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CHAPTER 2 – BOARDS AND PUBLIC FACILITIES

Article 1 – Board of Health

(Neb. Rev. Stat. §17-121) (Ord. No. 375, 2/07)

SECTION 2-101: MEMBERS; TERMS

A. The City Council shall appoint a Board of Health consisting of four members: the mayor, who shall serve as chairman; 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. In the event no physician resides within the city, the mayor shall appoint a citizen at large to serve instead. If the mayor has appointed a chief of police, he or she may serve on the board as secretary and quarantine officer.

B. The members of the Board of Health, other than the mayor, president of the council, and chief of police, if appointed, shall serve one-year terms of office, unless reappointed. No member of the Board of Health shall hold more than one board position. The members of the board shall serve without compensation. The Board of Health shall be funded by the City Council from time to time out of the general fund.

SECTION 2-102: MEETINGS; OFFICERS

The Board of Health shall meet at such times as the City Council may designate. A majority of the board shall constitute a quorum for the purpose of doing business. The secretary shall keep full and correct minutes and records of all meetings and file the same with the city clerk, where they shall be available for public inspection during office hours. Special meetings may be held upon the call of the chairman or any two members of the board.

SECTION 2-103: DUTIES

It shall be the duty of the Board of Health to enact rules and regulations, which shall have the full force and effect of law to safeguard the health of the people of the city. The board shall enforce the rules and regulations and provide fines and punishments for any violations thereof. The board may appoint a code enforcement officer to carry out investigations and enforcement of such activities in its stead. The board or its appointed code enforcement officer may regulate, suppress, and prevent the occurrence of nuisances and shall actively enforce all state laws and city ordinances relating to nuisances and matters of sanitation which affect the health and safety of the people. The board shall also have control of hospitals, dispensaries, places for treatment of sick, and matters relating to the same under such restrictions and provisions as may be provided by ordinance of the city. The board or its appointed code enforcement officer shall regularly inspect such premises and businesses as the City Council may direct. The board shall be responsible for making such reports, prescribing such pen-

alties, and performing such other duties as the council may designate from time to time. All actions of the Board of Health shall be subject to the review and supervision of the City Council.

Article 2 – Parks

SECTION 2-201: AREAS DEFINED

For purposes of this article, the park areas defined within the city are as follows:

A. “Monument Valley Pathways” shall mean the hard surface pathway running in a westerly direction from the Gering-Scottsbluff Highway along Terry Boulevard, adjacent to Terry's Lake, and by Hascall Park, thence continuing in a southwesterly direction around the Terry and Hazeldeane Carpenter Intergenerational Center, then continuing in a southerly direction to Country Club Road. At Country Club Road, Monument Valley Pathways shall take a direct westerly path toward the Scotts Bluff National Monument and Five Rocks Road.

B. “Carpenter Park” shall mean the area so maintained by the city which is situated in the southwesterly corner of the area known as “Terry's Lake.” “Hascall Park” shall mean the area so maintained by the city on the east and southeasterly side of Terry's Lake. Each park shall be designated by signs and shall contain playground and picnicking facilities. Carpenter Park and Hascall Park shall also include all areas adjacent to and surrounding Terry's Lake, not to include any privately owned property not open to public access.
(Ord. No. 372, 12/7/06)

SECTION 2-202: SPEED REGULATION

It shall be unlawful for any person or persons to operate a motor vehicle upon any roadway, thoroughfare, street or place within Carpenter Park and Hascall Park at a speed in excess of 15 miles per hour. It shall be unlawful for any person to operate a bicycle, skates or skateboard within Monument Valley Pathways at a speed in excess of 15 miles per hour. (Ord. No. 372, 12/7/06)

SECTION 2-203: DOGS AND OTHER DOMESTICATED ANIMALS; RUNNING AT LARGE

It shall be unlawful for any person, firm, corporation or partnership to permit or allow any dog or other domesticated animal to run at large anywhere within Monument Valley Pathways, Carpenter Park and Hascall Park; provided, this prohibition shall not apply to dogs or domesticated animals when the same are on a leash in the hands of some person or tied to a permanent object. (Ord. No. 372, 12/7/06)

SECTION 2-204: HOURS

It shall be unlawful for any person to enter, be or remain in or upon Monument Valley Pathways between the hours of sunset until sunrise of any day. It shall be unlawful for any person to enter, be or remain in or upon Carpenter Park and Hascall Park between the hours of 11:00 p.m. and 6:00 a.m. of any day; provided, this prohibition shall not

apply to police, firefighters, park attendants or park or other maintenance personnel of the city, or other public law enforcement officers, while such officers are engaged in the performance of their official duties. (Ord. No. 372, 12/7/06)

SECTION 2-205: MOTOR VEHICLES

It shall be unlawful for any person to operate or park a motor vehicle in any city park except on roadways, thoroughfares, streets, motor vehicle parking areas or other areas designated by the city for use by motor vehicles. It shall be unlawful for any person to operate or park a motor vehicle, except a wheelchair or a maintenance vehicle operated by a city employee, anywhere within Monument Valley Pathways, Carpenter Park and Hascall Park, other than a road or thoroughfare intended for the same. It shall be further unlawful to obstruct any portion of the Monument Valley Pathways. (Ord. No. 372, 12/7/06)

SECTION 2-206: LITTERING; CONTAMINATION OF WATER

It shall be unlawful for any person to:

A. Drop, throw, place or discard any wastepaper, dirt, weeds, trash, refuse or other rubbish of any sort onto any park area except in a designated receptacle.

B. Throw, discharge or otherwise place or cause or permit to be placed or discharged into any pond, lake, stream or other body of water in any park any substance, matter or thing which might cause the water to be harmful to persons or things, to give forth objectionable odors or to appear unsightly, or otherwise pollute the waters.
(Ord. No. 372, 12/7/06)

SECTION 2-207: FIRES

It shall be unlawful for any person to start a fire in any park except in receptacles and facilities provided by the city or in devises such as portable grills or camp stoves which are manufactured for the purpose of containing fires. (Ord. No. 372, 12/7/06)

SECTION 2-208: FIREARMS; FIREWORKS

A. It shall be unlawful for any person, except law enforcement officers or employees of the city while engaged in the performance of official duties, to carry, possess or discharge on or onto any park area any firearm, pellet gun, pistol, BB gun, bow and arrow, crossbow, or any other device capable of projecting a missile able to inflict harm to persons or animals, or to injure property, except in places and under special regulations as the City Council or the designee of the council may have adopted for practicing, giving exhibitions or holding competitions in the use of such devices.

B. It shall be unlawful for any person to possess or discharge any fireworks on, within or onto any park area.
(Ord. No. 372, 12/7/06)

SECTION 2-209: HORSES AND CATTLE

It shall be unlawful for any person to ride any horse or to cause or allow any horse or cattle to be driven through, run loose, staked out, or in any other way to be in any park except in an area designated by the City Council or the designee of the council for such riding or for showing horses or cattle. (Ord. No. 372, 12/7/06)

SECTION 2-210: FISHING; SWIMMING

Fishing from the paved path in Monument Valley Pathways is prohibited. The use of Monument Valley Pathways to gain access to the North Platte River for swimming is prohibited. (Ord. No. 372, 12/7/06)

SECTION 2-211: TERRY'S LAKE; SWIMMING; BOATING; ICE SKATING

A. It shall be unlawful for any person or persons to swim, boat, or ice skate in or upon the body of water known as "Terry's Lake," provided that this prohibition shall not apply to authorized law enforcement personnel, firefighters, and other emergency safety personnel who are at Terry's Lake to conduct emergency rescue operations or who have applied for and been granted a permit to conduct authorized emergency personnel training exercises in or upon said lake.

B. An application for a permit to cause or permit authorized emergency personnel to be in or upon Terry's Lake, otherwise prohibited in subsection (A), may be made to the city clerk, or his or her designee, to allow authorized emergency personnel to conduct training exercises in or upon Terry's Lake. The city clerk or his or her designee may issue a permit if he or she finds:

1. The times for the permitted training exercises will not have an adverse impact on wildlife, flora or fauna in the area of the proposed activity;

2. The proposed activity does not have an adverse impact on the recreational use of Terry's Lake; or

3. The authorized emergency personnel have completed an application for the permit and have agreed to an indemnification and hold harmless agreement with the city.

(Ord. No. 323, 12/3/98)

Article 3 – Planning Commission

(Neb. Rev. Stat. §§19-924 through 19-929) (Ord. No. 377, 2/07)

SECTION 2-301: MEMBERS

The Planning Commission shall consist of three 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 is 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. All regular members of the commission shall serve without compensation and shall hold no other city office except when appointed to serve on the Board of Adjustment as provided in Neb. Rev. Stat. §19-908.
“(Neb. Rev. Stat. §§19-926)”

SECTION 2-302: ALTERNATE MEMBER

The mayor, with the approval of a majority vote of the City Council, may by ordinance provide for the appointment of one alternate member to the commission, who shall serve without compensation and shall hold no other city office. The term of the alternate member shall be three years and he or she shall hold office until his or her successor is appointed and approved. The alternate member may be removed from office in the same manner as a regular member. If the alternate member position becomes vacant other than through the expiration of the term, the vacancy shall be filled for the unexpired portion of the term by the mayor with the approval of a majority 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.

SECTION 2-303: TERMS; VACANCIES

The term of each regular Planning Commission member shall be three years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before City Council, be removed by the mayor with the consent of a majority vote of the council members for inefficiency, neglect of duty, malfeasance in office, or other good and sufficient cause. Vacancies occurring other than through the expiration of term shall be filled for the unexpired portion of the term by the mayor.

SECTION 2-304: OFFICERS; MEETINGS

The Planning Commission shall elect its chairman and secretary from its members and create and fill such other of its offices as it may determine. No member of the commission shall serve in the capacity of both chairman and secretary. The secretary shall keep full and correct minutes and records of all meetings and file the same with the city clerk, where they shall be available for public inspection during office hours. The terms of the officers shall be one year and they shall be eligible for re-election. The chairman of the commission may call for a meeting when necessary to deal with business pending before the commission. Additionally, the City Council may require the commission to meet more frequently. 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 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.

SECTION 2-305: FUNDING

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

SECTION 2-306: POWERS AND DUTIES; APPEAL

A. Except as provided in Neb. Rev. Stat. §§19-930 to 19-933, the Planning Commission shall (1) make and adopt plans for the physical development of the city, including any areas outside its boundaries which in the commission's judgment bear relation to the planning of such city and including a Comprehensive Development Plan as defined by Neb. Rev. Stat. §19-903; (2) prepare and adopt such implemental means as a capital improvement program, subdivision regulations, building codes, and a zoning ordinance in cooperation with other interested municipal departments; and (3) consult with and advise public officials and agencies, public utilities, civic organizations, educational institutions, and citizens with relation to the promulgation and implementation of the Comprehensive Development Plan and its implemental programs. The commission may delegate authority to any such group to conduct studies and make surveys for the commission, make preliminary reports on its findings, and hold public hearings before submitting its final reports. The City Council shall not take final action on matters relating to the Comprehensive Development Plan, capital improvements, building codes, subdivision development, the annexation of territory, or zoning until it has received the recommendation of the Planning Commission. The City Council shall by ordinance set a reasonable time within which the recommendation from the commission is to be received. A recommendation from the commission shall not be re-

quired for subdivision of existing lots and blocks whenever all required public improvements have been installed, no new dedication of public rights of way or easements is involved, and such subdivision complies with the ordinance requirements concerning minimum areas and dimensions of such lots and blocks, if the City Council has designated an agent by ordinance pursuant to Neb. Rev. Stat. §19-916.

B. The commission may, with the consent of the City Council, in its own name (1) make and enter into contracts with public or private bodies, (2) receive contributions, bequests, gifts, or grant funds from public or private sources, (3) expend the funds appropriated to it by the city, (4) employ agents and employees, and (5) acquire, hold, and dispose of property. The commission may on its own authority make arrangements consistent with its program, conduct or sponsor special studies or planning work for any public body or appropriate agency, receive grants, remuneration, or reimbursement for such studies or work, and at its public hearings, summon witnesses, administer oaths, and compel the giving of testimony.

C. The commission may grant conditional uses or special exceptions to property owners for the use of their property if the City Council has, through a zoning ordinance or special ordinance, generally authorized the commission to exercise such powers and has approved the standards and procedures adopted by the commission for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the zoning ordinance as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized. The power to grant conditional uses or special exceptions shall be the exclusive authority of the commission, except that the City Council may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the zoning ordinance. The council may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable and will promote the public interest. An appeal of a decision by the commission or City Council regarding a conditional use or special exception shall be made to the District Court.

Article 4 – Board of Adjustment

SECTION 2-401: MEMBERS

A. 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. No member of the council shall serve as a member of the Board of Adjustment. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by such member shall also result in his or her immediate loss of membership on the Board of Adjustment and the appointment of another planning commissioner to the board. The first vacancy occurring on the Board of Adjustment shall be filled by the appointment of a person who resides in the extra-territorial 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. 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, as set by resolution by the council and kept on file in the city office, and conditioned upon the faithful performance of their duties.

B. Each member of the board shall serve a term of three years unless reappointed and shall be removable by a three-fourths vote of the City Council upon written charges and after a public hearing. Any vacancy shall be filled for the unexpired term of any member whose term becomes vacant.

SECTION 2-402: OFFICERS; MEETINGS

The Board of Adjustment shall organize at its first meeting of each year and elect from its membership a chairman and secretary. No member of the board shall serve in the capacity of both chairman and 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 a 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 chairman 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. The chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. The board shall be responsible for making those reports and performing those other duties as the mayor and City Council may designate.

SECTION 2-403: POWERS AND DUTIES; APPEALS; INTERPRETATION OF MAPS; VARIANCES

A. It shall be the duty of the board:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by a municipal official based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures;

2. To hear and decide, in accordance with the provisions of the zoning regulations, requests for interpretation of any map; and

3. When by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this section and Neb. Rev. Stat. §§19-901, 19-903 to 19-904.01, and 19-908 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. No such variance shall be authorized by the board unless it finds that:

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

   b. 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. 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.

B. 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 municipal 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.

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

D. In exercising the powers granted within this section, the board may, in conformity with Neb. Rev. Stat. §§19-901 to 19-915, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.
(Neb. Rev. Stat. §§19-907 through 19-910) (Ord. No. 386, 5/1/08)

SECTION 2-404: APPEAL; PROCEDURE

A. Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, officer, department, board, or bureau of the city may present to the district court a petition duly verified, setting forth that such decision is illegal in whole or in part and specifying the grounds of such illegality. Such petition must be presented to the court within 15 days after the filing of the decision in the office of the board. Upon the filing of such petition a summons shall be issued and served

upon the Board of Adjustment, together with a copy of the petition. Return of service shall be made within four days after the issuance of the summons. Within ten days after the return day of such summons, the Board of Adjustment shall file an answer to the petition which shall admit or deny the substantial averments of the petition and shall state the contentions of the board with reference to the matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition.

B. At the expiration of the time for filing answer, the court shall proceed to hear and determine the cause without delay and shall render judgment thereon according to the forms of law. If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. The appeal to the district court shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the state regulating appeals in actions at law.
(Neb. Rev. Stat. §19-912)

Article 5 – Penal Provision

SECTION 2-501: VIOLATION; PENALTY

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this chapter, set forth at full length herein or incorporated by reference, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $500.00 for each offense. A new violation shall be deemed to have been committed every 24 hours of such failure to comply.