resulting from his/her removal or the removal of another member of the City Council during the remainder of his/her term of office.

10. No recall petition shall be filed against an elected official within 12 months after a recall election has failed to remove him/her from office or within six months after

the beginning of his/her term of office or within six months prior to the incumbent filing deadline for the office.

(Neb. Rev. Stat. §32-1301 through 32-1309)

#### SECTION 1-612: BALLOTS

The county clerk shall provide printed ballots for every general municipal election and the expense of printing and delivering the ballots and cards of instruction shall be a charge upon the City. (Neb. Rev. Stat. §32-1202)

#### SECTION 1-613: WARDS

All elected officials of the City shall be nominated and elected on an at-large basis. The City shall have one ward. The City shall have two polling places within the City to be selected and designated as provided by law.

#### SECTION 1-614: EXIT POLLS

No person shall conduct any exit poll, public opinion poll, or any other interview with voters on Election Day seeking to determine voter preference within 20 feet of the entrance to any polling place or, if inside the polling place or building, within 100 feet of any voting booth. (Neb. Rev. Stat. §32-1525)

### **ARTICLE VII - POLICE DEPARTMENT**

#### SECTION 1-701: POWER, DUTIES, RESPONSIBILITIES

The city police, whether regular or special, shall have the power to arrest all offenders against the laws of the State of Nebraska or the City, by day or by night, and keep the said offenders in the city jail or some other place to prevent their escape until trial can be held before the proper official of the state or the City. They shall have full power and authority to call on any person whenever necessary to assist them in performing public duties, and failure, neglect or refusal to render such assistance shall be deemed a misdemeanor punishable upon conviction by a fine. Every city police officer shall be expected to be conversant and knowledgeable of the city and state laws and no law enforcement official shall have any interest in any establishment having a liquor license. City police shall have the duty to file such complaints and reports as may be required by the city ordinances and state laws. City police who shall willfully fail, neglect or refuse to make an arrest, or purposely and willfully fail to make an arrest, or purposely and willfully fail to make a complaint after an arrest is made shall be charged with the misdemeanor, and upon conviction of said misdemeanor, shall be fined. It shall be unlawful for the City Council to retain any city police officer in such position upon conviction of any Class I misdemeanor, Class W misdemeanor, or any felony violation of the United States, the State of Nebraska, or any other comparable offenses of any other jurisdiction. 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 shall carefully keep, and produce to the proper judicial official upon the trial, everything found upon the person of such prisoners. All personal effects so taken from prisoners aforesaid shall be restored to them upon their release. Suitable uniforms and badges shall be furnished to the city police by the City. Any member who shall lose or destroy the same shall be re-

quired to pay the replacement costs, and in the event that any member shall leave the force, he/she shall immediately deliver his/her badge to the city police chief. The City Council may from time to time provide the city police with such uniforms, equipment and transportation as may be essential in the performance of their official duties.

## SECTION 1-702: ARREST JURISDICTION

The city police chief or any other city police officer shall have 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/her primary jurisdiction. Primary jurisdiction shall mean the geographic area within territorial limits of the City of Atkinson.

The city police chief and any other city police officer who is within this state but beyond the territorial limits of his/her primary jurisdiction shall have the power and authority to enforce the laws of this state or any legal ordinance of the City or otherwise perform the functions of his/her office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within the territorial limits of his/her primary jurisdiction in the following cases:

1. The city police chief or any other city police officer, if in a fresh attempt to apprehend a person suspected of committing a felony, may follow such person into any other jurisdiction in this state and there arrest and detain such person and return such person to the officer's primary jurisdiction;

2. The city police chief or any other city police officer, if in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow such person anywhere in an area within 25 miles of the boundaries of the officer's primary jurisdiction and there arrest and detain such person and return such person to the officer's primary jurisdiction;

3. The city police chief or any other city police officer shall have such 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. A law enforcement officer in need of assistance shall mean: (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 (i) will not be apprehended unless immediately arrested; (ii) may cause injury to himself/herself or others or damage to property unless immediately arrested; or (iii) may destroy or conceal evidence of the commission of a crime; and

4. If the City, under the provisions of the Interlocal Cooperation Act, enters into a contract with any other municipality or county for law enforcement services or joint law enforcement services, law enforcement personnel may have such 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. Rev. Stat. §13-1802.  
(Neb. Rev. Stat. §29-215)

## SECTION 1-703: DISCHARGE OR DISCIPLINE OF POLICE MEMBERS

Any police officer or the city police chief may be disciplined or immediately discharged from duty for gross misconduct, neglect of duty or disobedience of lawful orders of the

mayor or the City Council as a whole.

#### **SECTION 1-704: APPEAL PROCEDURE FOR DISCHARGED OR DISCIPLINED POLICE OFFICERS**

In the event of discharge for any of the causes set forth in Section 1-703, the police officer or city police chief shall have the right to appeal his/her discharge or disciplinary action to the City Council. Such appeal shall be made within 30 days of his/her discharge or disciplinary action by filing a written application for a hearing before the council. Such written application shall be made to the city clerk, and if such application is made the clerk shall immediately notify the mayor of the receipt of such application. Upon notice of the filing of such application, the mayor shall call a special meeting of the City Council, within 20 days of receipt of the written application, to consider such application. Both the police officer and the individuals causing such disciplinary action or discharge shall have the right at the hearing to be heard and to present evidence to the City Council for its consideration. 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 board 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 City 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 of Nebraska.

### **ARTICLE VIII - PLANNING COMMISSION**

#### **SECTION 1-801: MEMBERS; OFFICERS; DUTIES; ALTERNATE**

1. The Planning Commission shall consist of seven regular members 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 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 a sufficient number of residents in the area over which the City exercises extraterritorial zoning and subdivision regulation, one regular member of the commission shall be a resident from such area. If it is determined by the City Council that a sufficient number of residents reside in the area subject to extraterritorial zoning and subdivision regulation, and no such resident is a regular member of the Commission, the first available vacancy on the commission shall be filled by the appointment of such an individual. For purposes of this section, "a sufficient number of residents" shall mean 500 residents. The term of each regular member shall be three years. All regular members shall hold office until their successors are appointed. Any member may be removed by the mayor after a public hearing before the City Council with the consent of a majority vote of the council, for inefficiency, neglect of duty, 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. All regular members of the commission shall serve without compensation and shall hold no other municipal office except when appointed to serve on the Board of Ad-

justment as provided in Neb. Rev. Stat. §19-908. In the discretion of the mayor and City Council, all members of the commission may be required to give bond in a sum set by resolution of the council and conditioned upon the faithful performance of their duties.

3. The commission shall elect its chairperson and a secretary from its members and create and fill such other of its offices as it may determine. The term of the chairperson and the secretary shall be one year, and they shall be eligible for reelection. No member of the commission shall serve in the capacity of both chairperson and secretary of the commission. It shall be the duty of the secretary to keep the full and correct minutes and records of all meetings and to file them with the city clerk, where they shall be available for public inspection during office hours.

4. The commission shall be funded by the City Council from time to time out of the General Fund. The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for that purpose by the City Council; and no expenditures nor agreements for expenditures shall be valid in excess of such amounts.

5. A number of commissioners equal to a majority of the number of regular members appointed to the commission shall constitute a quorum for the transaction of any business. The commission shall hold at least one regular meeting in each calendar quarter, except that 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 pending business. Special meetings may also be held upon the call of any three members of the commission.

6. The commission shall adopt rules and regulations for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which shall be a public record. The commission shall make and adopt plans for the physical development of the City, including any areas outside its boundaries which, in the commission's judgment, bear relation to the planning of the City, and shall carry out the other duties and exercise the powers specified in Neb. Rev. Stat. §19-929. All actions by the commission shall be subject to the review and supervision of the mayor and City Council. The commission shall make its recommendations to the council so that they are received by the council within 30 days after the commission begins consideration of a matter relating to the comprehensive development plan, capital improvements, building codes, subdivision development, the annexation, or zoning. The commission shall be responsible for making such reports and performing such other duties as the City Council may, from time to time, designate.

7. The mayor, with the approval of a majority vote of the elected members of the City Council, shall appoint one alternate member to the commission, who shall serve without compensation and shall hold no other municipal office. The term of the alternate member shall be three years, and he/she shall hold office until his/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 City Council. The alternate member may attend any meeting and may serve as a voting and participating member of the commission at any time when less than the full number of regular commission members is present and capable of voting.

(Neb. Rev. Stat. §§19-924 through 19-929)



## **ARTICLE IX - BOARD OF HEALTH**

### **SECTION 1-901: MEMBERS**

The City Council shall appoint a Board of Health which shall consist of four members: the mayor, 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. The mayor shall act as chairman of the Health Board. The members of the board shall serve a one-year term of office, unless reappointed, and shall reorganize at the first meeting in December of each year.

### **SECTION 1-902: POWERS AND DUTIES**

A majority of the board shall constitute a quorum and shall enact rules and regulations to safeguard the health of the people of the City and shall provide fines and punishments for the violations thereof. The board is authorized and directed to make all necessary rules and regulations relating to matters of sanitation, including the removal of dead animals, and sanitary conditions of the streets and alleys, and vacant grounds and of private and public stock yards and all other buildings and places where filth, nuisances or offensive matter is kept or is liable to and does accumulate. It shall suppress and prevent the occurrence of nuisances and enforce all laws of the State and ordinances of the City relating to the matters of sanitation. 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. It shall keep a record of all matters transacted at its meetings and all actions taken by it, which records shall be filed with the city clerk and be part of the public records of the City. (Neb. Rev. Stat. §17-121)

### **SECTION 1-903: DEPOSITING OR PERMITTING DEPOSIT OR ACCUMULATION OF ANY SUBSTANCE DETRIMENTAL TO HEALTH OR OFFENSIVE TO SMELL; PENALTY**

It shall be unlawful for any person to deposit, or permit the deposit or accumulation of any garbage, refuse of any kind or article or thing which is detrimental to health or from which obnoxious or offensive odors arise, on the streets, alleys or public grounds or on any private premises including enclosures in which livestock is kept within said city, and any person who violates this section and shall fail to remove such objectionable substances or otherwise comply with the orders of the Board of Health with reference thereto within 24 hours from the receipt of written notice thereof, upon conviction shall be fined in a sum not to exceed \$500.00 for each offense, and the offensive matter shall be ordered removed by or at the expense of the defendant. Each 24-hour failure to comply with the orders of the Board of Health shall constitute a separate and distinct offense.

## **ARTICLE X - TREE BOARD**

### **SECTION 1-1001: CREATION AND ESTABLISHMENT OF TREE BOARD**

There is hereby created and established a Tree Board for the City, which shall consist of six members. Such members shall be appointed by the mayor with the approval of

the City Council. In the event that a vacancy shall occur during the term of any member, his/her successor shall be appointed by the mayor with the approval of the council for the unexpired term.

#### SECTION 1-1002: DEFINITIONS

"Street trees" are herein defined as trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways with the City.

"Park trees" are herein defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the City, or to which the public has free access as a park.

"Private community forest" is herein defined as all trees within city boundaries but not owned by the City.

"Public community forest" is herein defined as all street and park trees owned by the City as a total resource.

#### SECTION 1-1003: TERM OF OFFICE

The term of the six persons to be appointed by the mayor with the approval of the City Council shall be three years. In the event that a vacancy shall occur during the term of any member, his/her successor shall be appointed for the unexpired portion of the term.

#### SECTION 1-1004: COMPENSATION

Members of the Tree Board shall serve without compensation.

#### SECTION 1-1005: DUTIES AND RESPONSIBILITIES

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

#### SECTION 1-1006: OPERATION

The Tree Board shall choose its own officers, make its own rules and regulations and keep a minute book of its proceedings. A majority of its members shall be a quorum for the transaction of business.

#### SECTION 1-1007: STREET TREE SPECIES TO BE PLANTED

The tree list adopted by the Tree Board and published by them constitutes the official street tree species for the City. No species other than those included in this list may be planted as street trees without written permission of the Tree Board.

## SECTION 1-1008: SPACING

The spacing of street trees will be in accordance with the three species size classes listed in the tree list and 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.

## SECTION 1-1009: DISTANCE FROM CURB AND SIDEWALK

The distance trees may be planted from curbs or curb lines and sidewalks will be in accordance with the three species size classes listed in the tree list and no trees may be planted closer to any curb or sidewalk than the following: small trees, two feet; medium trees, three feet; and large trees, four feet.

## SECTION 1-1010: DISTANCE FROM STREET CORNERS AND FIREPLUGS

No street tree shall be planted closer than 35 feet of any street corner, measured from the point of nearest intersecting curbs or curb lines. No street tree shall be planted closer than 10 feet of any fireplug.

## SECTION 1-1011: UTILITIES

No street trees other than those species listed as small trees in the tree list may be planted under or within 10 lateral feet of any overhead utility wire, or over or within 5 lateral feet of any underground water line, sewer line, transmission line or other utility.

## SECTION 1-1012: PUBLIC TREE CARE

The City shall have the right to plant, subject to Section 1-1013 herein, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. This section does not prohibit the planting of street trees by adjacent property owners, providing that the selection and location of said trees is in accordance with this article.

## SECTION 1-1013: CONSENT OF PROPERTY OWNER

The Tree Board shall plant no trees on public right of way without the consent of the adjacent property owners. Such consent shall be in writing and shall be maintained as part of the official Tree Board records.

## SECTION 1-1014: 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. Tree topping on private property is strongly discouraged. "Topping" is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so 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 article at the determination of the Tree Board.

## SECTION 1-1015: PRUNING, CORNER CLEARANCE

Every owner of any tree overhanging any street or right of way within the City 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, and so that there shall be a clear space of eight feet above the surface of the street or sidewalk.

## SECTION 1-1016: DEAD OR DISEASED TREE REMOVAL ON PRIVATE PROPERTY

All trees that are in a diseased, dying or dead condition are declared to be a public nuisance and shall be removed by the property owner from the private property on which they are located. For the purpose of carrying out the provisions of this section, the City Tree Board shall have the authority to enter on private property to inspect the trees thereon. In the event that the trees are diseased or dead, notice shall be given to the owner of the property by mail or personal service, and such notice shall allow the said owner 60 days to remove the said tree or trees. In the event that the owner is a non-resident, notice shall be made by publication in a newspaper of general circulation, or by certified mail if the name and address is known. The person charged with the removal may enter into an agreement with the City that such work be accomplished by the City, and the expense shall be declared to be a lien upon such property from the time the same becomes due until paid. If the owner fails, neglects or refuses to enter into such an agreement, or to remove the trees, the City Tree Board may enter upon the property and proceed to direct the removal of the trees and the cost thereof shall be chargeable to the property owner. If the owner fails to reimburse the City after being properly billed, the costs shall be assessed against the property and certified by the city clerk to the county treasurer to be collected in the manner prescribed by law. In the event the property owner is a non-resident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

## SECTION 1-1017: REMOVAL OF STUMPS

All stumps of street and park trees shall be removed so that the top of the stump shall not project above the surface of the ground.

## SECTION 1-1018: INTERFERENCE WITH TREE BOARD

It shall be unlawful for any person to prevent, delay or interfere with the City Tree Board, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any street trees, park trees, or trees on private grounds, as authorized in this article.

## SECTION 1-1019: REVIEW BY CITY COUNCIL

The City Council shall have the right to review the conduct, acts and decisions of the Tree Board. Any person may appeal any ruling or order of the Tree Board to the council, which may hear the matter and make a final decision.

## **ARTICLE XI - BOARD OF PARK COMMISSIONERS**

### **SECTION 1-1101: MEMBERS; TERMS; COMPENSATION**

1. The City Council shall appoint the Board of Park Commissioners. The board shall consist of three members who shall be residents of the City. The members shall be appointed by the mayor and City Council and shall serve terms of one year. The board shall serve without compensation and may be required, in the discretion of the council, to give a bond in a sum set by resolution of the council and conditioned upon the faithful performance of their duties.

2. Notwithstanding the foregoing contrary, in lieu of the City Council's appointment of an independent Board of Park Commissioners, the council may authorize the mayor to select three council members to fill the positions of Board of Park Commissioners. In such case, the said council members shall serve with all the rights, duties and responsibilities of the Park Board as set forth in this article.

(Am. Ord. No. 1065, 3/3/14)

### **SECTION 1-1102: ORGANIZATION; DUTIES**

1. At the time of the board's first meeting in April of each year, the members shall organize by selecting from their number a chairman and secretary. No member of the Park Board shall serve in the capacity of both chairman and secretary. It shall be the duty of the secretary to keep the full and correct minutes and records of all meetings and to file the same with the city clerk, where they shall be available for public inspection during office hours. A majority of the board shall constitute a quorum for meetings. The board shall meet at such times as the City Council may designate. Special meetings may be held upon the call of the chairman or any two of the board members.

2. It shall be the duty of the board to take the immediate charge of all parks and recreational facilities belonging to the City. The board shall establish appropriate rules and regulations for the management, use and operation of the same. All employees of the City doing work in or for the city park shall be under the supervision and direction of the Park Board. All actions of the board shall be subject to the review and control of the City Council. The board shall be responsible for making such reports and performing such other duties as the council may from time to time designate.

### **SECTION 1-1103: PARKS; OPERATION AND FUNDING; HOURS**

The City owns and operates the city parks and other recreational areas through the Board of Park Commissioners. The City Council, for the purpose of defraying the cost of the care, management and maintenance of the city 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 revenue from the said tax shall be known as the Park Fund and shall remain in the custody of the city treasurer. The board shall have the authority to adopt rules and regulations for the efficient management of the city parks and other recreational areas of the City. The board shall not enter into a contract of any nature which involves an expenditure of funds, except for ordinary operating expenses, unless the contract has been approved by resolution of the majority of the members of the City Council prior to the contractual agreement.

## SECTION 1-1104: PARKS; HOURS; PENALTY

1. It shall be unlawful to remain in city parks between the hours of 12:00 midnight and 5:00 a.m., except:

- A. In the case of a special or organized event where permission has been received in advance, in writing, by the City;
- B. In the case of events which, because of delays or extended playing periods recognized by the City, exceed these limits; and
- C. In the case of Mill Race Park, which shall be open 24 hours per day.

2. Any person found in violation as hereinbefore defined shall be deemed guilty of trespass, a misdemeanor, and shall be fined in a sum as set by resolution of the City Council and placed on file in the office of the city clerk for public inspection.

(Ord. No. 1016, 4/5/10) (Am. Ord. No. 1055, 5/6/13)

## SECTION 1-1105: 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 city parks and recreational areas. No person shall commit any waste on or litter the city parks or other public grounds. (Neb. Rev. Stat. §17-948 through 17-952)

## SECTION 1-1106: SWIMMING POOL; OPERATION AND FUNDING

The City owns and manages the city swimming pool through the Board of Park Commissioners. The City Council, for the purpose of defraying the cost of the management, maintenance and improvements of the swimming pool, may each year levy a tax not exceeding the maximum limit prescribed by state law on the actual valuation of all real estate and personal property within the City that is subject to taxation. The revenue from the said tax shall be known as the General Fund and shall include all donations, gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the swimming pool and shall remain in the custody of the city clerk/treasurer. Said monies levied and collected will be set aside by the City Council in the city budget for occupation and maintenance of the swimming pool and will be known as the park budget. The Board of Park Commissioners 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 may be deemed 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 City Council. (Neb. Rev. Stat. §17-948, 17-951, 17-952)

## SECTION 1-1107: SWIMMING POOL; ADMISSION CHARGE

The Board of Park Commissioners may, for the purpose of defraying the expenses involved in maintaining, improving, managing, and beautifying the swimming pool, make a reasonable admission charge for the use by any person of the city swimming pool. The said charges shall be on file at the office of the city clerk and shall also be posted in a

conspicuous place at the city swimming pool for public inspection. Such rates may be structured for classes of persons in a reasonable manner; provided, nothing herein shall be construed to permit or allow discrimination on the basis of race, creed, color or national origin in the classification of persons for admission charges. (Neb. Rev. Stat. §17-949)

#### SECTION 1-1108: SWIMMING POOL; RENTALS

The Board of Park Commissioners shall have the authority to rent the city swimming pool to such organizations and other persons as the board in its discretion may see fit, subject to the review of the City Council. 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 city clerk and posted in a conspicuous place at the city swimming pool. (Neb. Rev. Stat. §7-949)

#### SECTION 1-1109: SWIMMING POOL; RULES AND REGULATIONS

The Board of Park Commissioners shall have the power and authority to enact bylaws, rules and regulations for the protection of those using the swimming pool and for the efficient management thereof. The board may provide suitable penalties for the violation of such bylaws, rules and regulations subject to the review and supervision of the City Council. (Neb. Rev. Stat. §7-949)

### **ARTICLE XII - LIBRARY BOARD**

#### SECTION 1-1201: LIBRARY BOARD

1. The Library Board shall be appointed or elected. The City Council shall, by ordinance, adopt the manner in which the five members of the board are to be chosen. If chosen by appointment, each nominated member must receive a majority vote of the City Council. If elected, the usual election procedures of the City shall be as follows: The Library Board shall consist of five members who shall be residents of the City. The members of the board shall serve three-year terms of office as specified by Nebraska statutes. The board members shall serve without compensation and may be required, in the discretion of the City Council, to give a bond in a sum set by resolution of the council and conditioned upon the faithful performance of their duties. Neither the mayor nor any member of the City Council shall serve as a member of the Library Board while serving a term of office as mayor or as a council member.

2. At the time of the board's first meeting in July of each year, the members shall organize by selecting from their number a chairman and secretary. No member of the board shall serve in the capacity of both the chairman and secretary. It shall be the duty of the secretary to keep the full and correct minutes and records of all meetings and to file the same with the city clerk, where they shall be available for public inspection at any reasonable time. A majority of the board members shall constitute a quorum for the transaction of business. The board shall meet at such times as the City Council may designate. Special meetings may be held upon the call of the chairman or any three members of the board.

3. The Library Board shall have the authority to appoint a librarian and all other employees. It shall be the duty of the board to have general charge of the library and to

establish appropriate rules and regulations for the management, operation and use of the same. The board shall have supervisory authority over all employees of the library, including the librarian.

4. All actions of the board shall be subject to the review and supervision of the City Council. The board shall be responsible for making such reports and performing such additional duties as the council may designate from time to time.

#### SECTION 1-1202: OPERATION AND FUNDING

1. The City owns and manages the library through the Library Board. The City Council, for the purpose of defraying the cost of the management, purchases, improvements and maintenance of the library, may each year levy a tax not exceeding the maximum limit prescribed by state law on the actual valuation of all real estate and personal property within the City that is subject to taxation. The revenue from the said tax shall be known as the Library Fund and shall include all gifts, grants, deeds of conveyance, bequests or other valuable income-producing personal property and real estate from any source for the purpose of endowing the library. Such fund shall at all times be in the custody of the city treasurer.

2. The Library Board shall have the power and authority to appoint the librarian and to hire such other employees as it 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; however, the mayor and City Council shall approve any personnel administrative or compensation policy or procedure before implementation of such policy or procedure by the Library Board. All actions by the board shall be under the supervision and control of the City Council.

(Neb. Rev. Stat. §51-211) (Am. by Ord. No. 1049, 11/5/12)

#### SECTION 1-1203: 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.

#### SECTION 1-1204: RULES AND REGULATIONS

The Library Board shall establish rules and regulations for the governing of the library and for the preservation and efficient management thereof. The board 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.

#### SECTION 1-1205: COST OF USE

Use of the library shall be free for the inhabitants of the City. No service shall be denied to any person because of race, sex, religion, age, color, national origin, ancestry, physical handicap, or marital status. 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. (Am. by Ord. No. 1049, 11/5/12)



## SECTION 1-1206: 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 cost and penalty which the Library Board may assess.

## SECTION 1-1207: BOOK REMOVAL

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

## SECTION 1-1208: MONEY COLLECTED

Any money collected by the library shall be turned over monthly by the librarian to the city treasurer along with a report of the sources of the revenue.

## SECTION 1-1209: BOOK LABELING

It shall be the duty of the librarian to label, or cause to be labeled, with a printed and stamped label, proof of city ownership on each book, and also to mark the said proof on the 30th page of each volume.

## SECTION 1-1210: REPORTS

The Library Board shall, on or before the second Monday in February of 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. (Ord. No. 927, 12/6/04)

## **ARTICLE XIII - BOARD OF ADJUSTMENT**

(Neb. Rev. Stat. §19-907 through 19-910)

## SECTION 1-1301: MEMBERS; OFFICERS; DUTIES AND POWERS

1. The mayor shall appoint, with the consent of the City Council, a Board of Adjustment which 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 member of the board shall serve a term of three years, unless reappointed, and shall be removable only for cause by the City Council upon written charges and after a 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 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. After the effective date of this section, 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. Thereafter, at all times, at least one member of the Board of Adjustment shall reside outside the corporate boundaries of the City but within its extraterritorial zoning jurisdiction.

2. The members of the board shall serve without compensation and may be required, in the discretion of the City Council, to give a bond in a sum set by resolution of the council and conditioned upon the faithful performance of their duties. The board shall organize at its first meeting in June of each year and elect from its membership a chairperson and a secretary. It shall be the duty of the secretary to keep complete and accurate minutes of all board meetings, 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 public record. All meetings of the board shall be open to the public and shall be held at such times as the City Council may designate or at such other times as the chairperson may, in his or her discretion, call a meeting. Special meetings may be also held upon the call of any three members of the board. A majority of the board shall constitute a quorum for the purpose of doing business. The board shall adopt rules in accordance with the provisions of Neb. Rev. Stat. §19-901 to 19-914.

3. It shall be the duty of the board:

- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by a city official based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures;
- B. To hear and decide, in accordance with the provisions of the zoning regulations, requests for interpretation of any map; and
- C. Where 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 zoning regulation 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.

4. No variance shall be authorized by the board unless it finds that:

- A. The strict application of the zoning regulation would produce undue hardship;

- B. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- C. 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
- D. 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.

5. 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.

6. In exercising the above-mentioned powers, the board may 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 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 city 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.

7. The board shall be responsible for making such reports and performing such other duties as the City Council may designate. No member of the City Council shall serve as a member of the Board of Adjustment. No member of the Board of Adjustment shall serve in the capacity of both chairperson and secretary of the board.

## **ARTICLE XIV - HOUSING AGENCY**

### **SECTION 1-1401: RIGHTS AND DUTIES**

The previously created and existing Housing Authority shall continue to exist as a Housing Agency under the Nebraska Housing Agency Act, and shall hereafter conduct its operations consistent with the said Act. It shall be named the Atkinson Housing Agency and all property, rights and land, buildings, records and equipment, and any funds, money, revenue, receipts or assets of the Housing Authority shall belong to the Atkinson Housing Agency as successor. All obligations, debts, commitments and liabilities of the Housing Authority shall become obligations, debts, commitments and liabilities of the Atkinson Housing Agency. Any previously passed resolutions of the Housing Authority and any actions taken by the Housing Authority prior to January 1, 2002, with regard to any project or program which is to be completed within or to be conducted for a 12-month period following January 1, 2000, and which resolution or action is lawful under Nebraska law as it exists to the operative date of LB105, shall be a lawful resolution or action of the Atkinson Housing Agency, binding upon and enforceable by or against the Atkinson Housing Agency, notwithstanding that such provisions of the Nebraska Housing Agency Act. All commissioners of the Housing Authority and all officers, technical experts, directors and other appointees or employees of the Housing Authority holding office or employment by virtue of any such prior law on January 1, 2000, shall

be deemed to have been appointed or employed under the Nebraska Housing Agency Act.

#### SECTION 1-1402: HOUSING AGENCY BOARD

The mayor shall appoint, subject to confirmation by the City Council, five persons who, along with the resident commissioner, if any, shall constitute the Housing Agency Board and such persons shall be called the commissioners. One commissioner shall be appointed each year. Each commissioner shall serve a five-year term of office or until his/her successor is duly appointed and qualified; provided that all vacancies shall be filled for the unexpired terms. The council may appoint one of its members to serve as one of the five members of such Housing Agency for such term as the council may determine. No person shall serve as a commissioner unless he or she resides within the area of operation of Atkinson Housing Agency. A certificate of the appointment or reappointment of any commissioner shall be filed with the city clerk and such certificate shall be conclusive evidence of the proper appointment of such commissioner. A commissioner shall receive no compensation for his/her services, but he/she shall be entitled to the necessary expenses, including travel expenses, incurred in discharge of his/her duties as provided by Neb. Rev. Stat. §81-1175 through 81-1177. A majority of commissioners shall constitute a quorum of the agency for the purpose of conducting its business, exercising its powers, and for all other purposes. Action may be taken by the agency upon the vote of the majority of the commissioners present and voting, unless in any case the bylaws of the agency or the ordinance creating the agency require a larger number. The commissioners shall elect a chairman and vice-chairman from among the commissioners and shall have the power to employ an executive director who shall serve as ex officio secretary of the agency. The agency may also employ legal counsel, or it may call upon the chief law officer of the City, for such services as it may require. It may employ technical experts and such other officers, agents and employees as it may require and shall determine their qualifications, duties, compensations and terms of office. The agency may delegate such other powers and duties to its agents or employees as it may deem proper. During his/her tenure and for one year thereafter, no commissioner, officer or employee of the Housing Agency shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any housing project. If any such commissioner, officer or employee involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as commissioner, officer or employee, he/she shall immediately disclose his/her interest in writing to the agency, and such disclosure shall be entered upon the minutes of the agency and he/she shall not participate in any action by the agency relating to the property or contract in which he/she has any such interest; provided that nothing herein shall apply to the acquisition of any interest in notes or bonds of the agency issued in connection with any housing project, or to the execution of agreements by banking institutions for deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services, the rates for which are fixed or controlled by a governmental agency. Any violation of the provisions of this section shall constitute misconduct in office. This section shall not be construed to preclude, regulate or restrict the participation of any tenant of the agency from serving, if appointed, as a commissioner of such agency, but if appointed as a commissioner of such authority, he/she may not participate in any decision solely affecting his/her individual interest.

#### SECTION 1-1403: RESIDENT COMMISSIONER

A sixth commissioner, to be known as the resident commissioner, shall be appointed to the Housing Agency by the mayor, subject to confirmation by the council. To select the initial resident commissioner or to fill subsequent vacancies in the position, the Housing Agency shall notify any resident advisory board or other resident organization and all adult persons directly assisted by any such agency to the effect that the position of resident commissioner is open and that if any such person is interested in being considered as a candidate for the position, such person should notify the Housing Agency in writing, within 30 days, of the person's willingness to be considered and to serve as resident commissioner. The names of all persons interested who have notified the Housing Agency of their interest in so serving shall be forwarded to the mayor and the resident commissioner shall be appointed from the list of names, subject to confirmation by the council. Upon the appointment of a resident commissioner, the Certificate of Appointment shall state the term is for five years or when no longer an eligible resident, whichever occurs first. In the event that no qualified person has submitted his/her name to the Housing Agency as being interested as a candidate for the position, and the Housing Agency has received no notification of interest in serving as a resident commissioner by any person, no resident commissioner shall be required to be selected. In the event a resident commissioner is appointed and resigns from the position prior to completion of the appointed term, or is no longer an eligible resident, or is otherwise disqualified or removed from the board, and a vacancy is created, the Housing Agency shall solicit new candidates for the position following the same procedure set forth above. In the event that no resident commissioner is selected and the position is not filled, the agency shall re-notify all adult persons directly assisted by the agency that the position of resident commissioner is open and solicit these persons for candidates for the position not less than annually.

#### SECTION 1-1404: REMOVAL OF COMMISSIONERS

The mayor may remove a commissioner for neglect of duty, misconduct in office or conviction of any felony in the manner prescribed hereinafter. The mayor shall send a notice of removal to such commissioner which notice shall contain a statement containing the charges against him/her. Unless within ten days from the receipt of such notice such commissioner files with the clerk a request for a hearing before the City Council, the commissioner shall be deemed as removed from office. If a request for a hearing is filed with the clerk, the council shall hold a hearing not sooner than ten days after the date a hearing is requested, at which time the commissioner shall have the right to appear in person or by counsel and the council shall determine whether the removal shall be upheld. If the removal is not upheld, the commissioner shall continue to hold his/her position.

#### SECTION 1-1405: STATUS OF AGENCY

The Atkinson Housing Agency is a political subdivision, distinct and separate for the City of Atkinson. The Housing Agency shall constitute a public body, corporate and politic, and shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Nebraska Housing Agency Act.

#### SECTION 1-1406: HOUSING AGENCY ACT ADOPTED

Except as otherwise herein specifically provided, the definitions, terms, provisions and conditions set forth in the Nebraska statutes under the Nebraska Housing Agency Act are hereby adopted by reference, as they now exist or may hereafter be amended, for

the operation and management of the Atkinson Housing Agency, and the Housing Agency shall fully comply with and be governed by the terms of the Nebraska Housing Agency Act.

#### SECTION 1-1407: POLICIES AND PROCEDURES

The Housing Agency shall adopt and promulgate fair and equitable policies establishing a plan for selection of applicants. The plan shall include standards for eligibility, procedures for prompt notification of eligibility or disqualification and procedures for maintaining a waiting list of eligible applicants for whom vacancies are not immediately available. Eligible applicants shall be offered available vacancies as provided in such policies.

#### SECTION 1-1408: RULES AND REGULATIONS

The Housing Agency may adopt, promulgate and enforce rules and regulations related to carrying out the purposes of the local housing agency and exercise of its powers, and may amend or repeal such rules and regulations from time to time.

#### SECTION 1-1409: ANNUAL REPORTS

Within six months after the end of the Housing Agency's fiscal year, the Housing Agency shall file an annual report. This report shall contain financial statements and the results of the operations. The report shall be approved by the Board of Commissioners and signed by the chairman. The annual report of the Housing Agency shall be a public record and available for inspection and copying by members of the general public at the Housing Agency office. The annual report shall be placed on file with the city clerk upon completion thereof.

#### SECTION 1-1410: FILING OF PLANS

The Housing Agency shall file with the city clerk a copy of the five-year plan and the annual plan required by Section 511 of the Federal Quality Housing and Work Responsibility Act of 1998. The plans shall be filed within 30 days after the date the plan is filed with the Department of Housing and Urban Development.

### **ARTICLE XV – CEMETERY BOARD**

(Ord. No. 1040, 1/6/12)

#### SECTION 1-1501: MEMBERS; VACANCIES

The mayor, by and with the consent of the City Council or a majority thereof, may appoint a board of five members, to be known as the Cemetery Board, from among the citizens at large of such city, who shall serve without pay. Neither the mayor nor any member of the council may be a member of the Cemetery Board. The mayor shall appoint one council member as a liaison between the board and the City Council. At the time of establishing such board, approximately one-third of the members shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, and thereafter members shall be appointed for terms of three years. Vacancies in the membership of the board other than through the expiration of a term shall be filled for the unexpired portion of the term. (Neb. Rev. Stat. §12-401)

## SECTION 1-1502: OFFICERS

The members of the Cemetery Board may select such officers from among their own number as they may deem necessary. (Neb. Rev. Stat. §12-403)

## SECTION 1-1503: DUTIES

The Cemetery Board shall have the general care, management, and supervision of the municipal cemetery with the power and authority to limit and regulate the number of cemetery lots that may be owned by the same person; to prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots; and to prohibit any diverse or improper use thereof; provided, no religious tests shall be made as to the ownership of lots, the burial therein, and the ornamentation of graves. The board shall have the power and authority to hire and supervise such employees as it may deem necessary. The board shall pass such rules and regulations as may be proper for the efficient operation of the cemetery and prescribe penalties and fines for violations thereof. The board shall be responsible for making such reports and performing such additional duties as the City Council may designate. All actions by the board shall be under the supervision and control of the council.

## SECTION 1-1504: SEXTON

The Cemetery Board, subject to approval of the City Council, shall have the authority to appoint a sexton who shall perform such duties and make such reports as the 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 the grave or cause the same to be dug or excavated in compliance with the rules and regulations of the Cemetery Board. (Neb. Rev. Stat. §12-403) (Am. Ord. No. 1111, 4/4/16)

## SECTION 1-1505: CEMETERY OPERATION AND FUNDING; PERPETUAL CARE

1. *Taxation.* The City owns and manages the city cemetery through the Cemetery Board. The mayor and City Council, for the purpose of defraying the cost of the care, management, improvement, beautifying, and welfare of the cemetery, may each year levy a tax not to exceed the maximum limit prescribed by law, upon the taxable value of all the taxable property in the City subject to taxation for general purposes. The tax shall be collected and paid to the City as taxes for general purposes are collected and paid to the City. All taxes collected for this purpose shall constitute and be known as the cemetery fund and shall be used for the general care, management, improvement, beautifying, and welfare of such cemetery. Warrants upon this fund shall be drawn by the Cemetery Board and shall be paid by the city treasurer. The City Council may issue a warrant from the cemetery fund if a payment is due and the Cemetery Board is not scheduled to meet prior to such due date to authorize the warrant.

2. *Perpetual Care.* The city treasurer shall allocate and set apart a percentage of the entire amount paid for lots or burial spaces for perpetual care. The fund shall be permanent in nature and as it accumulates shall be vested 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. The income from the fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery. The principal of the perpetual fund may be used for the

general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as long as no more than 20% of the principal is so used in any fiscal year and no more than 40% of the principal is so used in any period of ten consecutive fiscal years. The principal of the perpetual fund may also be used for the purchase and development of additional land to be used for cemetery purposes as long as no more than 25% of the principal is so used in any fiscal year and no more than 35% of the principal is so used in any period of ten consecutive fiscal years.

3. *Donations and Bequests.* The City Council may receive money by donation, bequest, or otherwise for credit to the perpetual fund to be invested as provided by ordinance or as conditioned by the donor. The income therefrom may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as the donor may designate. The principal therefrom may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as the donor may designate as long as no more than 20% of the principal is so used in any fiscal year and no more than 40% of the principal is so used in any period of ten consecutive fiscal years. The principal therefrom may also be used for the purchase and development of additional land to be used for cemetery purposes as the donor may designate as long as no more than 25% of the principal is so used in any fiscal year and no more than 35% of the principal is so used in any period of ten consecutive fiscal years.

4. *No Limitation.* This section does not limit the use of any money that comes to the City by donation, bequest, or otherwise that is not designated to be credited to the perpetual fund or that allows greater use for purchase or development of additional land to be used for cemetery purposes.  
(Neb. Rev. Stat. §12-402)

#### SECTION 1-1506: CEMETERY; FEES

The cost for purchase of burial spaces in the municipal cemetery shall be set by the City Council and filed in the office of the city clerk for public inspection.

#### SECTION 1-1507: CEMETERY; SALE OF LOTS

The Cemetery Board may convey cemetery lots by certificate signed by the mayor and countersigned by the city clerk under the city 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/her heirs, and assigns. (Neb. Rev. Stat. §17-941)

#### SECTION 1-1508: CEMETERY; FORFEITURE OF LOTS; RECLAMATION

1. Except as provided in subsection (2) of this section, all certificates to any lot or lots upon which no interments have been made and which have been sold for burial purposes under the provisions of Neb. Rev. Stat. §17-941 may be declared forfeited and subject to resale if, for more than three consecutive years, all charges and liens as provided herein or by any of the rules, regulations, or bylaws of the association are not promptly paid by the holders of such certificates. All certificates to any lot or lots sold shall contain a forfeiture clause to the effect that if no interment has been made on the lot or lots and all liens and charges have not been paid as provided in this subsection, by ordinance, or in the bylaws of the association, such certificate and the rights under



the same may, at the option of the Cemetery Board, with the sanction of the mayor and council, be declared null and void and the lot or lots shall be subject to resale as in the first instance.

2. When any lot has been transferred by warranty deed or by a deed conveying a fee simple title but there has been no burial in any such lot or subdivision thereof and no payment of annual assessments for a period of three years, the Cemetery Board, with the sanction of the mayor and City Council, may reclaim the unused portion of such lot or subdivision after notifying the record owner or his or her heirs or assigns, if known, by certified mail and publishing notice of its intention to do so. Such notice shall be published once each week for four weeks in a newspaper of general circulation in the county, shall describe the lot or subdivision proposed to be reclaimed, and shall be addressed to the person in whose name such portion stands of record or, if there is no owner of record, to all persons claiming any interest in such lot or subdivision. If no person appears to claim such lot or subdivision and pay all delinquent assessments with interest within 15 days after the last date of such publication, the Cemetery Board may by resolution reclaim such lot or subdivision.

(Neb. Rev. Stat. §17-938)

#### SECTION 1-1509: CEMETERY; LOT TRANSFERS

Any person who wishes to transfer a certificate may do so by surrendering the original certificate to the city clerk, who shall issue a new certificate to the new owner upon the receipt of the recording fee set by resolution of the City Council.

#### SECTION 1-1510: CEMETERY; INTERMENT AND DISINTERMENT PREREQUISITES

No grave space shall be opened unless the space has been paid for or unless the undertaker assumes the responsibility for paying for such space. The interment of any deceased person shall be performed under the direct supervision of a licensed funeral director. No disinterment of any body of any deceased person shall take place until all laws of the State of Nebraska have been complied with and the office of the city clerk has been so notified.

#### SECTION 1-1511: CEMETERY; INTERMENT

All interments shall utilize at least a concrete liner or vault of such nature as to prevent cave-in or sinking of the grave site. The City shall not be held responsible for errors in location of graves on lots arising from improper instructions of lot owners. Orders from funeral directors shall be deemed to be orders from lot owners. Under no circumstances shall the City assume any responsibility for errors in locating burial spaces when instructions of the lot owner are received over the telephone.

#### SECTION 1-1512: CEMETERY; PLACEMENT OF MONUMENTS AND MARKERS

The Cemetery Board may prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots. No monument or marker of any nature shall be set in the municipal cemetery without first obtaining a permit, which said permit shall show the location of grave site. The fee for said permit shall be set by the City Council and filed in the office of the city clerk for public inspection. The City shall not assume responsibility of a wrong location when all information has not been given in writing. If

the monument is deemed to be in a wrong location, the monument company shall be responsible for removal of the monument/marker and proper replacement. (Neb. Rev. Stat. §17-942)

#### SECTION 1-1513: CEMETERY; INDIGENTS

A section of burial spaces in the cemetery has been designated for the burial of indigents. Said burial spaces will be used only for persons who resided within the corporate city limits.

#### SECTION 1-1514: 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 a misdemeanor. (Neb. Rev. Stat. §28-512)

#### SECTION 1-1515: CEMETERY; IMPROVEMENT

The mayor and City Council may survey, plat, map, grade, fence, ornament, and otherwise improve all burial and cemetery grounds and avenues leading thereto. They may provide for construction of walks and protection of ornamental trees therein and pay the expenses thereof. (Neb. Rev. Stat. §17-940)

#### SECTION 1-1516: CEMETERY; MONUMENTS, MARKERS, AND VASES

The City of Atkinson and Woodlawn Cemetery will not be responsible for any damage to monuments, markers of any kind, or vases. Responsibility for the repairs including theft or vandalism for any grave marking items will be the sole responsibility of the individual lot owner(s).

#### SECTION 1-1517: CEMETERY; ESTABLISHMENT OF FEES

The City Council may, from time to time, change the cemetery fees by resolution.

#### SECTION 1-1518: CEMETERY; GRAVE LINER

Every grave shall have a grave liner and the minimum of such shall be concrete. Cremated remains must be buried in a non-biodegradable urn/vault or urn. All cremation burials must be retrievable. There shall be no burials of only wooden urns or boxes. (Ord. No. 1111, 4/4/16)

#### SECTION 1-1519: CEMETERY; MONUMENT REQUIREMENTS

No grave monument or marker of any type shall be placed on a grave unless it meets the following requirements:

1. The headstone must be at the west end of the grave and foot marker at the east end of the grave;
2. The monument or marker must be securely anchored to a concrete foundation;

3. The concrete foundation must extend at least 3 inches beyond the base of the monument on all sides and be flush with ground level; and

4. Monuments, plaques, markers, etc., shall be permanent stones such as marble, granite or bronze. No homemade concrete, wood or metal monuments or markers are allowed.

(Ord. No. 1111, 4/4/16)

## SECTION 1-1520: CEMETERY; SHRUBS AND TREES

It shall be unlawful to plant, maintain, or suffer to remain on any cemetery lot any shrub, flower or tree without the written permission of the Cemetery Board. (Ord. No. 1111, 4/4/16)

## **ARTICLE XVI – COMMUNITY DEVELOPMENT AGENCY**

### SECTION 1-1601: CREATION; OPERATION

1. The Community Development Agency of the City of Atkinson has been created pursuant to Neb. Rev. Stat. §18-2101.01.

2. The Community Development Agency shall have all of the powers set forth in Neb. Rev. Stat. §18-2101 through 18-2154 and any additional powers granted by the legislature of the State of Nebraska from time to time for community redevelopment authorities.

3. The affairs of the Community Development Agency shall be administered by the City Council.

4. The Community Development Agency at its organizational meeting each year shall elect a chairman and vice-chairman. The agency shall have the power to employ counsel and a director and such other officers and employees as may be desired.

(Ord. No. 764, 2/9/98)

## **ARTICLE XVII - PENAL PROVISION**

### SECTION 1-1701: VIOLATION; PENALTY

Anyone violating any of the terms and conditions of any of the foregoing chapter and articles shall be deemed guilty of a misdemeanor and shall be fined in a sum of not more than \$500.00 for each offense, and each day's maintenance of the same shall constitute a separate offense.