# CHAPTER I. ADMINISTRATION

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## ARTICLE 1. GENERAL PROVISIONS

1-101. CODE DESIGNATED. The chapters, articles and sections herein shall constitute and be designated as "The Code of the City of Oberlin, Kansas," and may be so cited. The Code may also be cited as the "Oberlin City Code." (Code 1989)

1-102. DEFINITIONS. In the construction of this code and of all ordinances of the city, the following definitions and rules shall be observed, unless such construction would be inconsistent with the manifest intent of the governing body or the context clearly requires otherwise:

(a) City shall mean the City of Oberlin, Kansas.

(b) Code shall mean "The Code of the City of Oberlin, Kansas."

(c) Computation of Time. The time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day be a Saturday, Sunday, or legal holiday, that day shall be excluded.

(d) County means the County of Decatur in the State of Kansas.

(e) Delegation of Authority. Whenever a provision appears requiring or authorizing the head of a department or officer of the city to do some act or perform some duty, it shall be construed to authorize such department head or officer to designate, delegate and authorize subordinates to do the required act or perform the required duty unless the terms of the provision designate otherwise.

(f) Gender. Words importing the masculine gender include the feminine and neuter.

(g) Governing Body shall be construed to mean the mayor and city council of the city, or those persons appointed to fill a vacancy in the office of mayor or the city council as provided in this code.

(h) In the city shall mean and include all territory over which the city now has, or shall hereafter acquire jurisdiction for the exercise of its police powers or other regulatory powers.

(i) Joint authority. All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

(j) Month shall mean a calendar month.

(k) Number. Words used in the singular include the plural and words used in the plural include the singular.

(l) Oath includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the word "swear" is equivalent to the word "affirm."

(m) Officers, departments, etc. Officers, departments, boards, commissions and employees referred to in this code shall mean officers, departments, boards, commissions and employees of the city, unless the context clearly indicates otherwise.

(n) Owner applied to a building or land, shall include not only the owner of the whole but any part owner, joint owner, tenant in common or joint tenant of the whole or a part of such building or land.

(o) Person includes a firm, partnership, association of persons, corporation, organization or any other group acting as a unit, as well as an individual.

(p) Property includes real, personal and mixed property.

(q) Real Property includes lands, tenements and hereditaments, and all rights thereto and interest therein, equitable as well as legal.

(r) Shall, may. "Shall" is mandatory and "may" is permissive.

(s) Sidewalk means any portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.

(t) Signature, subscription includes a mark when the person cannot write, when his or her name is written near such mark and is witnessed by a person who writes his or her own name as a witness.

(u) State shall be construed to mean the State of Kansas.

(v) Street means and includes public streets, avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the city.

(w) Tenant or occupant applied to a building or land, shall include any person holding a written or oral lease of, or who occupies the whole or a part of such building or land, whether alone or with others.

(x) Tenses. Words used in the past or present tense include the future as well as the past and present.

(y) Writing or written may include printing, engraving, lithography and any other mode of representing words and letters, except those cases where the written signature or the mark of any person is required by law.

(z) Year means a calendar year, except where otherwise provided.

(Code 1989)

1-103. EXISTING ORDINANCES. The provisions appearing in this code, so far as they are in substance the same as those of ordinances existing at the time of the effective date of this code, shall be considered as continuations thereof and not as new enactments. (Code 1989)

1-104. EFFECT OF REPEAL. The repeal of an ordinance shall not revive an ordinance previously repealed, nor shall such repeal affect any right which has accrued, any duty imposed, any penalty incurred or any proceeding commenced under or by virtue of the ordinance repealed, except as shall be expressly stated therein. (Code 1989)

1-105. CATCHLINES OF SECTIONS. The catchlines of the sections of this code printed in capital letters are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of any section, nor unless expressly so provided, shall they be so deemed when any section, including its catchline, is amended or reenacted. (Code 1989)

1-106. PARENTHETICAL AND REFERENCE MATTER. The matter in parenthesis at the ends of sections is for information only and is not a part of the code. Citations indicate only the source and the text may or may not be changed by this code. This code is a new enactment under the provisions of K.S.A. 12-3014 and 12-3015. Reference matter not in parenthesis is for information only and is not a part of this code. (Code 1989)

1-107. AMENDMENTS; REPEAL. Any portion of this code may be amended by specific reference to the section number as follows: "Section _____ of the code of the City of Oberlin is hereby amended to read as follows: (the new provisions shall then be set out in full). . ." A new section not heretofore existing in the code may be added as follows: "The code of the City of Oberlin is hereby amended by adding a section (or article or chapter) which reads as follows: . . .(the new provisions shall be set out in full). . ." All sections, or articles, or chapters to be repealed shall be repealed by specific reference as follows: "Section (or article or chapter) _____ of the code of the City of Oberlin is hereby repealed." (Code 1989)

1-108. ORDINANCES. The governing body shall have the care, management and control of the city and its finances, and shall pass all ordinances needed for the welfare of the city. All ordinances shall be valid when a majority of all the members-elect of the city council shall vote in favor. Where the number of favorable votes is one less than required, the mayor shall have power to cast the deciding vote in favor of the ordinance. (K.S.A. 12-3002; Code 1989)

1-109. SAME; SUBJECT AND TITLE; AMENDMENT. No ordinance shall contain more than one subject, which shall be clearly expressed in its title; and no section or sections of an ordinance shall be amended unless the amending ordinance contains the

entire section or sections as amended and the section or sections amended shall be repealed. (K.S.A. 12-3004; Code 1989)

1-110. SAME; PUBLICATION. No ordinance, except those appropriating money, shall be in force until published in the official city newspaper by the city clerk. One publication of any such ordinance shall be sufficient unless additional publications are required by statute or ordinance. The publisher of the newspaper shall prefix such published ordinance by a line in brackets stating the month, day and year of such publication. (K.S.A. 12-3007; Code 1989)

1-111. SAME; ORDINANCE BOOK. Following final passage and approval of each ordinance, the city clerk shall enter the same in the ordinance book of the city as provided by law. Each ordinance shall have appended thereto the manner in which the ordinance was passed, the date of passage, the page of the journal containing the record of the final vote on its passage, the name of the newspaper in which published and the date of publication. (K.S.A. 12-3008; Code 1989)

1-112. RESOLUTIONS, MOTIONS. Except where a state statute or city ordinance specifically requires otherwise, all resolutions and motions shall be passed if voted upon favorably by a majority of a quorum of the city council. (Code 1989)

1-113. CITY RECORDS. The city clerk or any other officer or employee having custody of city records and documents shall maintain such records and documents in accordance with K.S.A. 12-120 to 12-121 inclusive, which is incorporated by reference herein as if set out in full. (K.S.A. 12-120:121; Code 1989)

1-114. ALTERING CODE. It shall be unlawful for any person, firm or corporation to change or amend by additions or deletions, any part or portion of this code, or to insert or delete pages, or portions thereof, or to alter or tamper with such code in any manner whatsoever which will cause the law of the City of Oberlin to be misrepresented thereby. This restriction shall not apply to amendments or revisions of this code authorized by ordinance duly adopted by the governing body. (Code 1989)

1-115. SCOPE OF APPLICATION. Any person convicted of doing any of the acts or things prohibited, made unlawful, or the failing to do any of the things commanded to be done, as specified and set forth in this code, shall be deemed in violation of this code and punished in accordance with section 1-116. Each day any violation of this code continues shall constitute a separate offense. (Code 1989)

1-116. GENERAL PENALTY. Whenever any offense is declared by any provision of this code, absent a specific or unique punishment prescribed, the offender shall be punished in accordance with this section.

(a) A fine of not more than $499; or,
(b) Imprisonment in jail for not more than 179 days; or,

(c) Both such fine and imprisonment not to exceed (a) and (b) above. (Code 1989)

1-117. SEVERABILITY. If for any reason any chapter, article, section, subsection, sentence, clause or phrase of this code or the application thereof to any person or circumstance, is declared to be unconstitutional or invalid or unenforceable, such decision shall not affect the validity of the remaining portions of this code. (Code 1989)

1-118. APPLICABILITY TO AREAS OUTSIDE THE CORPORATE LIMITS.
(a) All ordinances of the City of Oberlin as they now or hereafter shall exist shall apply to that area commonly known as Sappa Park which is owned by the City of Oberlin in Olive Township, Decatur County, Kansas.
(b) The unlawful discharge of firearms provision within the Uniform Public Offense Code shall not be applicable to the areas of Sappa Park leased to the gun club, to lawful hunting in prescribed hunting areas on in other areas specifically designated from time to time by the Chif of Police as areas in which certain firearms may be discharged. (Ord. 779)

## ARTICLE 2. GOVERNING BODY

1-201. GOVERNING BODY. The governing body shall consist of a mayor and city council to be elected as set out in Chapter 5 of this code. (Code 1989)

Ref.: Election of city officers, see Charter Ordinance No. 4, Appendix B.

1-202. MEETINGS. The regular meeting date of the governing body of the city shall be set by resolution of the council. (Ord. 697)

1-203. COMPENSATION. It is hereby provided that the mayor, and each other member of the governing body of the city shall have, as compensation for services rendered to the city as mayor and councilmen, a salary of $200 per month for the mayor and $100 per month for each of the council members. (Ord. 237; Code 1989)

1-204. POWERS GENERALLY. All powers conferred upon cities of the third class by the laws of the State of Kansas shall be exercised by the governing body subject to such limitation as may be prescribed by law. All executive and administrative authority granted or limited by law shall be vested in the mayor and council of the city as the governing body of the city.

1-205. SPECIAL MEETINGS; CALLING; MINUTES. Special meetings of the governing body may be called by the mayor (or acting mayor in the absence of the mayor from the city) on the written request of any three members of the governing body, specifying the object and purpose of such meeting, which request shall be read at the meeting and entered at length on the journal by the city clerk. The call of the mayor for any such

special meeting shall be endorsed upon the written request and shall specify the time and place of such meeting, and shall be filed with the city clerk. Thereupon, the city clerk shall give notice to such meeting to each member of the governing body. (K.S.A. 15-106)

1-206. ADJOURNED MEETING: TIME AND PLACE. Any regular or special meeting of the governing body may be adjourned for the completion of its business at such subsequent time and place as the governing body may determine in the motion to adjourn.

1-207. QUORUM; ATTENDANCE OF MEMBERS. At all meetings of the governing body, a majority of the councilmen elect shall constitute a quorum to do business, but any less number may adjourn from day to day and compel the attendance of absent members of the governing body. (K.S.A. 15-106)

1-208. PRESIDING OFFICER, MAYOR. The mayor shall preside at all meetings of the governing body, and shall have a casting vote when the governing body is equally divided upon any question. (Code 1989)

1-209. PRESIDENT OF COUNCIL; ACTING PRESIDENT. In the absence of the mayor, the president of the council shall preside at meetings of the governing body. In the absence of the mayor and president of the council, the council shall elect one of its members to preside who shall be styled "acting president of the council." The president of the council and acting president, when occupying the place of the mayor as presiding officer shall have the same privileges as other members of the governing body. (K.S.A. 15-310)

1-210. PRESIDENT OF COUNCIL: ELECTION; DUTIES. The governing body shall, at its regular meeting following any city election, elect one (1) of its members as "President of the Council." When any vacancy shall happen in the office of mayor, the president of the council for the time being shall exercise the office of mayor, and all the rights, privileges and jurisdiction of the mayor, until such vacancy be filled at the next city election where the mayor is to be elected, or until such disability be removed, or in the case of temporary absence, until the mayor shall return. (K.S.A. 15-310:311, Ordinance 736)

1-211. COUNCIL COMMITTEES; APPOINTMENT. Standing committees of the governing body shall be appointed by the mayor, with the consent of the council, on an as needed basis. (Ord. 697)

1-212. ADMINISTRATIVE POWERS: COMMITTEES; MAYOR. It shall be the duty of each committee to act promptly and faithfully in all matters referred to it and to make a report thereof at the next meeting of the governing body. The governing body may designate whether the administration of a policy or the carrying out of any order of the

governing body shall be performed by a governing body committee, an appointive officer of the city or the mayor. If no administrative authority is designated by ordinance or other action of the governing body, the authority shall be exercised by the mayor as provided by law. (K.S.A. 15-301:302, 305:306, 308)

1-213. ORDINANCES: PUBLICATION REQUIRED; DUTIES OF CITY CLERK. The city clerk shall cause all ordinances (except those appropriating money) to be published, as soon as practicable after their passage, in the official city newspaper which shall have been designated by the governing body, and no ordinance having any object beyond the bare appropriation of money shall be in force until published in such newspaper. One publication of any such ordinance shall be sufficient. The publisher of the newspaper shall prefix such ordinance by a line in brackets, stating correctly the date of such publication, thus: (Published _____ 19____), giving the month, day and year of the publication. The city clerk shall immediately upon the final passage and approval of each ordinance enter the same in the "Ordinance Book" of the city as provided by law and append thereto a note reciting the manner in which the ordinance passed, the date of its passage, the page of the journal containing the record of the final vote on its passage, the name of the newspaper in which published and the date of publication. Such note shall be in substantially the following form:

> "Note: Ordinance No. _____ passed the ____ day of _____, 19____. Record of final vote on passage, page ____, Journal No. _____. Published in _____ the _____ day of _____ 19____."

1-214. VACANCIES IN ELECTIVE OFFICES. In case of a vacancy in the office of councilman occurring by reason of resignation, death, removal from the city, removal from office, or becoming mayor by reason of being president of the council when a vacancy occurs in the office of mayor, the mayor shall appoint, with the consent of a majority of the remaining councilmen, some suitable elector of the city to fill the vacancy until the expiration of the term of such office. In case of a vacancy in the office of mayor occurring by reason of resignation, death, removal from office, removal from the city, or refusal or failure to qualify, the president of the council, or in the case of the mayor-elect's refusal or failure to qualify, the new president of the council, shall become mayor until the expiration of the term, and a vacancy shall occur in the office of the councilman becoming mayor. (C.O. No.4)

1-215. RESOLUTIONS AND MOTIONS, PASSAGE. Except where a state statute or city ordinance specifically requires otherwise, all resolutions and motions shall be passed if voted upon favorably by a majority of a quorum of the council.

1-216. EMERGENCY GOVERNMENT. In the event of a catastrophe in which all, or a majority, of the members of the governing body are fatally injured, the interim governing body shall be composed of the surviving members, the city attorney, the city

clerk, and a sufficient number of the appointed officials selected in the order of the greatest seniority in office to make up a governing body of the prescribed number.

1-217. RULES AND ORDER OF BUSINESS. The following shall constitute guidelines for the rules and order of business of the city.

Rule 1. Adjourned Meetings. Adjourned meetings of the governing body may be held at such time and place as the governing body may determine in the motion to adjourn.

Rule 2. Special Meetings. Special meetings may be held at any time upon a call signed by a majority of the governing body

The call of a special meeting shall be in substantially the following form:

CALL FOR SPECIAL GOVERNING BODY MEETING

Oberlin, Kansas
_____,19___

To the Members of the Governing Body

A special meeting of the governing body is hereby called to be held at the city hall, _____, 19_____ at _____o'clock ___m., the object of said meeting being to _____ (state object)

Signed:

_____
_____
_____

A notice of such special meeting, stating the time, place, and object of the meeting, directed to the _____ shall be issued by the city clerk to the chief of police, his or her deputy, or a law enforcement officer or other city employee, who shall be required to make service of said notice at once personally upon each _____ or to leave it at his or her usual place of residence, and such notice must be served or left at the usual place of residence at least two hours before the time of meeting. The person serving the notice shall make a return in writing of the service, showing the manner of such service. Attendance at a special meeting by any member of the governing body shall constitute a waiver of the right to notice under this rule for that member. The notice and the return shall be in substantially the following form:

NOTICE OF SPECIAL GOVERNING BODY MEETING
Office of the City Clerk
Oberlin, Kansas

To _____
_____

You are hereby notified that there will be a special meeting of the Governing Body at_____o'clock ____m., _____, 19_____, at the city hall for the object of (state the same object as shown in the call).

Witness my hand and the seal of said city this _____ day of _____, 19_____.

State of _____ _____
City Clerk

County _____ ss.

City of_____
To (chief of police, his or her deputy, or a law enforcement officer or other city employee).

Greeting:

You are hereby directed to serve the above notice at once personally upon _____ _____ or to leave it at his or her usual place of residence before _____ o'clock _____m., _____ 19_____, and to make a return in writing of said service, showing the manner of such service.

(SEAL) _____
City Clerk

RETURN

Received the original notice of special governing body meeting, of which the foregoing is a copy, at _____ o'clock _____m., on the _____ day of _____, 19_____, and (served the same personally on _____ _____ or left said original notice at the usual place of residence of _____ _____) at _____ o'clock _____m., on the _____ day of _____, 19_____.

Dated this _____ day of _____, 19_____

Signed: _____
Person serving notice

Rule 3. Order of Business. At the hour appointed for meeting, the governing body shall be called together by the mayor, and in his or her absence by the acting mayor. The

city clerk shall call the roll and note the absentees and announce whether a quorum be present. Upon the appearance of a quorum the governing body shall proceed to business, which shall be conducted in the following order:

(1) Reading of the minutes of the last regular meeting and intervening special meetings, which if no corrections are offered, shall stand approved;
(2) Presentation of petitions, memorials, and remonstrances;
(3) Presentations of claims and appropriation ordinance;
(4) Unfinished business;
(5) New business;
(6) Reports of other city officers.

Rule 4. Order. The mayor shall preserve order and decorum and shall decide questions of order subject to an appeal to the council.

Rule 5. Decorum. Every member previous to his or her speaking shall address himself or herself to the chair and shall not proceed until recognized by the chair. He or she shall indulge in no personalities and confine his or her remarks to the matter under debate.

Rule 6. Point of Order. A member called to order shall immediately suspend until the point of order raised is decided by the chair.

Rule 7. Certain Motions in Writing. Every motion except to adjourn, postpone, reconsider, commit, lay on the table, or for the previous question, shall be reduced to writing if the chair or any member requires it; when made and seconded, it shall be stated by the chairperson or being written shall be read by the clerk, and may be withdrawn before decision or amendment, or any disposition thereof has been made, or a vote thereon had.

Rule 8. Resolutions. All resolutions must be in writing.

Rule 9. Motions During Debate. When a question is under debate no motion shall be entertained except:

(1) To adjourn;
(2) To lay on the table;
(3) To take the previous question;
(4) To postpone;
(5) To amend;

which several motions shall have precedence in the order in which they are named, and the first three shall be decided without debate.

Rule 10. Division. Any member may call for a division of a question when the same will admit thereof.

Rule 11. Voting; Abstaining From Voting. When a question is put by the chair, every member present shall vote unless for special reasons the chair shall excuse him or her. For those questions for which an abstention is permitted, such a vote shall be counted as a vote cast in favor of the position taken by the majority of those persons present and voting. In doubtful cases the chair may direct, or any member call for, a division. The yeas and nays shall be called upon a requisition of the chair or any member, and upon the final passage of all ordinances in which case the names of the members voting and their votes shall be recorded in the minutes.

Rule 12. Precedence of Questions. All questions shall be put in the order in which they are moved, except in case of privilege questions, and in filling blanks the longest time and the largest sum shall be first.

Rule 13. Previous Question. The previous question shall be put in these words: "Shall the main question now be put?" It shall be admitted on demand of any member and until decided shall preclude all amendments and debate of the main question.

Rule 14. Passing of Ordinances. All ordinances shall be read by sections, at which time amendments, if any, may be offered, but the reading of any section shall not preclude the offering of an amendment to any preceding one. If amendments are made the chair shall so report, and each section shall be read as amended before the vote on the passage of the ordinance is taken. After reading and amendment (if any) of the ordinance, the question shall be: "Shall the ordinance pass?" The vote on the final passage of an ordinance shall be taken by yeas and nays, which shall be entered on the journal by the clerk; and no ordinance shall be valid unless a majority of (or otherwise as required by law) the members of the council vote in favor thereof: Provided, That no ordinance shall contain more than one subject, which shall be clearly expressed in its title, and no section or sections of an ordinance shall be amended unless the amending ordinance contains the entire section or sections as amended and the section or sections amended shall be repealed. (K.S.A. 12-3002; 12-3004)

Rule 15. Signing and Engrossing Ordinances. After an ordinance shall have passed it shall be correctly entered in the original ordinance book and the original and the book copy shall be signed by the mayor, or in the absence of the mayor by the acting mayor, and attested by the clerk, who shall secure publication of the ordinance as required by law.

Rule 16. Clerk Reads Communications. Petitions and other papers addressed to the governing body shall be read by the clerk under proper order of business upon presentation of the same to the board.

Rule 17. Robert's Rules of Order. In all points not covered by these rules the governing body shall be governed in its procedure by Robert's Rules of Order.
(Code 1985)

## ARTICLE 3. OFFICERS AND EMPLOYEES

1-301. EMPLOYMENT OF OFFICERS. The council shall develop and implement policies and procedures for employing, evaluating and retaining or not retaining in employment all nonelected personnel, including a municipal judge, a clerk, a treasurer, a marshal-chief of police and law enforcement officers. (C.O. No. 12)

1-302. ORGANIZATIONAL STRUCTURE. There are hereby created the following departments of city government: Administrative, Public Safety, Public Works, Gateway Event Center. The city administrator shall have general oversight and supervision of all departments and shall be the department head of the administrative and public safety departments. Except as provided in subsections (e) and (f) hereof, the city administrator shall have final authority regarding hiring and termination of employees.

(a) Administrative Department shall include the positions of city clerk, city treasurer and city judge, and such other positions as are required to fulfill its functions, which shall include accounting and billing for utilities, recordkeeping, financial management, enforcement of codes, operation of city police court, and such other administrative duties necessary or desirable in the operation of the city.

(b) Public Safety Department shall include the positions of police chief, fire chief and animal control superintendent, and such other positions as are required to provide for the public safety and welfare.

(c) Public Works Department shall be headed by the city superintendent, and its functions shall include utility operations and maintenance, street maintenance, parks, swimming pool, cemeteries, and all other duties related to the maintenance and operation of the infrastructure and recreation facilities of the city, except for the operation of the Gateway Event Center.

(d) The Gateway Event Center operations shall be in a separate department, and the manager of the center shall be the department head. All personnel employed in the operation of the Gateway shall be included in this department.

(e) The city superintendent, police chief, fire chief, and Gateway manager shall be hired by the city administrator with the advice and consent of the city council. The administrator, in consultation with respective department heads and the police chief and fire chief as appropriate, shall hire all other city employees.

(f) In the termination of employment of any city employee except the city administrator or city attorney, who are directly under the authority of the council, the city council shall have such review authority as is provided in the grievance procedure of the city as stated in the personnel handbook.

(g) The city council may at any time, by resolution, abolish or create any department or position named in this article.
(Ord. 702, Secs. 3:10)

1-303. CITY ADMINISTRATOR. (a) The city council shall be charged with the responsibility of hiring a city administrator. The administrator may be an employee at will or under employment contract, as determined by the council.

(b) In employing the city administrator, the position shall be advertised to seek qualified applicants. The city council shall select an administrator from among those applicants, or may order that the application process be reopened.

The city administrator shall be appointed on the basis of qualifications and ability and need not be a resident of the city. (Ord. 538, Sec. 1; Ord. 702, Sec. 2)

1-304. POWERS AND DUTIES OF ADMINISTRATOR. Except as otherwise provided by law or the ordinances of the city, the city administrator shall:

(a) Manage, direct, control and supervise all the administrative departments and services of the city, and act as head of the administrative and public safety departments;

(b) Recommend to the mayor and city council for hiring all appointive officers and employees;

(c) Supervise, direct and assign the duties of all appointive officers and employees;

(d) Prepare and submit the annual budget of the governing body and keep it fully, completely and timely advised as to the financial condition of the city;

(e) Exercise general supervision and control over all city purchases and expenditures in accordance with the budget and such policies as may be established by the governing body;

(f) Recommend to the governing body a schedule of salaries for all officers and employees;

(g) Have the care and management of all city-owned land, property, buildings and equipment;

(h) Develop and prepare such planning, short-range as well as long-range, as the governing body shall request and shall submit such planning to the governing body for action;

(i) Attend all meetings of the governing body and such other meetings of commissions and other organizations as the governing body shall direct;

(j) Make such recommendations to the governing body as are deemed necessary for effective administration of all city services;

(k) Be responsible for the proper and efficient discharge of the duties of all city administrative officers and employees;

(l) Perform such other duties as the governing body may direct.

(m)(1) The decision to sell or transfer any City property must be made by the City Council, with the exception of any item of used or obsolete personal property owned by the City having a value of $250 or less which may be sold at the written direction of the City Administrator. Said sale shall be by public sale or sealed bid. As to real estate owned by the City, sale of the real property through a real estate agent in authorized.

(m)(2) All monies received from the sale of City property shall be delivered to the City Council, along with a written report of such sale detailing the date of sale, name and address of purchaser, list of property sold and the selling price. The City Council shall then decide in what fund said proceeds shall be placed.

(Ord. 538, Sec. 2; Ord. 702, Sec. 3, Ord. 743, 769)

1-305. CITY ATTORNEY. The mayor, with the consent of the council, at the first regular meeting of the council in May of each year, shall appoint the city attorney. (Ord. 702, Sec. 1)

1-306. POWERS AND DUTIES OF CITY ATTORNEY. The city attorney shall be a qualified elector of Decatur County or of an adjoining county and be admitted to practice before the Supreme Court of the State of Kansas. The duties of the city attorney shall be to appear and prosecute or defend all actions or proceedings in any of the courts of records or before any of the administrative agencies of the State of Kansas in which the city may be a party or have an interest, to advise and counsel the governing body and officers of the city, to draft ordinances, contracts, examine deeds and abstracts, render opinions, to attend all regular meetings and such special meetings as from time to time the governing body may direct, and to perform other professional services incidental to his or her office. For his or her services the city attorney shall receive an amount to be established by the governing body prior to the rendering of the service.

1-307. DUTIES; CITY CLERK. The city clerk of the city shall have the following duties:

(a) Keep his or her office in the city building, which office shall be open at such times during business hours in the city as may be fixed by the council;

(b) Attend all meetings of the council and make and keep a record of all proceedings and meetings of the council in minute form entered in the journal of council proceedings. In the absence of the clerk from any meeting, the presiding officer shall appoint a member of the governing body to keep an account of the proceedings and to report the same to the city clerk;

(c) Carry on all the official correspondence of the city, giving the same prompt attention and shall present for the consideration of the mayor and council at each meeting all correspondence received and replies given by him or her;

(d) Have charge of the corporate seal of the city and shall affix the same to the official copy of all ordinances, deeds, contracts and similar documents required to be authenticated, and shall be authorized to administer oaths for all purposes pertaining to the business affairs of the city;

(e) Be custodian of all the city records, books, papers, contracts, petitions, documents and other personal effects belonging to the city not properly pertaining to any other office and shall keep suitable files and records of the same;

(f) Receive and audit all claims against the city and shall present them for consideration of the governing body at its regular meetings each month, and shall prepare appropriation ordinances for the payment of all claims allowed by the governing body. He or she shall draw warrants (or warrant checks) only when appropriations to pay claims against the city have been made by ordinance;

(g) Report to the governing body at its regular meetings each month in regard to the financial condition of the funds of the city so that the governing body may not create debts nor authorize the issuance of warrants in violation of the budget law or the cash-basis law relating to the duties of city officers;

(h) Keep a separate account of each fund of the city, whether the funds be derived from taxation or otherwise; no money belonging to one fund shall be placed to the credit of another fund, or be transferred to another fund unless there is lawful authority for the same. Each separate tax levy shall constitute a separate fund, and income derived from other sources shall be credited to the proper fund of the city;

(i) Render such assistance as may be required by the governing body in preparing the annual city budget, any ordinance for the levying of taxes, and shall certify the same to the county clerk in the form and manner required by law together with a copy of the budget; provided, that a copy of the budget shall be filed with the State Department of Post Audits;

(j) Keep a fully accurate account of all bonds issued by the city, recording them in the book by date, number, amount thereof, rate of interest, number of each coupon, amount of each, to whom payable, where payable and when canceled upon return of the same to the city;

(k) Keep a record of all special assessments made by the governing body for any purpose and shall certify the assessments to the county clerk for collection and payment in the manner provided by law;

(l) Act as the withholding agent of the city for the purpose of the federal revenue (income) act as authorized by Section 75-3042, Kansas Statutes Annotated, and shall receive from each officer or employee of the city the withholding certificate required by virtue of the revenue act. He or she shall maintain a suitable record of the sums so withheld from wages and salaries and remit the same to the Director of Internal Revenue at such times and in such form as may be required by the regulations.

1-308. SAME; CITY TREASURER. Duties for the city treasurer of the city shall be as follows:

(a) Receive and safely keep all moneys belonging to the city coming to him or her by virtue of office, giving receipt therefor and for all moneys received by him or her from any other source than the city clerk, he or she shall give duplicate receipts causing one of them to be filed with the city clerk, and shall keep a copy thereof in his or her own office;

(b) Keep proper records and accounts of all moneys received and disbursed by him or her from any source and funds in behalf of the city specifying the time of receipt and disbursement, from whom received and to whom disbursed on account of the city;

(c) Publish or cause to be published an annual financial statement of the city in the manner and style required by Section 12-1608 of the Kansas Statutes Annotated;

(d) Deposit all funds of the city coming into his or her hands in his or her official capacity or responsibility in a depository bank or banks within the city, and only after the same has been designated by the governing body and after the depository bank shall have given security in those instances when a depository of public moneys must give security. All such deposits shall be made in his or her name and in his or her official title as treasurer of the city;

(e) Pay out funds of the city upon warrants (warrant checks) property signed by the mayor, attested by the city clerk and countersigned by him or her. He or she shall

cancel all warrants as soon as paid, and in canceling paid warrants, he or she shall write across the face of such warrant the word "Paid" in red ink and sign the same; provided, that in case a combination warrant check is used and such warrant is stamped by a depository bank of the city, the endorsement of the treasurer will not be required. (K.S.A. 9-1403, 12-608; K.S.A. 9-1401:1402, 10-801:809)

1-309. POWERS AND DUTIES OF CITY SUPERINTENDENT. The city superintendent shall be appointed on the basis of his or her engineering and administrative abilities and shall:

(a) Have and exercise management and supervision over all the utilities, streets, and park departments;

(b) Have care and management over all city-owned property, land, buildings or equipment;

(c) Attend all meetings of the governing body and regularly submit to the governing body a written report on the status of the city and its services;

(d) Be responsible for the proper and efficient discharge of the duties of all city employees under his jurisdiction. Make such recommendations to the governing body as deemed necessary for the good and efficient administration of departments under his or her jurisdiction;

(e) Investigate all complaints in relation to matters concerning departments under his or her jurisdiction. Submit reports in order that the governing body may determine and establish policies for control of services;

(f) Make studies and reports in order that governing body may adopt such measures as may be deemed necessary or expedient for the health, safety and welfare of the city;

(g) Perform such other duties as the governing body may direct.

No act or decision of the city superintendent shall be rescinded or overruled, nor shall the services of the city superintendent be terminated, unless by a majority vote of the council. In cases involving the discharge of a city employee by the city superintendent the employee shall have a right of appeal to the governing body.

1-310. MUNICIPAL JUDGE. The judge of the municipal court shall try all cases cognizable before the municipal court and shall have power to bring parties before it for trial upon complaint duly made. He or she shall have such authority and powers as the law provides.

Ref.: For further duties of the municipal judge, see Chapter X, Article 1 of this code.

1-311. DUTIES OF CITY MARSHAL; ASSISTANT MARSHAL; OFFICERS. The city marshal-chief of police and his or her assistants shall have the following duties:

(a) The city marshal shall be chief of police, and shall at all times by day or by night have power to make arrests with process issued by the municipal judge, or without process on view of any offense against the laws of the State of Kansas or ordinances of

the city, or to order the arrest under proper process of all offenders against the laws or ordinances, to keep all persons so arrested in the county jail or other proper place to prevent their escape until their trial can be had before the proper offices; and to execute all processes issued by the municipal judge and delivered to him or her for that purpose;

(b) The assistant marshal shall have the same powers conferred upon the city marshal-chief of police. All police officers of the city, in the discharge of their duties, shall be subject to the order of the city marshal-chief of police;

(c) It shall be the general duty of the marshals and police officers of the city at all times and to the best of their ability to preserve good order, peace and quiet throughout the city as provided by law or ordinance. All persons arrested for violation of any law of the state and who shall not be charged with any offense under an ordinance of the city shall be released to the custody of the sheriff of the county and such arrest shall be reported to the county attorney.

Ref.: See also Chapter XI of this code.

1-312. CHIEF OF THE FIRE DEPARTMENT. The chief of the fire department or any members of the fire department designated by him or her, shall perform the fire inspection duties and enforce the fire safety regulations required by ordinance or the laws of Kansas respecting persons and property within the city.

Ref.: For further duties of the chief of the fire department, See Chapter VI, of this code.

1-313. ORDERS AND REPORTS. It shall be the general practice of the governing body to issue all orders and directives to all city officers and departments and receive reports and communications therefrom through the office of the city administrator. (Ord. 538, Sec. 3)

## ARTICLE 4. OATHS AND BONDS

1-401. OFFICERS' OATHS REQUIRED. All officers of the city, whether elected, appointed or employed either under the laws of the State of Kansas, or ordinances of the city, shall, before entering upon the duties of their respective offices, take and subscribe an oath or affirmation as follows:

"I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of Kansas and faithfully discharge the duties of _____ (here enter name of office). So help me God."

(K.S.A. 54-106)

1-402. OATHS FILED. All officers and employees required by section 1-401 of this article to take and subscribe or sign an oath or affirmation shall be supplied the

necessary forms for the purpose at the expense of the city and upon taking and subscribing or signing any such oath or affirmation, the same shall be filed by the city clerk.

1-403. BONDS REQUIRED. The following city officers shall each, before entering upon the duties of his office, give a good and sufficient corporate surety bond to the city which shall be approved by the governing body before the officer shall begin the performance of his duties. The bond shall be in the following amount for each officer named:

(a) City Treasurer - $5,000;
(b) City Clerk - $5,000;
(c) Municipal Judge - $1,000;
(d) Fire Department Treasurer - $1,000;
(e) Library Board Treasurer - $2,500.

(K.S.A. 15-208; Code 1989)

1-404. CONDITION OF BOND. All surety bonds required by any provision of this article shall be conditioned for the faithful performance of duty and of all acts required by the laws of the State of Kansas and the ordinances of the city and for the application and payment over to the proper persons of all moneys or property coming into the hands of each such officer or employee by virtue of his or her office or employment.

1-405. PREMIUMS. The premiums on all surety bonds required by this article shall be paid as a claim against the city. (K.S.A. 78-111)

1-406. APPROVAL OF BONDS. All bonds given to the city shall be approved as to form by the city attorney, if one be appointed, and as to surety and sufficiency by the governing body, unless otherwise provided by the laws of the State of Kansas.

## ARTICLE 5. OPEN RECORDS

1-501. POLICY. (a) It is hereby declared to be the policy of the city that all public records which are made, maintained or kept by or are in the possession of the city, its officers and employees, shall be open for public inspection as provided by, and subject to the restrictions imposed by, the Kansas Open Records Act.

(b) Any person, upon request, shall have access to such open public records for the purpose of inspecting, abstracting or copying such records while they are in the possession, custody and control of the appointed or designated record custodian thereof, or his or her designated representative.

(Code 1985)

1-502. RECORD CUSTODIANS. The record custodian(s) appointed and designated pursuant to this article shall preserve and protect all public records from damage,

disorganization and theft and shall assist, in a timely and efficient manner, any person making request for access to any open public record. (Code 1985)

1-503. PUBLIC REQUEST FOR ACCESS. All city offices keeping and maintaining open public records shall establish office hours during which any person may make a request for access to an open public record. Such hours shall be no fewer than the hours each business day the office is regularly open to the public. For any city office not open Monday through Friday, hours shall be established by the record custodian for each such day at which time any person may request access to an open public record. (Code 1985)

1-504. FACILITIES FOR PUBLIC INSPECTION. All city offices keeping and maintaining open public records shall provide suitable facilities to be used by any person desiring to inspect and/or copy an open public record. The office of the city clerk, being the principal recordkeeper of the city, shall be used as the principal office for providing access to and providing copies of open records to the maximum extent practicable. Requesters of records shall be referred to the office of the city clerk except when the requested records are not in that office and are available in another city office. (Code 1985)

1-505. PROCEDURES FOR INSPECTION. Any person requesting access to an open public record for purposes of inspecting or copying such record, or obtaining a copy thereof, shall abide by the procedures adopted by the governing body for record inspection and copying, including those procedures established by record custodians as authorized by the governing body. Such procedures shall be posted in each city office keeping and maintaining open public records. (Code 1985)

1-506. APPOINTMENT OF OFFICIAL CUSTODIANS. The following city officers are hereby appointed as official custodians for purposes of the Kansas Open Records Act and are hereby charged with responsibility for compliance with that Act with respect to the hereinafter listed public records:

(a) City Clerk - All public records kept and maintained in the city clerk's office and all other public records not provided for elsewhere in this section.

(b) City Treasurer - All public records not on file in the office of the city clerk and kept and maintained in the city treasurer's office.

(c) Chief of Police - All public records not on file in the office of the city clerk and kept and maintained in the city police department.

(d) Fire Chief - All public records not on file in the office of the city clerk and kept and maintained in the city fire department.

(e) City Attorney - All public records not on file in the office of the city clerk and kept and maintained in the city attorney's office.

(f) Clerk of the Municipal Court - All public records not on file in the office of the city clerk and kept and maintained in the municipal court.

(Code 1985)

1-507. DESIGNATION OF ADDITIONAL RECORD CUSTODIANS. (a) Each of the official custodians appointed in section 1-506 is hereby authorized to designate any subordinate officers or employees to serve as record custodian. Such record custodians shall have such duties and powers as are set out in the Kansas Open Records Act.

(b) Whenever an official custodian shall appoint another person as a record custodian he or she shall notify the city clerk of such designation and the city clerk shall maintain a register of all such designations.
(Code 1985)

1-508. DUTIES OF CUSTODIANS. All city officers and employees appointed or designated as record custodians under this article shall: protect public records from damage and disorganization; prevent excessive disruption of the essential functions of the city; provide assistance and information upon request; insure efficient and timely action and response to all applications for inspection of public records; and shall carry out the procedures adopted by this city for inspecting and copying open public records.
(Code 1985)

1-509. REQUESTS TO BE DIRECTED TO CUSTODIANS. (a) All members of the public, in seeking access to, or copies of, a public record in accordance with the provisions of the Kansas Open Records Act, shall address their requests to the custodian charged with responsibility for the maintenance of the record sought to be inspected or copied.

(b) Whenever any city officer or employee appointed or designated as a custodian under this article is presented with a request for access to, or copy of, a public record which record the custodian does not have in his or her possession and for which he or she has not been given responsibility to keep and maintain, the custodian shall so advise the person requesting the record. Further, the person making the request shall be informed as to which custodian the request should be addressed to, if such is known by the custodian receiving the request.
(Code 1985)

1-510. FEE ADMINISTRATION. The city clerk is hereby authorized to provide the clerk's office, and the office of each record custodian, with sufficient cash to enable the making of change for record fee purposes. Each custodian shall transmit all record fee moneys collected to the city treasurer whenever the amount accumulated exceeds $100, but not less than monthly. Each custodian shall maintain duplicates of all records and copy request forms, completed as to the amount of fee charged and collected, which amounts shall be periodically audited by the clerk-finance officer and treasurer of the city. (Code 1985)

1-511. INSPECTION FEE. (a) Where a request has been made for inspection of any open public record which is readily available to the record custodian, there shall be no inspection fee charged to the requester.

(b) In all cases not covered by subsection (a) of this section, a record inspection fee shall be charged at the rate of $10 per hour per employee engaged in the record search. A minimum charge of $5 shall be charged for each such request.
(Code 1985)

1-512. COPYING FEE. (a) A fee of $.25 per page shall be charged for photocopying public records, such fee to cover the cost of labor, materials and equipment.

(b) For copying any public records which cannot be reproduced by the city's photocopying equipment, the requester shall be charged the actual cost to the city, including staff time, in reproducing such records.
(Code 1985)

1-513. PREPAYMENT OF FEES. (a) A record custodian may demand prepayment of the fees established by this article whenever he or she believes this to be in the best interest of the city. The prepayment amount shall be an estimate of the inspection and/or copying charges accrued in fulfilling the record request. Any overage or underage in the prepayment shall be settled prior to inspection of the requested record or delivery of the requested copies.

(b) Prepayment of inspection and/or copying fees shall be required whenever, in the best estimate of the record custodian, such fees are estimated to exceed $5.

(c) Where prepayment has been demanded by the record custodian, no record shall be made available to the requester until such prepayment has been made.
(Code 1985)

1-514. PAYMENT. All fees charged under this article shall be paid to the custodian of the records inspected and/or copied unless the requester has established an account, for purposes of billing and payment, with the city. All fees received shall be paid to the city treasurer whenever the amount of fees collected totals $100, but not less than monthly.
(Code 1985)

## ARTICLE 6. EMPLOYEE BENEFITS

1-601. PERSONNEL REGULATIONS. There shall be established by the city administrator, designated the personnel officer, a uniform personnel regulation which shall, as a minimum, include:

(a) A position classification system in which all positions of city employment, present and anticipated, are identified by position number, title pay grade and job description;

(1) The positions of elected officers, the city magistrate and the city attorney, shall be identified by position number and title, but they shall constitute the unclassified service in regard to pay grade and job description,

(2) Positions filled on a seasonal, part-time or irregular basis shall be classified and identified,

(3) Persons serving the city under contract, retained as consultants, employed to render the city expert service of an occasional nature, serving as members of boards and commissions, jointly employed by the city and another governmental agency and those serving as volunteers shall not be included in the position classification system,

(b) A merit system of employment in which the recruitment, selection, appointment, promotion, demotion, transfer, suspension, and dismissal of all classified position employees shall be effected solely on the basis of merit and fitness and which provides for the strict compliance with applicable statutes;

(c) A pay and fringe benefit system in which the compensation for each classified position is established by the assignment of a pay grade;

(1) Not more than seven pay grades shall be created,

(2) Each pay grade shall provide for a minimum of three step increases within the range of the pay grade, the highest step of each pay grade shall be equivalent to, or higher than, the lowest step of the next higher grade,

(d) A detailed statement of rules governing the employment of persons in the classified positions, including, but not limited to;

(1) Hours of work,

(2) Holidays,

(3) Overtime policy,

(4) Vacation, sick leave and other leaves,

(5) Disciplinary actions and the right of employees to present appeals and grievances,

(6) The participation of employees in the formulation of personnel policies, including membership in employees organizations as restricted by applicable statutes,

(e) A statement of policy concerning the continuing education and training of classified employees with provision for the payment of all or a portion of the costs by the city;

(f) Each employee shall be provided a summary of the uniform personnel regulations, and shall have access to the complete text upon request. At least one copy of the current regulations shall be maintained at the city office.
(Ord. 539, Sec. 1)

1-602. APPROVAL. The uniform personnel regulations shall be reviewed and approved by the governing body, which approval shall be noted in the minutes any changes shall be approved by the council, with a notation in the minutes thereof, to become effective. (Ord. 539, Sec. 2)

1-603. ANNUAL REVIEW. The city administrator shall, at the time of submission of the annual budget to the governing body for consideration, submit to the governing body a detailed listing of the classified positions to be authorized during the budget year, including any recommendations for changes to the classification system, recommendations for changes in the pay system, and an estimate of all personnel costs

based upon these recommendations, including pay, fringe benefits and training costs. (Ord. 539, Sec. 3)

1-604. PERSONNEL RULES. There is hereby incorporated by reference for the purpose of establishing employee personnel rules and regulations, the document entitled "Uniform Personnel Rules and Regulations of the City of Oberlin, Kansas" prepared by the City of Oberlin not less than three copies shall be marked "Official Copy as Incorporated by the Code of the City of Oberlin, Kansas." The official copies shall be filed with the city clerk and shall be open to inspection and available to the public at all reasonable hours. All departments of the city shall be supplied with copies of such rules and regulations as may be deemed necessary.

1-605. SOCIAL SECURITY. Title II of the Social Security Act is incorporated by reference herein and made a part thereof as if the same had been set out in full herein, and the benefits extended to the city employees. (Ord. 302)

1-606. RETIREMENT. The benefits of the Kansas Public Employees Retirement System has been extended to the employees of the city, said system effective as of January 1, 1975.

1-607. INSURANCE. All full-time city employees shall be eligible to participate in the city's medical-hospital insurance program. The city shall pay 100 percent of medical-hospital insurance program for each full-time employee.

1-608. VALIDITY. If any phrase, clause, paragraph or section of this chapter is declared unconstitutional or invalid by any court of competent jurisdiction, it is hereby declared that the governing body would have enacted the remaining portions of this chapter without the phrase, clause, paragraph or section so held unconstitutional or invalid.

## ARTICLE 7. CAPITAL IMPROVEMENTS FUND

1-701. FUND ESTABLISHED. In accordance with the provisions of K.S.A. Supp. 12-1,118 et seq., there is hereby established a capital improvements fund which shall be used by the city to finance, in whole or in part, any public improvement need set forth in the city's capital improvement plan. (Ord. 641, Sec. 1)

1-702. USE OF MONEYS. In addition to providing a financing mechanism for paying capital improvements costs, such fund may also be used to pay for engineering and other advanced public improvement plans and studies, with the fund periodically reimbursed from bond proceeds, special assessments or state or federal aid that may be available for the completed project. (Ord. 641, Sec. 2)

## ARTICLE 8. MUNICIPAL EQUIPMENT RESERVE FUND

1-801. FUND ESTABLISHED. In accordance with the provisions of K.S.A. Supp. 12-1,117 et seq., there is hereby established a municipal equipment reserve fund which shall be used by the city to finance the acquisition of equipment, including machinery, vehicles and other personal property, necessary for the future operation of the city. (Ord. 642, Sec. 1)

## ARTICLE 9. RISK MANAGEMENT RESERVE FUND

1-901. FUND ESTABLISHED. In accordance with the provisions of K.S.A. 12-2615, there is hereby established a risk management reserve fund which shall be used by the city as a basis for the development of a risk management program. The fund will be used to pay deductibles on insurance claims, litigation and legal defense expenses on claims, the costs of insurance and the costs of processing claims. (Ord. 643, Sec. 1)

## ARTICLE 10. INVESTMENT OF IDLE FUNDS

1-1001. PURPOSE AND GOALS. It is the purpose of this statement to set forth the public policies of the city relating to the investment of public moneys, and establish procedural requirements as to investment management practice. The objective of the investment policy and program of the city shall be as follows:

(a) The safeguarding of all public moneys shall be of the highest priority. Public money shall not be invested or managed in any manner which would jeopardize the safety of the principal.

(b) Consistent with the requirement of safety, the objective of the investment program shall be to aggressively manage and invest all public moneys to maximize net earnings, consistent with the public responsibility to secure maximum, safe investment return possible from moneys assigned to its stewardship, to relieve demands on the property tax and to otherwise reduce the cost of public services.
(Code 1985)

1-1002. INVESTMENT OF IDLE FUNDS. Temporarily idle moneys of the city not currently needed, may in accordance with the procedure hereafter described be invested:

(a) In temporary notes or no-fund warrants issued by such investing governmental unit;

(b) In time deposit, open accounts or certificates of deposit with maturities of not more than two years:

(1) In commercial banks which have offices located in such investing governmental unit; or

(2) If the office of no commercial bank is located in such investing governmental unit, then in commercial banks which have offices in the county or counties in which all or part of such investing governmental unit is located;

(c) In time certificates of deposit with maturities of not more than two years:

(1) With state or federally chartered savings and loan associations or federally chartered savings banks which have offices located in such investing governmental unit; or

(2) If the office of no state or federally chartered savings and loan association or federally chartered savings bank is located in such governmental unit, then with state or federally chartered savings and loan associations or federally chartered savings banks which have offices in the county or counties in which all or part of such investing governmental unit is located;

(d) In repurchase agreements with:

(1) Commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks which have offices located in such investing governmental unit, for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof; or

(2)(A) If the office of no commercial bank, state or federally chartered savings and loan association or federally chartered savings bank is located in such investing governmental unit; or

(B) If no commercial bank, state or federally chartered savings and loan association or federally chartered savings bank has an office located in such investing governmental unit is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (l) of K.S.A. 75-4201, and amendments thereto, then such repurchase agreements may be entered into with commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks which have offices in the county or counties in which all or part of such investing governmental unit is located; or

(3) If no bank, state or federally chartered savings and loan association or federally chartered savings bank which has its office in such county or counties is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (l) of K.S.A. 75-4201, and amendments thereto, then such repurchase agreements may be entered into with commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks which have offices in the State of Kansas;

(e) In United States treasury bills or notes with maturities as the governing body shall determine, but not exceeding two years. Such investment transactions shall only be conducted with the following, which is doing business within the State of Kansas, any state or national bank, state or federally chartered savings and loan association, or federally chartered savings bank; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York, or any broker-dealer which is registered in compliance with the requirements of section 15C of the securities exchange act of 1934 and registered pursuant to K.S.A. 17-1254, and amendments thereto;

(f) The municipal investment pool fund;

(g) The investments authorized and in accordance with the conditions prescribed in section 2 of the municipal investment pool fund act;

(h) The trust departments of commercial banks which have offices located in such investing governmental unit or with trust companies which have contracted to provide trust services under the provisions of K.S.A. 9-2107, and amendments thereto, with commercial banks which have offices located in the county or counties in which such investing

governmental unit is located. Public moneys invested under this paragraph shall be secured in the same manner as provided for under K.S.A. 9-1402, and amendments thereto. Investments of public moneys under this paragraph shall be limited to those investments authorized under subsection (b) of section 1 of the municipal investment pool fund act.

(i) The investments authorized in paragraphs (e), (f), (g) or (h) of this section shall be utilized only if the appropriate eligible commercial banks, which have offices located in the investing governmental unit or in the county or counties in which all or a part of such investing governmental unit is located if no such bank has an office which is located within such governmental unit, or the appropriate eligible state or federally chartered savings and loan associations or federally chartered savings banks, which have offices located in the investing governmental unit or in the county or counties in which all or a part of such investing governmental unit is located if no such state or federally chartered savings and loan association or federally chartered savings bank has an office which is located within such governmental unit, cannot or will not make the investments authorized in paragraphs (b) or (c) of this section available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (l) of K.S.A. 75-4201, and amendments thereto. (K.S.A. 12-1675; Code 1997)

1-1003. PROCEDURES AND RESTRICTIONS. The city clerk shall periodically report to the governing body as to the amount of money available for investment and the period of time such amounts will be available for investment, and shall submit such recommendations as deemed necessary for the efficient and safe management of city finances. The recommendations of the city clerk shall provide for an investment program which shall so limit the amounts invested and shall schedule the maturities of investments so that the city will, at all times, have sufficient moneys available on demand deposit to assure prompt payment of all city obligations. (Code 1985)

1-1004. CUSTODY AND SAFEKEEPING. Securities purchased pursuant to this article shall be under the care of the city clerk, city treasurer, and mayor and shall be held in the custody of a state or national bank or trust company, or shall be kept by such officers in a safety deposit box of the city in a bank or trust company. Securities in the original or receipt form held in the custody of a bank or trust company shall be held in the name of the city, and their redemption, transfer, or withdrawal shall be permitted only upon the written instruction of the city officers. Securities not held in the custody of a bank or trust company shall be personally deposited by such officer in a safety deposit box in the name of the city in a bank or trust company, access to which shall be permitted only in the personal presence and under the signature of at least two such officers. (Code 1985)

1-1005. SALE OR TRANSFER. If, in order to maintain sufficient moneys on demand deposit in any fund as provided in section 1-1003, it becomes necessary to transfer or sell any securities of such funds, the officers specified in section 1-1004 may transfer said securities to any other fund or funds in which there are temporarily idle moneys, or shall sell such securities, and for such purpose they shall have authority to make any necessary written direction, endorsement or assignment for and on behalf of the city. (Code 1985)

1-1006. INTEREST ON TIME DEPOSITS. The city clerk shall deposit the interest earned on invested idle funds to the general fund, unless otherwise required or authorized by law. (Code 1985)

Ref. See K.S.A. 12-1675, and amendments thereto.

## ARTICLE 11. HUMANITIES COMMISSION

1-1101. COMMISSION ESTABLISHED. There is hereby established an Oberlin Arts and Humanities Commission to identify, explore and develop this area's sense of community, heritage and vision through the use of artistic and cultural resources. (Ord. 655, Sec. 1)

1-1102. MEMBERSHIP; APPOINTMENT; TERM. The commission shall consist of seven members, six of which shall be appointed by the mayor, with the approval of the city council, one of whom shall be a member of the city council. One member shall be a member of the board of county commissioners of Decatur County or a designee thereof, appointed by the board. The initial appointments to the commission shall be for one, two and three year terms and thereafter all appointments shall be for a term of three years and until a successor is qualified; provided no person shall be appointed for more than two consecutive full terms. (Ord. 655, Sec. 2; Ord. 705)

1-1103. ORGANIZATION. The commission shall annually organize and select the officers as specified in the by-laws. The commission shall adopt such by-laws as may be necessary to accomplish the purposes of their organization, which the by-laws shall be effective upon adoption by the commission and approval by the governing body of the city. (Ord. 655, Sec. 3)

1-1104. DUTIES AND POWERS. The commission shall have the following duties and powers:

(a) To hold regular public meetings and keep a written record of its proceedings which shall be public records.

(b) To annually review the financial needs of the programs for the development of the fine and performing arts and the humanities, and submit a proposed budget therefore to the city administrator; to make expenditures in accordance with the annual budget adopted by the city.

(c) Make application and solicitation for and accept grants, gifts, and donations of money, property, or personal services from individuals, groups, organizations, and the like or from any agency of the city, county, state or federal government granted or given for a purpose consistent with the purposes of this commission and to expend all funds so received.

(d) Initiate, sponsor or conduct, alone or in cooperation with other public or private agencies, public programs to further the development and public awareness of, and interest in the fine and performing arts and the humanities.

(e) Advise and assist the city in connection with such other artistic and cultural activities as may be referred to it by the city.

(f) Serve as a clearing house for scheduling exhibits, concerts, recitals, lectures and other cultural events that may occur in the community.

(g) Generally stimulate, facilitate, coordinate and cooperate with existing organizations for the development of the arts and historical tradition of the city and to initiate programs and proposals of encouragement for promotion and development of the arts, culture, heritage, beauty and tradition of the city.
(Ord. 655, Sec. 4)

## ARTICLE 12. SET OFF PROVISIONS

1-1201. SETOFF. If any individual or entity (debtor) owes the City of Oberlin any amount of money and if the City of Oberlin owes that same individual or entity (debtor) any amount of money, the City Clerk is hereby directed to set-off said amounts. This collection remedy is in addition to and not in substitution for any other remedy available by law. Earnings shall be subject to this procedure, but shall be subject to the same dollar limitations and dollar restrictions as are provided by law for wage garnishments. (Ord 789)

1-1202 SETOFF, PROCEDURE. Once this set-off procedure has occurred the City Clerk shall give the following notification to the debtor in writing, either by personal delivery to the debtor or by restricted mail, return receipt requested. The notice shall include:

a) A demand for payment of the debt and a brief explanation of the legal basis of the debt;

b) A statement of the county's intention to set-off the debt due against the debtor's earnings, refund, or other payment due to the debtor from the City of Oberlin;

c) The right of the debtor to request in writing a hearing to contest the validity of the claim. Such request for a hearing must be made within 15 days of personal notice to the debtor where the notice was not given by mail or within 15 days of the mailing of notice to the debtor;

d) A statement that a hearing may be requested by making a written request therefor to the City Clerk; and,

e) The fact that failure to request a hearing within the 15-day period will be deemed a waiver of the opportunity to contest the claim, causing final set-off by default. (Ord. 789)

1-1203 SETOFF, HEARING. Upon the request of the debtor for a hearing, a hearing officer will be appointed by the City Clerk. The hearing officer shall hold a hearing to determine whether the debt claim is valid and will issue his written findings. The debtor will be notified by mail of the decision. If the debtor is aggrieved by the hearing officer's decision, the debtor may appeal to the district court. All proceedings shall be stayed pending the outcome of same. (Ord 789)

1-1204 SETOFF, USAGE. In the event that one set-off does not completely pay off the debt owed to the county, this same set-off procedure may be followed as many times as are necessary to collect the full amount of the county's debt. (Ord 789)

## ARTICLE 13. Public Building Commission

1-1301 **Creation.** There is hereby created under the authority of the Act, a municipal corporation to be known as the City of Oberlin, Kansas Public Building Commission (the "PBC").

1-1302 **Composition.** The PBC shall be composed of **[_____]** members (the "Members"). The Mayor and the Councilmembers shall be the Members of the PBC. The Members shall serve for a term co-terminus with their term as Mayor and Councilmembers, respectively. In the event that the PBC provides buildings or structures that are leased to governmental entities other than the City, the composition of the PBC shall be modified by subsequent ordinance of the City to conform to the requirements of the Act.

1-1303 **Purpose, Powers and Functions.** The PBC is created for the purposes of, and shall have the powers and shall perform the functions set forth in, the Act; provided that the PBC shall not enter into any leases for PBC property to entities other than the City without the prior approval of the governing body of the City. The City, by ordinance or charter ordinance hereafter taking effect, shall have the authority to further limit or expand the purposes, powers and/or functions of the PBC.

1-1304 **Support Services.** Unless otherwise approved by the governing body, the City Clerk shall provide administrative services to the PBC and the City's bond counsel and City Attorney shall provide legal services to the PBC.

1-1305 **Further Action.** The PBC shall have the authority to adopt bylaws, resolutions or other

official actions authorized by the Act and not inconsistent with the provisions of this Ordinance to govern its actions.

1-1306 **Severability.** If any provision of this Ordinance is deemed or ruled unconstitutional or otherwise illegal or invalid by any court of competent jurisdiction, such illegality or invalidation shall not affect any other provision of this Ordinance. This Ordinance shall be enforced and construed as if such illegal or invalid provision had not been contained herein.

# CHAPTER II. ANIMAL CONTROL AND REGULATION

Article 1. General Provisions
Article 2. Dogs
Article 3. Other Animals
Article 4. Pit Bull Dogs

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## ARTICLE 1. GENERAL PROVISIONS

2-101. DEFINITIONS. For the purposes of this chapter, the following words and phrases shall mean:

(a) Abandon includes the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care.

(b) Animals means all vertebrate and invertebrate animals such as but not limited to bovine cattle, horses and other equines, hogs, goats, dogs, cats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons, and other fowl or wild animals, reptiles, fish, bees or birds that have been tamed, domesticated or captivated.

(c) Animal Shelter means the facility or facilities operated by the city or its authorized agents for the purpose of impounding or caring for animals under the authority of this chapter or state law.

(d) At-large means to be outside of a fence or other enclosure which restrains the animals to a particular premise or not under the control, by leash or lead, of the owner or other authorized person capable of restraining the animal. Animals tethered to a stationary object within range of public thoroughfares are deemed to be "At-large."

(e) Bite means any actual or suspected abrasion, scratch, puncture, tear, bruise, or piercing of the skin, caused by any animal, which is actually or suspected of being contaminated or inoculated with the saliva from the animal, directly or indirectly, regardless of the health of the animal causing such bite.

(f) Cat means any member of the species felis catus, regardless of sex.

(g) Dangerous or Vicious Animal means any animal deemed to be dangerous or vicious per section 2-115.

(h) Dog means any member of the species canis familiaris, regardless of sex.

(i) Fowl means all animals that are included in the zoological class aves, which shall include, but not limited to, chickens, ducks, geese, turkeys, guineas and pigeons.

(j) Harbor means any person who shall allow any animals to habitually remain or lodge or to be fed within his or her home, store, yard, enclosure or place of business or any other premises where he or she resides or controls.

(k) Humane Live Animal Trap means any cage trap that upon activation encloses an animal without placing any physical restraint upon any part of the body of such animal.

(l) Humanely Euthanize means the proper injection of a substance that quickly and painlessly terminates the life of an animal, or any other method approved by the American Veterinary Medical Association or the American Humane Society.

(m) Immediate Control means the regulation and supervision by a competent person so that an animal is unable to run or get loose at will.

(n) Kennel means any establishment, commercial or otherwise, maintained for breeding, rearing, grooming, boarding, or otherwise harboring in an enclosure in one location only, four or more dogs.

(o) Livestock includes, but is not limited to cattle, horses, goats, sheep or other animals commonly regarded or used as farm or ranch animals.

(p) Neutered means any male or female cat or dog that has been permanently rendered sterile.

(q) Own means and includes own, keep, harbor, shelter, manage, possess, or have a part interest in any animal. If a minor owns any such animal subject to the provisions of this chapter, the head of the household of which such minor is a member shall be deemed to own such animal for the purposes of this chapter.

(r) Owner means the one who owns, or his or her employee, agent, or other competent person into whose charge an animal has been placed by the actual owner as described in subsection (q) above.

(s) Vaccination means an injection of a vaccine, approved by the State Board of Public Health and administered by a licensed veterinarian for the purpose of immunizing an animal against rabies.

(t) Veterinarian means a doctor of veterinary medicine licensed by the State of Kansas.

(Code 1989)

2-102. ANIMAL CONTROL OFFICER; DUTY TO IMPOUND; CITATION ALTERNATIVE. (a) There is hereby created the position of animal control officer for the city and such officer shall be charged with the enforcement of this chapter. Any person employed by the city as an animal control officer and commissioned by the chief of police of the city shall have such powers and authority as allowed by law in the enforcement of this chapter. All animal control officers shall be subject to the supervision and direction of the chief of police of the city.

(b) Except as provided in subsection (c), it shall be the duty of the animal control officer to take up and impound all animals found in the city in violation of the provisions of this chapter.

(c) As an alternative to the provisions of subsection (b) of this section, any law enforcement officer or the animal control officer may issue a citation to the owner, harborer or keeper of an animal in violation of this chapter, and the person receiving the citation shall, within 10 days, appear in the municipal court of the city to answer the charged violation of this chapter.

(Code 1989)

2-103. SAME; CAPTURE/DESTRUCTION. When deemed necessary by law enforcement officers or the animal control officer for the health, safety and welfare of the residents of the city, such officers and/or their agents may:

(a) Place a humane trap on public or a requesting resident's property for the purpose of capturing any animal defined in this chapter as creating a nuisance in the city;

(b) Use any tranquilizer guns, humane traps, or other suitable devices to subdue and capture any animal that is deemed by the animal control officer, in his or her discretion, to be of a danger to itself or to the public health and safety.

(c) Use firearms or other suitable weapons to destroy any rabid animal, any vicious animal as defined in section 2-115, or any animal creating a nuisance as defined in section 2-111, where such animal is impossible or impractical to catch, capture or tranquilize.

(Code 1989)

2-104. SAME; RIGHT OF ENTRY; UNLAWFUL INTERFERENCE.

(a) The animal control officer or any law enforcement officer shall have the right of entry upon any private unenclosed lots or lands for the purpose of collecting any animal whose presence thereupon is a violation of this chapter.

(b) It shall be unlawful for any person to interfere with the animal control officer in the exercise of his or her duties.

(Code 1989)

2-105. MUNICIPAL POUND ESTABLISHED. A municipal pound shall be established to carry out the provisions of this chapter. Such a pound may be operated by a contractor and all services required herein may be provided by a contractor. When so contracted, the pound shall have the following services and facilities as a minimum:

(a) Adequate pickup and impounding of all stray and ownerless dogs and animals otherwise in violation of the provisions of this chapter.

(b) Group holding facilities for stray, ownerless and unvaccinated animals impounded for violation of the provisions of this chapter.

(c) Individual isolation facilities for sick, biting, rabid and suspected rabid animals.

(d) Facilities for the humane destruction of animals.

(Code 1989)

2-106. BREAKING POUND.

(a) It shall be unlawful for any unauthorized person to open, unlock, break open or attempt to break open the pound, or to take or let out any animal placed therein, or take or attempt to take from an authorized officer of this city any animal taken up by him or her under the provisions of this chapter, or in any manner interfere with or hinder any authorized officer or employee of this city in catching, taking up, or impounding any animal.

(b) It shall be unlawful for any person or persons, other than those duly authorized, to care for, feed, attempt to feed, or interfere in any way with the care of impounded animals.
(Code 1989)

2-107. CRUELTY TO ANIMALS. It shall be unlawful for any person to:

(a) Willfully or maliciously kill, maim, disfigure, torture; beat with a stick, chain, club or other object; mutilate, poison, burn or scald with any substance; or otherwise cruelly set upon any animals, except that reasonable force may be employed to drive off vicious animals;

(b) Drive or work any animal cruelly or cruelly work any maimed, mutilated, infirm, sick or disabled animal, or cause, allow or permit the same to be done;

(c) Have, keep or harbor any animal which is infected with any dangerous or incurable and/or painfully crippling condition except as provided in section 2-119.

(d) Sell or offer for sale, barter, give away, or use as an advertising device or promotional display, living baby chicks, rabbits, ducklings or other fowl under two months of age in any quantity less than 12; or to sell, offer for sale, barter, give away, or display animals or fowls as specified in this section which have been dyed, colored or otherwise treated so as to impart to them an artificial or unnatural color. This section shall not be construed to prohibit the sale of animals or fowls as specified in this subsection, in proper facilities, by hatcheries or persons engaged in raising and selling such animals and fowls for recognized animal husbandry purposes;

(e) Promote, stage, hold, manage, or in any way conduct any game, exhibition, contest or fight in which one or more animals are engaged for the purpose of injuring, killing, maiming, or destroying themselves or any other animal;

(f) Neglect or refuse to supply such animal with necessary and adequate care, food, drink, air, light, space, shelter or protection from the elements as necessary for health and well-being of such kind of animal.

(g) Abandon or leave any animal in any place without making provisions for its proper care;

(h) These provisions shall not apply to the exceptions sanctioned under section 2-108.

In addition to the penalties provided in section 1-116 of this code, the municipal court judge may order a person convicted of violation under this section to turn the animal involved over to a designated humane society. All such animals taken by the designated agency may be placed with another or more suitable person or destroyed humanely as soon thereafter as is conveniently possible. (Code 1989)

2-108. SAME; EXCEPTIONS. The provisions of section 2-107 shall not apply to:

(a) Normal or accepted veterinary or veterinary hospital practices or treatment of animals under active veterinary care;

(b) Bona fide experiments carried on by commonly recognized research facilities;

(c) Killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of Chapter 32 or Chapter 47 of the Kansas Statutes Annotated;

(d) Rodeo practices accepted by the rodeo cowboys' association;

(e) The humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or by an authorized agent such as a licensed veterinarian, at the request of the owner;

(f) The humane killing of an animal by the animal control officer, a public health officer or a law enforcement officer in the performance of his or her official duty;

(g) The humane killing of an unclaimed animal after three full business days following the receipt of such animal at a municipal pound or an incorporated humane society shelter by the owner, operator or authorized agents of such establishments. (Code 1989)

2-109. KEEPING ANIMALS. It shall be unlawful for the owner, lessee, occupant or person in charge of any premises in the city to possess and maintain any animal within 300 feet of any dwelling or business building occupied by any person or persons other than himself, herself and members of his or her family or within 300 feet of any public building. This provision shall not apply to:

(a) The maintaining of a stockyard or sales barn for the loading, unloading, temporary detention and sale of such livestock, if the location of such stockyard or sales barn does not otherwise violate the zoning ordinances of the city;

(b) The maintaining of dogs which are regulated by Article 2 of this chapter;

(c) The maintaining of non-poisonous and non-vicious animals and fowl which are commonly kept as household pets, such as cats, hamsters, rabbits, parakeets, and comparable animals, when kept as household pets and in a safe and sanitary manner in accordance with section 2-113 of this chapter;

(d) The transporting of animals through the city by ordinary and customary means;

(e) The maintaining of animals at the premises of the Decatur County Fair Association.

(f) The maintaining of animals pursuant to permit issued by the Board of Zoning Appeals. A landowner or occupant, with the permission of the landowner, may apply for a permit from the Board of Zoning Appeals which will allow the maintaining of animals in the city limits with the application providing a request for the particular type and maximum number of animals. No such permit shall be applied for or issued to parcels of less than one acre. Upon receipt of such an application, the Board of Zoning Appeals shall convene a public hearing on the issuance of such permit. Notice of such hearing shall be published one time in the official city newspaper at least seven days prior to the date set for hearing. At the hearing the Board of Zoning Appeals shall take testimony from the applicant and any other interested parties. The decision of the Board of Zoning Appeals shall give consideration to such items as (but not limited to) the location for which the permit is sought, giving substantial weight to the testimony of any residents within 300 feet of the location of the proposed permit, the size of the parcel,

the historical use of the location for keeping a particular type and number of animals, and to any health concerns. Appeals from the Board of Zoning Appeals shall be taken in the same manner as set forth in the city zoning ordinance. Once a permit is granted for a location and for a particular type of and maximum number of animals, the same forever thereafter shall be in force unless the city shall file with the Board of Zoning Appeals a request to revoke the permit for legitimate and measurable health concerns or for non-use for a period exceeding sixty months. Notice of hearing and rights of appeal from such a decision shall be the same as in the case of an original application and decision. There shall be no application fee for such permit.
(Code 1989, Ord 753)

2-110. ANIMAL TRAPS. It shall be unlawful for any person to use, place, set out, or deploy any animal trap aboveground, which makes use of a spring gun, spring jaws, clamping devices, cutting or stabbing mechanism or any other devices that will damage or severely injure any animal when caught or trapped by the device or trap; except that nothing herein contained shall prohibit the use of animal traps that are so designed to trap and hold animals without injuring the animals. (Code 1989)

2-111. NUISANCE; ANIMAL ACTIVITIES PROHIBITED. It shall be unlawful for the owner of any animal to keep or maintain such animal in the city so as to constitute a nuisance. For the purpose of this section, "nuisance" is defined as any animal which:

(a) Molests or interferes with persons in the public right-of-way;

(b) Attacks or injures persons, or other domestic animals;

(c) Damages public or private property other than that of its owner or harborer by its activities or with its excrement;

(d) Scatters refuse that is bagged or otherwise contained;

(e) Causes any condition which threatens or endangers the health or well-being of persons or other animals.

If a summons is issued charging violation of this provision, a subpoena shall also be issued to the complainant to testify to the nuisance under oath. (Code 1989)

2-112. NOISY ANIMALS. The keeping, or harboring of any animal which by loud, frequent and habitual barking, howling, yelping, mewing, roaring or screeching shall disturb the peace of any neighborhood is hereby prohibited. It shall be the duty of any person harboring or keeping such loud or noisy animal or animals to abate the condition, and if he or she fails to do so, the city may abate it by taking up, impounding and/or disposing of the animal at the expense of the owner. (Code 1989)

2-113. ANIMAL CONFINES; SHELTERS.

(a) It shall be unlawful for any person to keep or maintain any animal in any yard, structure or area that is not clean, dry and sanitary, free from debris and offensive odors that annoy any neighbor, and devoid of rodents and vermin.

(b) Excrement shall be removed at least once each week from any animal shelter, pen or yard area where animals are kept, or more often if necessary to prevent or control

odors, fly breeding, or rodent infestation. If excrement is stored on the premises by any animal owner, it shall be stored in adequate containers with fly-tight lids, and all such stored or accumulated wastes shall be disposed of at least once each week.

(c) All animal shelters, pens and yards shall be so located that adequate drainage is obtained, normal drying occurs, and standing water is not present.

(d) All animal shelters and board fences confining animals shall be maintained in good repair, and all animal shelters and board fences confining animals subject to residential and commercial classification shall be protected from deterioration by painting or comparable treatment.

(e) Barbed wire fences and electrically charged fences shall not be permitted for animal confines except on properties for which an agricultural classification permit is held or where the barbed wire fence or electrically charged fence is protected by an exterior fence.

(f) All premises on which animals are kept shall be subject to inspection by the animal control officer, duly authorized law enforcement officer, or public health official. If the officer or official determines from such inspection that the premises are not being maintained in a clean and sanitary manner, he or she shall notify the owner of the animals in writing to correct the sanitation deficiencies within 24 hours after notice is served on the owner. Any animal kept under any condition which could endanger the public or animal health or create a health nuisance may be impounded. Animals shall be released after fees are paid and cause for impoundment has been corrected.
(Code 1989)

2-113A. SAME; STOCKYARDS; COMMERCIAL HOLDING PENS. Animal shelters owned or operated as a stockyard or commercial holding pen shall be adequately maintained and cleaned as often as is necessary, as determined by the health officer, to control fly breeding or to control other conditions adversely affecting the public health including the following:

(a) Collected fecal material and other solid organic waste shall be disposed of at a sanitary landfill, fertilizer processing plant, or by proper dispersal on land used for agricultural purposes.

(b) Grain or protein feed shall be stored in tightly covered rodent-proof metal containers or rodent-proof bins.

(c) Premises subject to the terms of this section shall be maintained free of rodent harborage and in accordance with this code.

(d) Wherever reasonable, use shall be made of anti-coagulant rodenticides for the control of rodents and organo-phosphorus insecticides for the control of flies or any other effective chemical means for the control of rodents and flies.

(e) Wherever reasonable, use shall be made of soil sterilants and herbicides or other effective means for the control of weeds and grass around structures and buildings.

(f) Enclosures including fences where animals such as horses, cows, sheep and goats are maintained shall be constructed in a manner, using dimension lumber materials, or other effective means to prevent such animals from breaking out or causing hazard to persons or property.

(g) The solid wastes accumulated from the cleaning of animal shelters and holding pens maintained by persons subject to a residential classification permit as herein provided shall be stored in metal containers, with tight-fitting metal lids, and all such stored or accumulated wastes shall be disposed of at least once each week.

(h) Holding lots, pens and floors of sheds and buildings where animals are held and which are maintained by persons subject to a commercial, industrial or agricultural classification permit according to the terms of this chapter shall be surfaced with concrete or asphaltic materials and that the drainage system of such surfaced areas shall include proper retaining walls and traps to control the waste from draining into watercourses and such drainage system shall be subject to the approval of the health officer. The health officer shall waive this standard for domestic animal holding operations where such animal holding is longer than 24 hours for any domestic animal involved or where dirt lots are more appropriate to the proper care of cattle, horses or sheep.

(i) Solid wastes accumulated from the cleaning of animal shelters and holding pens maintained by persons subject to a commercial, industrial or agricultural permit according to the terms of this chapter shall be stored on concrete slabs or other facilities, such as dirt lots on which is stockpiled manure with an exposed perimeter as approved by the health officer; provided that all solid waste shall be properly disposed of at least once each week or as may be approved by the health officer.
(Code 1989)

2-114. DEATH OF ANIMALS. All dead animals shall be disposed of by the owner or keepers within 24 hours of the animal's death, by burial, incineration in a facility approved by the animal control officer, by rendering or by other lawful means approved by the animal control officer. No dead animal shall be dumped on any public or private property. (Code 1989)

2-115. VICIOUS ANIMALS. (a) Prohibited: It shall be unlawful for any person to keep, possess or harbor a vicious animal within the city. Impoundment of animals whose owners have been cited for violation of this section shall be at the discretion of the animal control officer. If the animal presents a clear and present danger to the public health or safety, it shall be the duty of the animal control officer or his or her agent to impound such animal.

(b) Defined: For purposes of this chapter a vicious animal shall include:

(1) Any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or

(2) Any animal which attacks a human being or domestic animal without provocation;

(3) Any animal owned or harbored primarily or in part for the purpose of fighting or any animal trained for fighting;

(4) Any animal which is urged by its owner or harborer to attack, or whose owner or harborer threatens to provoke such animal to attack, any law enforcement officer while such officer is engaged in the performance of official duty.

(c) Complaint: Whenever a sworn complaint is filed in the municipal court against the owner of an animal alleging that such animal is vicious and in violation of this section, the municipal judge shall hold a hearing to determine whether or not the animal is vicious within the meaning of this section and thereby in violation of this section. The owner of the animal shall be notified in writing of the time and place of the hearing at least one week prior to the hearing. In making a determination, the municipal judge shall consider the following:

(1) The seriousness of the attack or bite;

(2) Past history of attacks or bites;

(3) Likelihood of attacks or bites in the future;

(4) The condition and circumstances under which the animal is kept or confined;

(5) Other factors which may reasonably relate to the determination of whether or not the animal is vicious.

The municipal judge shall order the impoundment, the muzzling in accordance with subsection (d) and/or the confinement of the animal accused of being in violation of this section in a manner and location that will insure that it is no threat to persons or other animals pending the outcome of the hearing. If such impoundment, muzzling or otherwise safe confinement is not possible or if prior court orders to restrain such animal have gone unheeded, the municipal judge may order the animal immediately destroyed.

(d) Vicious Dogs to be Muzzled: It shall be the duty of every owner, keeper or harborer of any dog in the city, which dog is vicious or has been known to bite, chase, or run after any person or animal in the streets, alleys, or any public place in the city, to keep the same muzzled with a good and sufficient wire or leather muzzle, securely fastened so as to wholly prevent such dog from biting any animal or person until such time as a determination has been made by the court as to whether the dog is vicious or not. Any person owning, keeping or harboring any dog within the city limits contrary to this section shall be guilty of a violation of this code.

(e) Immediate Destruction: Nothing in this chapter shall be construed to prevent the animal control officer or any law enforcement officer from taking whatever action is reasonably necessary to protect himself or herself or members of the public from injury or danger, including immediate destruction of any vicious animal without notice to the owner.

(f) Release of: If a complaint has been filed in the municipal court against the owner of an impounded animal for a charge under this section, the animal shall not be released except on the order of the municipal judge, who may also direct the owner to pay all impounding fees in addition to any penalties for violation of this chapter. The municipal judge may, upon making a finding that an animal is vicious or that it represents a clear and present danger to the citizens or to other animals in the community, order the animal to be destroyed in a humane manner by the animal shelter. Surrender of an animal by the owner thereof to the animal control officer does not

relieve or render the owner immune from the decision of the court, nor to the fees and fines which may result from a violation of this section.
(Code 1989)

2-116. RUNNING AT LARGE. It shall be unlawful for any person to willfully allow any animal or fowl under his or her control to be or to run at large within the city. Any animal or fowl found at large shall be impounded as provided in section 2-117 or 2-207 (dogs). (Code 1989)

2-117. IMPOUNDMENT; FEE; NOTICE; RECORD. (a) The animal control officer or law enforcement officer shall impound any animal or fowl found at large in the city or constituting a nuisance or otherwise in violation of this chapter in a suitable pound or enclosure provided or contracted for by the city. The impounding officer shall make diligent inquiry as to the owner of the animal and shall notify the owner thereof of such impoundment as soon as reasonably possible.

(b) Where impoundment actually occurs, the city shall be entitled to receive from such owner an impoundment fee of Forty Dollars ($40) which shall include the pick-up fee and the cost of impoundment. (Ordinance 731)

(c) In case the identity of the owner of the impounded animal or fowl cannot be ascertained, the animal control officer or police officer shall, upon taking any such animal into custody and impounding the same, make a record thereof, with a description of the animal and the date and place taken into custody and the place of impounding, and shall thereupon immediately post a public notice stating that the animal, describing the same with the date and place of taking, has been taken up, and that unless the charges of impounding the same, together with any license fees due and unpaid, are paid within 72 hours, excluding weekends and legal holidays, from the time of the notice, that the animal will be disposed of as provided in this code.

(d) The animal control officer shall each month submit a report to the city clerk showing the number of animals impounded and disposed of, and the fees collected pursuant to this article and shall pay those fees to the city clerk for credit to the general operating fund.
(Code 1989)

2-118. REDEMPTION OF IMPOUNDED ANIMALS. At any time before the sale or destruction of any animal impounded under the provisions of this article, except for animals impounded under sections 2-115 (vicious) and 2-119 (rabid), the owner thereof may redeem the animal by paying the animal control officer or any person in charge, the impounding fee and all costs incurred as a result of such impoundment. (Code 1989)

2-119. IMPOUNDMENT OF RABIES SUSPECTS. Any law enforcement officer or local health officer may take up, upon private or public property, any animal which has bitten or scratched a person or other animal and impound the animal in a veterinary hospital or animal care facility for a period of not more than 30 days during which time the local health officer shall determine whether or not such animal is suffering from a disease and,

if not, the local health officer shall authorize the release of the animal upon payment by the owner of the boarding fee therefore. The health officer may authorize the keeping of any such animal on the owner's premises if the owner produces a rabies vaccination certificate showing that the animal has valid rabies vaccination protection. Impoundment costs shall be borne by the owner. (Code 1989)

2-120. ANIMALS BITTEN BY RABID ANIMALS. Whenever a dog, cat or other animal is bitten by a rabid animal or an animal later proved to have been rabid, it shall be the duty of the owner of the animal that is bitten, to report that fact to the local health officer and/or the police department. It shall also be the duty of the owner of the bitten animal to either destroy or have his or her bitten animal destroyed unless:

(a) The animal which was bitten had been vaccinated against rabies at least three weeks before being bitten and has a current vaccination; and

(b) If the bitten animal has a current vaccination, it shall be confined for 90 days; and

(c) The bitten animal shall be released from confinement only upon written order from the local health officer, who declares the animal to be free of rabies; and

(d) If the animal is found to have contracted rabies during confinement, it shall be properly disposed of.

(Code 1989)

2-121. VEHICULAR ACCIDENTS INVOLVING ANIMALS. Any person who as the operator of a motor vehicle strikes any animal shall stop at once and shall immediately report such injury or death to the owner of such animal, or in the event that the owner cannot be ascertained, and located, the operator shall at once report the accident to the animal control officer or any law enforcement officer. (Code 1989)

2-122. EMERGENCY; PROCLAMATION. The mayor is hereby authorized whenever in his or her opinion the danger to the public safety from rabid animals is made imminent to issue a proclamation ordering all persons owning any animal in the city to confine the animal in a good and sufficient enclosure from which the animal cannot escape, or fasten such animal by means of a chain on the premises where the owner may reside, for such time as may be specified in such proclamation. Any animal not confined during such time may be disposed of wherever found by any police officer, or the animal control officer of the city. The owner of such animal shall be prosecuted for such violation thereof. (Code 1989)

2-123. KENNEL LICENSES.

(a) No person or household shall own or harbor more than four dogs of six months of age or older or more than one litter of pups, or engage in the commercial business of breeding, buying, selling, trading, training, or boarding dogs without having obtained a kennel license from the city clerk.

(b) Kennel licenses must be renewed annually. No kennel license shall be issued until an inspection certificate has been issued by the animal control officer certifying

approval of the kennel and compliance with the applicable laws of the city and the State of Kansas, and a certificate by the zoning code enforcement officer has been issued certifying that the applicant for the kennel license is not violating zoning laws of the city. If the city clerk has not received any protest against the kennel, the city clerk may issue a renewal of an existing kennel license at the same location without any report from the animal control officer and zoning code enforcement officer. If the animal control officer or the zoning code enforcement officer finds that the holder of any kennel license is violating any zoning law, or any other law of the State of Kansas, or of the city, or is maintaining the facility in a manner detrimental to the health, safety or peace of mind of any person residing in the immediate vicinity, he or she shall report such fact to the city clerk, and the license shall not be renewed except after a public hearing before the governing body.

(c) The animal control officer, the zoning enforcement officer, or any law enforcement officer shall have the right to inspect any premises licensed under this section at any reasonable time and nothing shall prevent the entry onto private property for the purpose of inspection. The application for a kennel shall constitute consent to such entry and inspection.

(d) The governing body may suspend or revoke a kennel license if, pursuant to a public hearing, it finds any of the following:

(1) The kennel is maintained in violation of any applicable law of the State of Kansas, or of the city.

(2) The kennel is maintained so as to be a public nuisance.

(3) The kennel is maintained so as to be detrimental to the health, safety or peace of mind of persons residing in the immediate vicinity.

(e) The annual kennel license fee shall be $25. Payment of such license fee is in addition to, and not in lieu of, the dog license fees otherwise required under this chapter.

(f) This section shall not apply to and will not be construed to require a kennel license for a licensed veterinarian to operate an animal hospital.

(Code 1989)

## ARTICLE 2. DOGS

2-201. REGISTRATION AND VACCINATION REQUIRED; FEE.

(a) Every owner of any dog over six months of age shall annually register with the city clerk his or her name and address with the name, sex and description of each dog owned and kept within the city. It shall be unlawful for the owner of any newly acquired dog or any dog brought into the city to fail to register such animal within 30 days from acquisition or bringing the dog into the city. It shall be unlawful for the owner of any previously registered dog to fail to maintain current registration of such dog.

(b) Upon registration, the owner shall present a current, completed certificate of immunization against rabies. No registration shall follow without evidence of this document, and it shall be unlawful for the owner of any dog over six months of age to fail to maintain effective rabies immunization of such dog.

(c) The owner or harborer of any dog shall, at the time of registering such dog, present to the city clerk a certificate from an accredited veterinarian showing that a male dog has been neutered or a female dog has been spayed, if the dog has been neutered or spayed.

(d) The city clerk shall collect an annual registration fee of $5 for each neutered male dog and for each spayed female dog, and $10 for each unneutered male dog and for each unspayed female dog.

(e) The registration year shall be from January 1st through December 31st of each year. The fee shall be payable before March 1st of each year without penalty.

Every owner or harborer of dog or dogs who shall fail to register the same prior to the 1st day of March of each year shall pay in addition to the registration fee herein provided a penalty fee for late registration of $2.50 for each neutered male dog and for each spayed female dog and $5 for each unneutered male dog and for each unspayed female dog.
(Code 1989)

2-202. DOG TAGS. It shall be the duty of the city clerk or designated agent, upon a showing of current rabies immunization and receipt of the registration fee hereinbefore required, to keep in a book suitable for the registration of dogs, the time of the registration, the name of the owner or keeper, the number of the registration and the amount paid therefor, and shall deliver to the owner or keeper of the dog a certificate in writing, stating that the person has registered the dog and the number by which the dog is registered, and shall also deliver to the owner or keeper of the dog a tag with the registration number and the registration year thereon, which shall be, by the owner or keeper, attached to the collar to be used on the dog so registered. When any tag has become lost during a registration period, the owner of the dog may request a duplicate tag for the remainder of the registration period. When so requested, the city clerk shall, upon presentation of the registration certificate, issue a duplicate of such tag upon the payment of $1 fee. It shall be unlawful for any person to take off or remove the city registration tag from any dog belonging to another, or remove the strap or collar on which the same is fastened. (Code 1989)

2-203. SAME; COUNTERFEIT TAG. It shall be unlawful for any person to place on any dog a tag issued for any other dog or to make or use any false, forged or counterfeited tag or imitation thereof. (Code 1989)

2-204. EVIDENCE OF VACCINATION. It shall be unlawful for the owner of any dog kept within the city to fail to display a current certificate of immunization against rabies issued by an accredited veterinarian evidencing the vaccination of such dog within two years, when requested by the animal control officer or any law enforcement officer. (Code 1989)

2-205. VISITING DOGS. The provisions of this article with respect to registration shall not apply to any dog owned by any person visiting or temporarily remaining within the

city for less than 30 days. However, such dogs shall be kept under restraint by the owner thereof at all times. (Code 1989)

2-206. RUNNING AT LARGE; FINE.

(a) It shall be unlawful for the owner or harborer of any dog to permit such dog to run at large within the city at any time;

(b) Any dog running at large within the city shall be impounded as set out in section 2-207;

(c) The owner of any dog impounded for running at large shall be deemed guilty of a violation and upon the first conviction thereof within any licensing period shall be fined in a sum not less than $25 nor more than $100; upon a subsequent conviction thereof within any licensing period shall be fined in a sum not less than $50 nor more than $100 and after the third conviction within any licensing period the offending dog may be ordered destroyed by the court;

(d) In all cases where the court finds that the dog involved in the violation was at the time of the violation an unregistered dog, the court may impose a fine of twice the amounts allowed in subsection (c) above.

(Code 1989)

2-207. IMPOUNDMENT; RECORD; NOTICE; REDEMPTION; MINIMUM FEE.

(a) Any dog found in violation of the provisions of this article shall be subject to impoundment by the city.

(b) A record of all dogs impounded shall be kept by the city containing the following information: color, sex, weight, height, identifying marks, registration number (if any) and the date of impoundment.

(c) If the dog impounded has a current registration tag attached to its collar or if the impounding officer knows the identity of the dog's owner, the owner of such dog, as shown by the records of the city clerk shall be notified in writing as soon as possible or at least 24 hours before such dog is disposed of by destruction or sale. If, at the end of 72 hours, excluding weekends and legal holidays, the city clerk has been unable to locate the owner, or the owner, upon having been located, refuses to claim or redeem said dog, then the dog may be sold, euthanized or otherwise disposed of.

(d) If the dog impounded has no current registration tag and the identity of the animal's owner is unknown to the animal control officer or the impounding law enforcement officer then such impounding officer shall, upon taking any such animal into custody and impounding the same, make a record thereof, with a description of the animal and the date and place taken into custody and the place of impounding, and shall thereupon immediately post a public notice stating that the animal, describing the same with the date and place of taking, has been taken up, and that unless the charges of impounding the same, together with any license fees due and unpaid, are paid within 72 hours, excluding weekends and legal holidays, from the date of the notice, that the animal will be disposed of as provided in this code. If, within said time, the owner does not appear to claim the dog, then the dog may be sold, euthanized or otherwise disposed of.

(e) If at any time before the sale or destruction of any dog impounded under the provisions of this article, the owner of an impounded dog does appear and redeem the dog, it shall be turned over to the person claiming it upon payment of any impoundment fees or penalties plus the actual costs of impoundment, and upon compliance with the registration provisions of this article. This subsection shall not apply to any dog alleged as being vicious under section 2-115 or suspected of rabies under section 2-119 of this code.

(f) The minimum impoundment fee shall be $10.

(g) Any dog impounded may not be released without a current rabies vaccination.

(h) Impoundment hereunder shall not preclude any court from imposing and executing any fine which might otherwise be levied under this article for violation of any of the provisions thereof; nor shall impoundment be a defense in any prosecution commenced hereunder.

(i) The redemption of any dog impounded for a violation of any provision of this chapter shall be prima facie evidence of the violation of such provision by the person redeeming the dog.

(Code 1989)

2-208. DISPOSITION OF UNCLAIMED DOGS. If any dog is not redeemed by its owner or harborer within the time allowed for redemption as specified in section 2-207 thereof, the animal control officer, any authorized law enforcement officer, any authorized veterinarian or any duly authorized pound personnel may destroy such dog or sell the same for the costs of impoundment and keeping, plus any registration fee due for the current year. (Code 1989)

2-209. CONFINEMENT OF DOGS IN HEAT. Any unspayed female dog in the stage of estrus (heat) shall be confined during such period of time in a house, building or secure enclosure, and the area of enclosure shall be so constructed that no other dog or dogs may gain voluntary access to the confined animal except for purposes of planned breeding. Any animal that is in the state of estrus (heat) and that is not properly confined, or any such animal that is creating a neighborhood nuisance, shall be removed to a boarding kennel, to a veterinary hospital or to the animal shelter. All expenses incurred as a result of the confinement shall be paid by the owner. The owner of animals removed to the animal shelter shall be charged at the rate established from time to time by the animal shelter for routine confinement. (Code 1989)

2-210. MUZZLING. Whenever the mayor shall deem it necessary for the protection and welfare of the inhabitants of the city, he or she shall issue an order requiring all dogs kept within the city to be effectively muzzled for such length of time as may be specified in the order, to prevent them from biting or injuring persons or animals. Such order shall be published in the official newspaper of the city for such period of time as the mayor may deem necessary. (Code 1989)

## ARTICLE 3. OTHER ANIMALS

2-301. EXOTIC ANIMALS.

(a) It shall be unlawful for any person, firm or corporation to keep, maintain or have in his or her possession or under his or her control within the city any poisonous reptile or any other dangerous wild animal or reptile, any vicious or dangerous animal or any other animal or reptile of wild, vicious or dangerous propensities.

(b) It shall be unlawful for any person to keep, maintain or have in his or her possession or under his or her control within the city any of the following animals:

(1) All poisonous animals including rear-fang snakes.
(2) Apes: Chimpanzees; gibbons; gorillas, orangutans; and saimangs.
(3) Baboons.
(4) Badgers.
(5) Bears.
(6) Bison.
(7) Bobcats.
(8) Cheetahs.
(9) Crocadilians.
(10) Constrictor snakes.
(11) Coyotes.
(12) Deer; includes all members of the deer family, for example, white-tailed deer, elk, antelope and moose.
(13) Elephants.
(14) Game cocks and other fighting birds.
(15) Hippopotami.
(16) Hyenas.
(17) Jaguars.
(18) Leopards.
(19) Lions.
(20) Lynxes.
(21) Monkeys.
(22) Ostriches.
(23) Pumas; also known as cougars, mountain lions and panthers.
(24) Raccoons.
(25) Rhinoceroses.
(26) Skunks.
(27) Tigers.
(28) Wolves.

(c) The prohibitions of this section shall not apply to bona fide pet shops, zoos, circuses, carnivals, educational institutions, or medical institutions, if:

(1) Their location conforms to the provisions of the zoning ordinance of the city.

(2) All animals and animal quarters are kept in a clean and sanitary condition and so maintained as to eliminate objectionable odors.

(3) Animals are maintained in quarters so constructed as to prevent their escape.

(d) The municipal judge shall have the authority to order any animal deemed vicious confined, destroyed or removed from the city.

(Code 1989)

2-302. PIGEONS, DEFINITIONS:

A. "Pigeon" means a member of the family Columbidae, and shall include "Racing Pigeons", "Fancy Pigeons" and "Sporting Pigeons" as defined in this ordinance.

B. "Racing Pigeon" means a pigeon which, through selective past breeding, has developed the distinctive physical and mental characteristics as to enable it to return to its home after having been released a considerable distance therefrom, and which is accepted as such by the American Racing Pigeon Union, Inc. or the International Federation of Racing Pigeon Fanciers; also commonly known as Racing Homer, Homing Pigeon or Carrier Pigeon.

C. "Fancy Pigeon" means a pigeon which, through past breeding, has developed certain distinctive physical and performing characteristics as to be clearly identified and accepted as such by the National Pigeon Association, the American Pigeon Club, or the Rare Breeds Pigeon Club. Examples: Fantails, Pouters, Trumpeters.

D. "Sporting Pigeon" means a pigeon which, through selective past breeding, has developed the ability to fly in a distinctive manner, such as aerial acrobatics or endurance flying. Examples: Rollers, Tipplers.

E. "Loft" means the structure(s) for the keeping or housing of pigeons permitted by this ordinance.

F. "Mature Pigeon" means a pigeon aged six months or older.

G. "Owner" means the owner of Pigeons subject to this ordinance.

2-303. PIGEONS, CONDITIONS:

The keeping, breeding, maintenance and flying of pigeons shall be permitted on the following conditions:

A. The loft shall be of such sufficient size and design, and constructed of such material, that it can be maintained in a clean and sanitary condition.

B. There shall be at least two (2) square feet of floor space in any loft for each mature pigeon kept therein.

C. The construction and location of the loft shall not conflict with the requirements of any Building Code or Zoning Code of the city, except that any restrictions as they relate to the location in a particular zone or any home occupation restrictions shall not apply.

D. All feed for said pigeons shall be stored in such containers as to protect against intrusion by rodents and other vermin.

E. The loft shall be maintained in a sanitary condition and in compliance with all applicable health regulations of the city.

F. All pigeons shall be confined to the loft, except for limited periods necessary for exercise, training and competition; and at no time shall pigeons be allowed to perch or linger on the buildings or property of others.

G. All pigeons shall be fed within the confines of the loft.

H. No one shall release pigeons to fly for exercise, training or competition except in compliance with the following rules:

1) The owner of the pigeons must be a member in good standing of an organized pigeon club, such as the American Racing Pigeon Union, Inc., the International Federation of Racing Pigeon Fanciers, the National Pigeon Association, the American Tippler Society, the International Roller Association, the Rare Breeds Pigeon Club, or a local club which has rules that will help preserve the peace and tranquility of the neighborhood.

2) Pigeons will not be released for flying which have been fed within the previous four (4) hours.

I. Pigeons shall be banded and registered with one of the national pigeon associations/registries.

2-304. PERMIT: On application signed by the owner, on such form as shall be provided by the City, wherein the owner shall certify that his loft(s) comply with applicable building and zoning codes, and upon payment of a non-refundable fee of $_____, a hearing shall be held by the Board of Zoning Appeals to determine whether or not such a permit should be issued. The Board of Zoning Appeals shall give publication notice of such application and hearing at least 10 days prior to the hearing. In determining whether to issue such a permit, the Board of Zoning Appeals shall take into consideration, among other considerations, the comments of any neighbors and the location of the proposed loft. If the Board of Zoning Appeals determines that such permit should be granted, then a permit shall be issued to the owner, which shall remain in full force and effect unless suspended or revoked, or unless the use of the loft be discontinued for a period of one year.

2-305 RIGHT OF ENTRY FOR INSPECTION: The Animal Control Officer may enter and inspect any property or loft at any reasonable time for the purpose of investigating either an actual or suspected violation or to ascertain compliance or noncompliance with this ordinance.

2-306 VIOLATION AND PENALTIES: When the Animal Control Officer finds a violation to have occurred, the officer shall give written Notice thereof to the owner. If said violation is not remedied within ten (10) days, the Animal Control Officer may issue a citation to appear in municipal court to answer the charges stated thereon. Any owner found violating any of the provisions of this ordinance shall upon conviction be guilty of a misdemeanor punishable by a fine not to exceed the sum of $100.00. Three convictions within eighteen (18) months shall result in the revocation of the permit.

# CHAPTER III. BEVERAGES

Article 1. General Provisions
Article 2. Cereal Malt Beverages
Article 3. Alcoholic Liquor
Article 4. Private Clubs

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## ARTICLE 1. GENERAL PROVISIONS

3-101. DEFINITIONS. Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this chapter, have the meanings indicated in this section.

(a) Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(b) Alcoholic Liquor means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage.

(c) Cereal Malt Beverage means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 3.2 percent alcohol by weight.

(d) Class A Club means a premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the State of Kansas, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members), and their families and guests accompanying them.

(e) Class B Club means a premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

(f) Club means a Class A or Class B club.

(g) General Retailer means a person who has a license to sell cereal malt beverages at retail.

(h) Limited Retailer means a person who has a license to sell cereal malt beverages at retail only in original and unopened containers and not for consumption on the premises.

(i) Place of Business. Any place at which cereal malt beverages or alcoholic beverages or both are sold, including the following:

Any place at which cereal malt beverages may be sold pursuant to a license granted by the city only after the issuance of a temporary permit. Any license not marked by the

city clerk as a permanent place of business license shall be presumed to be a temporary location license.

(j) Wholesaler or distributor. Any individuals, firms, copartnerships, corporations and associations which sell or offer for sale any beverage referred to in this chapter, to persons, copartnerships, corporations and associations authorized by this chapter to sell cereal malt beverages at retail.

(Code 1989; Ord. 685)

3-102. PUBLIC SALE; CONSUMPTION. (a) It shall be unlawful for any person to sell, serve or dispense any cereal malt beverage or alcoholic beverage in any public place not licensed to sell, serve or dispense such beverage at such public place within or under the jurisdiction of the city, or at a public place that is so licensed that does not have a required temporary permit.

(b) It shall be unlawful for any person to drink or consume any cereal malt beverage or alcoholic beverage in any public place not licensed to sell and serve such beverage for public consumption at such public place within or under the jurisdiction of the city, or at a public place that is so licensed that does not have a required temporary permit.

(c) For purposes of this section, the term public place shall include upon any street, public thoroughfare, public parking lot or any privately owned parking area made available to the public generally, within any parked or driven motor vehicle situated in any of the aforesaid places or upon any property owned by the state or any governmental subdivision thereof unless such property is leased to others under K.S.A. 12-1740 et seq. if the property is being used for hotel or motel purposes or purposes incidental thereto or is owned or operated by an airport authority created pursuant to Chapter 27 of the Kansas Statutes Annotated or upon property specifically listed in subsection (d) below and the selling, serving, dispensing, drinking or consuming of cereal malt beverage or alcoholic beverage is by or with the permission of the lessee of the city or that person's quests.

(d) The following-described property with title vested in the city is exempt from subsection (c) above:

Gateway Civic Center premises per the following deeds recorded in the register of deeds' office, Decatur County, Kansas: In Book A-74, page 648; Book A-74, page 986; Book A-74, page 988; and Book A-74, page 947; and

Oberlin Country Club, Inc., as recorded in Book A-15, page 105 of the register of deeds' office in Decatur County, Kansas.

(K.S.A. 41-719; Code 1981, 3-205; Code 1985; Ord. 685)

## ARTICLE 2. CEREAL MALT BEVERAGES

3-201. LICENSE REQUIRED OF RETAILERS. (a) It shall be unlawful for any person to sell any cereal malt beverage at retail without a license for each place of business where cereal malt beverages are to be sold at retail.

(b) It shall be unlawful for any person, having a license to sell cereal malt beverages at retail only in the original and unopened containers and not for consumption on the premises, to sell any cereal malt beverage in any other manner.
(K.S.A. 41-2702; Ord. 662, Sec. 1)

3-202. APPLICATION. Any person desiring a license shall make an application to the governing body of the city and accompany the application by the required license fee for each place of business for which the person desires the license. The application shall be verified, and upon a form prepared by the attorney general of the State of Kansas, and shall contain:

(a) The name and residence of the applicant and how long he or she has resided within the State of Kansas;

(b) The particular place for which a license is desired;

(c) The name of the owner of the premises upon which the place of business is located;

(d) The names and addresses of all persons who hold any financial interest in the particular place of business for which a license is desired.

(e) A statement that the applicant is a citizen of the United States and not less than 21 years of age and that he or she has not within two years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, or been adjudged guilty of drunkenness, or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States;

(f) Each application for a general retailer's license must comply with the provisions of chapter 8 of this code.

(g) Each application for a general retailer's license must comply with the provisions of chapter 7 of this code.

The application shall be accompanied by a statement, signed by the applicant, authorizing any governmental agency to provide the city with any information pertinent to the application. One copy of such application shall immediately be transmitted to the chief of police of the city for investigation of the applicant. It shall be the duty of the chief of police to investigate such applicant to determine whether he or she is qualified as a licensee under the provisions of this chapter. The chief shall report to the governing body not later than five working days subsequent to the receipt of such application. The application shall be scheduled for consideration by the governing body at the earliest meeting consistent with current notification requirements. (Ord. 662, Sec. 2; Code 1989)

3-202A. LICENSE APPLICATION PROCEDURES. (a) All applications for a new and renewed cereal malt beverage license shall be submitted to the city clerk 10 days in advance of the governing body meeting at which they will be considered.

(b) The city clerk's office shall notify the applicant of an existing license 30 days in advance of its expiration.

(c) The clerk's office shall provide copies of all applications to the police department, to the fire department when they are received. The police department will run a records check on all applicants and the fire department and health department will inspect the premises in accord with chapters 7 and 8 of this code. The departments will then recommend approval, or disapproval, of applications within five working days of the department's receipt of the application.

(d) The governing body will not consider any application for a new or renewed license that has not been reviewed by the above city departments.

(e) An applicant who has not had a cereal malt beverage license in the city shall attend the governing body meeting when the application for a new license will be considered.

(Ord. 662, Sec. 3; Code 1989)

3-203. LICENSE GRANTED; DENIED. (a) The journal of the governing body shall show the action taken on the application.

(b) If the license is granted, the city clerk shall issue the license which shall show the name of the licensee and the year for which issued.

(c) No license shall be transferred to another licensee.

(d) If the license shall be denied, the license fee shall be immediately returned to the person who has made application.

(Ord. 662, Sec. 4)

3-204. LICENSE TO BE POSTED. Each license shall be posted in a conspicuous place in the place of business for which the license is issued. (Ord. 662, Sec. 5)

3-205. LICENSE, DISQUALIFICATION. No license shall be issued to:

(a) A person who has not been a resident in good faith of the state of Kansas for at least one year immediately preceding application and a resident of Decatur county for at least six months prior to filing of such application.

(b) A person who is not a citizen of the United States.

(c) A person who is not of good character and reputation in the community in which he or she resides.

(d) A person who, within two years immediately preceding the date of making application, has been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of drunkenness or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States.

(e) A partnership, unless all the members of the partnership shall otherwise be qualified to obtain a license.

(f) A corporation if any manager, officer or director thereof or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than nonresidence within the city or county.

(g) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25 percent of the stock, of a corporation which: (A) Has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or (B) has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state.

(h) A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee.

(i) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, retailer residency requirements or age, except that this subsection (i) shall not apply in determining eligibility for a renewal license.
(Ord. 662, Sec. 6)

3-206. RESTRICTION UPON LOCATION. (a) No license shall be issued for the sale at retail of any cereal malt beverage on premises which are located in areas not zoned for such purpose.

(b) It shall be unlawful to sell or dispense at retail any cereal malt beverage at any place within the city limits that is within a 200-foot radius of any church, school or library.

(c) The provisions of this section shall not apply to any establishment holding a private club license issued by the State of Kansas.

(K.S.A. 41-2704; Ord. 662, Sec. 7, Ord 839)

3-207. LICENSE FEE. The rules and regulations regarding license fees shall be as follows:

(a) General Retailer — The minimum license fee for selling cereal malt beverages at retail at either a permanent or temporary place of business shall be $100 per calendar year. Payment of the $100 fee authorizes the applicant to apply for one license for the first place of business. A licensee may purchase additional licenses for the following fees:

(1) Permanent place of business — $100.
(2) Temporary location — $50.

A temporary license shall be issued only to those persons who hold a permanent location license. Use of a temporary location shall be permitted only during times covered by a temporary permit issued pursuant to section 3-211. The license shall be issued on a calendar year basis. No temporary license authorizes the sale or dispensing of cereal malt beverages without the issuance of a temporary permit for a particular location. The actual location to be covered by the temporary permit shall be designated by the license holder at least 14 days prior to the even and shall be made in writing to the City Clerk. A permit, subject to all other applicable city ordinances and state

statutes, shall be issued if approved by the Governing Body using the same criteria for the issuance of a permanent license.

(b) Limited Retailer — The fee for each place of business selling only at retail cereal malt beverages in original and unopened containers and not for consumption on the premises shall be $50 per calendar year.

The full amount of the license fee shall be required regardless of the time of the year in which the application is made, and the licensee shall only be authorized to operate under the license for the remainder of the calendar year in which the license is issued. (K.S.A. 41-2702; Ord. 662, Sec. 8; Ord. 795)

3-208. SUSPENSION OF LICENSE. The chief of police, upon five days' written notice, shall have the authority to suspend such license for a period not to exceed 30 days, for any violation of the provisions of this chapter or other laws pertaining to cereal malt beverages, which violation does not in his or her judgment justify a recommendation of revocation. The licensee may appeal such order of suspension to the governing body within seven days from the date of such order, and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. (K.S.A. 41-2708; Ord. 662, Sec. 9)

3-209. LICENSE SUSPENSION/REVOCATION BY GOVERNING BODY. The governing body of the city, upon five days' written notice, to a person holding a license to sell cereal malt beverages may permanently revoke or cause to be suspended for a period of not more than 30 days such license for any of the following reasons:

(a) If a licensee has fraudulently obtained the license by giving false information in the application therefor;

(b) If the licensee has violated any of the provisions of this article or has become ineligible to obtain a license under this article;

(c) Drunkenness of a person holding such license, drunkenness of a licensee's manager or employee while on duty and while on the premises for which the license is issued, or for a licensee, his or her manager or employee permitting any intoxicated person to remain in such place selling cereal malt beverages;

(d) The sale of cereal malt beverages to any person under 21 years of age;

(e) For permitting any gambling in or upon any premises licensed under this article;

(f) For permitting any person to mix drinks with materials purchased in any premises licensed under this article or brought into the premises for this purpose;

(g) For the employment of any person under the age established by the State of Kansas for employment involving dispensing cereal malt beverages;

(h) For the employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor;

(i) For the sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premise licensed under this article;

(j) The nonpayment of any license fees;

(k) If the licensee has become ineligible to obtain a license under this chapter;

(l) The provisions of subsections (f) and (i) shall not apply if such place of business is also currently licensed as a private club.
(K.S.A. 41-2708; Ord. 662, Sec. 10)

3-210. SAME; APPEAL. The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the district court of Decatur county. Any appeal taken under this section shall not suspend the order of revocation of the license of any licensee, nor shall any new license be issued to such person or any person acting for or on his or her behalf, for a period of six months thereafter. (K.S.A. 41-2708; Ord. 662, Sec. 11)

3-211. CHANGE OF LOCATION; USE OF TEMPORARY LOCATIONS. (a) If a licensee desires to change the location of his or her place of business, he or she shall make an application to the governing body showing the same information relating to the proposed location as in the case of an original application. Such application shall be accompanied by a fee of $50. If the application is in proper form and the location is not in a prohibited zone and all other requirements relating to such place of business are met, a new license shall be issued for the new location for the balance of the year for which a current license is held by the licensee.

(b) A holder of a license for a temporary location may apply for a temporary permit to use the location by filing an application with the city clerk who will provide a copy to the city police. The application shall contain the following information:

(1) The name of the sponsor of the event and a copy of any agreement with the sponsor and/or owner of the premises if other than the licensee.

(2) A clear description of the location of the event particularly if an area less than the entire area subject to the licensed temporary location is to be used.

(3) A disclosure of all of the licensee's employees who will or may be serving cereal malt beverages at the event.

(4) A statement of the dates the event will be conducted and the hours of operation on each day.

(5) A temporary permit fee of $50

The application will be submitted to the city clerk not less than 14 days before the event for which the temporary permit is sought unless the mayor waives such requirement for good cause. Unless the application is found to be in violation of city or state laws or the licensed temporary location is already scheduled for an event or is otherwise not suitable for the proposed event as determined by the city council, it will be returned signed by the mayor and city clerk and such signed application shall constitute the licensee's temporary permit.
(Ord. 662, Sec. 12; Ord. 795)

3-212. WHOLESALERS AND/OR DISTRIBUTORS. It shall be unlawful for any wholesaler and/or distributor, his, her or its agents or employees, to sell and/or deliver cereal malt beverages within the city, to persons authorized under this article to sell the same within this city unless such wholesaler and/or distributor has first secured a license

from the director of revenue, state commission of revenue and taxation of the State of Kansas authorizing such sales. (K.S.A. 41-2713; Ord. 662, Sec. 13)

3-213. BUSINESS REGULATIONS. It shall be the duty of every licensee to observe the following regulations.

(a) The place of business licensed and operating under this article shall at all times have a front and rear exit unlocked when open for business.

(b) The premises and all equipment used in connection with such business shall be kept clean and in a sanitary condition and shall at all times be open to the inspection of the police and health officers of the city, county and state.

(c) Except as provided by subsection (d), no cereal malt beverages may be sold or dispensed between the hours of 12:00 midnight and 6:00 a.m., or consumed between the hours of 12:30 a.m., and 6:00 a.m., or on Sunday between the hours of midnight an noon or on Sunday after the hour of 8:00 p.m. to midnight. Closing hours for clubs shall conform to K.S.A. 41-2614 and any amendments thereto. No cereal malt beverage may be sold on Easter.

(d) Cereal malt beverages may be sold at any time alcoholic liquor is allowed by law to be served on premises which are licensed pursuant to K.S.A. 41-2701 et seq., and licensed as a club by the State Director of Alcoholic Beverage Control, or at any time authorized by a temporary permit.

(e) The place of business shall be open to the public and to the police at all times during business hours, except that premises licensed as a club under a license issued by the State Director of Alcoholic Beverage Control shall be open to the police and not to the public.

(f) It shall be unlawful for any licensee or agent or employee of the licensee to become intoxicated in the place of business for which such license has been issued.

(g) No licensee or agent or employee of the licensee shall permit any intoxicated person to remain in the place of business for which such license has been issued.

(h) No licensee or agent or employee of the licensee shall sell or permit the sale of cereal malt beverage to any person under 21 years of age.

(i) No licensee or agent or employee of the licensee shall permit any gambling in the place of business for which such license has been issued unless such activity has been licensed or authorized under the laws of the State of Kansas.

(j) No licensee or agent or employee of the licensee shall permit any person to mix alcoholic drinks with materials purchased in said place of business or brought in for such purpose.

(k) No licensee shall employ any person who has been judged guilty of a felony. (Ord. 662, Sec. 14; Ord. 685, 802)

3-214. SANITARY CONDITIONS REQUIRED. All parts of the licensed premises including furnishings and equipment shall be kept clean and in a sanitary condition, free from flies, rodents and vermin at all times. The licensed premises shall have at least one restroom for each sex easily accessible at all times to its patrons and employees. The restroom shall be equipped with at least one lavatory with hot and cold running water,

be well lighted, and be furnished at all times with paper towels or other mechanical means of drying hands and face. Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable. The doors of all toilet rooms shall be self closing and toilet paper at all times shall be provided. Easily cleanable receptacles shall be provided for waste material and such receptacles in toilet rooms for women shall be covered. The restrooms shall at all times be kept in a sanitary condition and free of offensive odors and shall be at all times subject to inspection by the city health officer or designee. (Ord. 662, Sec. 15)

3-215. MINORS ON PREMISES. (a) It shall be unlawful for any person under 21 years of age to remain on any premises where the sale of cereal malt beverages is licensed for on-premises consumption.

(b) This section shall not apply if the person under 21 years of age is an employee of the licensed establishment, or is accompanied by his or her parent or guardian, or if the licensed establishment derives not more than 50 percent of its gross receipts in each calendar year from the sale of cereal malt beverages for on-premises consumption. (Ord. 662, Sec. 16)

## ARTICLE 3. ALCOHOLIC LIQUOR

3-301. STATE LICENSE REQUIRED. (a) It shall be unlawful for any person to keep for sale, offer for sale, or expose for sale or sell any alcoholic liquor as defined by the "Kansas liquor control act" without first having obtained a state license to do so.

(b) The holder of a license for the retail sale in the city of alcoholic liquors by the package issued by the state director of alcoholic beverage control shall present such license to the city clerk when applying to pay the occupation tax levied in section 3-302 and the tax shall be received and a receipt shall be issued for the period covered by the state license.
(Code 1981, 3-201; Code 1985)

3-302. OCCUPATIONAL TAX. There is hereby levied an annual occupation tax of $300 on any person holding a license issued by the state director of alcoholic beverage control for the retail sale within the city of alcoholic liquors for consumption off the premises. Such tax shall be paid by the retailer to the city clerk before business is begun under an original state license and shall be paid within five days after any renewal of a state license. (Code 1981, 3-202; Code 1985)

3-303. POSTING OF RECEIPT. Every licensee under this article shall cause the city alcoholic liquor retailer's occupation tax receipt to be placed in plain view, next to or below the state license in a conspicuous place on the licensed premises. (Code 1981, 3-203; Code 1985)

3-304. HOURS OF SALE. No person shall sell at retail any alcoholic liquor:

(a) On any Sunday between the hours of midnight and noon and the hours of 8:00 pm and midnight;

(b) On Easter

(c) Before 9:00 a.m. or after 11:00 p.m. on any day when the sale thereof is permitted.

(K.S.A. 41-712; Code 1997, Ord 802)

3-305. BUSINESS REGULATIONS. It shall be unlawful for a retailer of alcoholic liquor to:

(a) Permit any person to mix drinks in or on the licensed premises;

(b) Employ any person under the age of 21 years in connection with the operation of the retail establishment;

(c) Employ any person in connection with the operation of the retail establishment who has been adjudged guilty of a felony;

(d) Furnish any entertainment in his or her premises or permit any pinball machine or game of skill or chance to be located in or on the premises; or

(e) Have in his or her possession for sale at retail any bottles, cask, or other containers containing alcoholic liquor, except in the original package.

(f) Sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person under 21 years of age.

(Code 1981, 3-204; Code 1985)

3-306. INCAPACITATED PERSONS. It shall be unlawful for any person to knowingly sell, give away, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such liquor. (K.S.A. 41-715; Code 1985; Ord. 665, Sec. 2)

3-403. RESTRICTION ON LOCATION. (a) No license shall be issued to a person whose place of business is located within 200 feet of any church, public or parochial school, said distance to be measured from the nearest property line of the church or school to the nearest portion of the building occupied by the private club. (b)The distance location of subsection (a) above shall not apply to a private club when the license applicant petitions for and receives a waiver of the distance limitation from the governing body. The governing body shall grant such a waiver only following public notice and hearing. (Ord. 665, Sec. 3)

3-404. BUSINESS REGULATIONS. (a) The governing body may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions of the place licensed, and may establish zoning districts within which no private club may be located.

(b) No club licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day

other than a Sunday, nor between the hours of 2:00 a.m. and 12:00 noon on a Sunday.

(c) Cereal malt beverages may be sold on premises licensed both for retail sale of cereal malt beverage for on-premises consumption pursuant to K.S.A. 41-2701, et. seq., and holding a license as a private club issued by the State of Kansas at any time when alcoholic liquor is allowed by law to be served on the premises.

(d) No membership shall be sold to any person under 21 years of age, nor shall alcoholic beverages or cereal malt beverages be given, sold or traded to any person under 21 years of age.

(K.S.A. 41-2614, 41-2704; Ord. 665, Sec. 4; Code 1989)

3-405. MINORS ON PREMISES. (a) It shall be unlawful for any person under the age of 21 years to remain on any premises where the sale of alcoholic liquor is licensed for on-premises consumption.

(b) It shall be unlawful for the operator, person in charge or licensee of any premises licensed for on-premises consumption of alcoholic liquor to permit any person under the age of 21 years to remain on the premises.

(c) This section shall not apply if the person under the age of 21 years is accompanied by his or her parent or guardian, or if the licensed premises derives not more than 50 percent of its gross receipts in each calendar year from the sale of alcoholic liquor for on-premises consumption.

(Code 1985)

3-406. PENALTY. If the licensee has violated any of the provisions of this article, the governing body of the city, upon five days' written notice to the person holding such license to sell alcoholic liquor, may suspend or cause to be suspended for a period of not more than 30 days or permanently revoke such license and the individual holding the license may be charged in municipal court with a violation of the alcoholic liquor laws of the city. Violators may also be punished as provided in section 1-116. (Ord. 665, Sec. 6)

## ARTICLE 5. DRINKING ESTABLISHMENTS

3-501. LICENSE REQUIRED. It shall be unlawful for any person granted a drinking establishment licensed by the State of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a local license from the city clerk. (Ord. 777)

3-502. LICENSE FEE (a) There is hereby levied an annual license fee on each drinking establishment located in the city which has a drinking establishment license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license. The city license fee for a drinking establishment shall be

$100. Temporary applications for operation of 3 days or fewer shall carry a fee of $50.
(b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of a city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city. (Ord 777)

3-503 RESTRICTION ON LOCATION (a) No license shall be issued to a person whose place of business is located within 200 feet of any church, public or parochial school, said distance to be measured from the nearest property line of the church or school to the nearest portion of the building occupied by the drinking establishment. (b)The distance location of subsection (a) above shall not apply to a drinking establishment when the license applicant petitions for and receives a waiver of the distance limitation from the governing body. The governing body shall grant such a waiver only following public notice and hearing. (Ord 777)

3-504 BUSINESS REGULATIONS (a) The governing body may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions of the place licensed, and may establish zoning districts within which no drinking establishments may be located.
(b) No drinking establishment licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day other than a Sunday, nor between the hours of 2:00 a.m. and 12:00 noon on a Sunday. (Ord 777)

3-505 PENALTY. If the licensee has violated any of the provisions of this article, the governing body of the city, upon five days' written notice to the person holding such license to sell alcoholic liquor, may suspend or cause to be suspended for a period of not more than 30 days or permanently revoke such license and the individual holding the license may be charged in municipal court with a violation of the alcoholic liquor laws of the city. Violators may also be punished as provided in section 1-116. (Ord 777)

# CHAPTER IV. BUILDINGS, CONSTRUCTION AND INSTALLATION

Article 1. Fire Limits
Article 2. Building Code
Article 3. Electrical Code
Article 4. Plumbing Code
Article 5. Dangerous Structures
Article 6. Numbering Buildings

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## ARTICLE 1. FIRE LIMITS

4-101. FIRE LIMITS DEFINED. The boundaries of the fire district as it presently exists or as it may from time to time be amended are shown on the District Map on file in the office of the city clerk. The boundaries as shown upon such map shall have the same force and effect as though fully set forth or described in this article.

## ARTICLE 2. BUILDING CODE

4-202. UNIFORM BUILDING CODE INCORPORATED. There is hereby adopted and incorporated by reference, for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, location and maintenance of buildings and structures, the Uniform Building Code, 1988 Edition as recommended by the International Conference of Building Officials, such code being made as a part of the ordinances and code of the city as if the same had been set out in full herein, all as authorized and in the manner prescribed by K.S.A. 12-3009 through 12-3012 including any amendments thereto. No fewer than three copies of the Uniform Building Code shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Oberlin," and shall be filed with the city clerk to be open to inspection and available to the public at all reasonable hours of business.

Any person violating any provision of such code shall be punished as provided in section 1-116 of this code. (Code 1989)

4-202. AMENDMENTS. Amendments to the standard code incorporated in Section 4-201 of this article shall be as follows:

(a) Section 9.1 -- Noncompliance -- is hereby repealed and amended to read: 9.1 -- PENALTY -- Any person who shall violate any of the provisions of the code hereby incorporated by reference or fail to comply with this article, or who shall violate or fail to comply with any order made thereunder, or any certificate or permit issued thereunder, shall severally for each and every such violation and noncompliance respectively, be guilty of a misdemeanor, punishable by a fine of not less than $5 nor more than $100 or by imprisonment for not less than five days nor more than 30 days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each 10 days that prohibited conditions are maintained shall constitute a separate offense.

The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.
(Ord. 458, Sec. 8)

4-203. DEFINITIONS. Definitions of terms as used in this article shall be as follows:

(a) Wherever the term "municipality" is used in this code, it shall be held to mean the City of Oberlin;

(b) Wherever the term "corporation counsel" is used in this code, it shall be held to mean the attorney for the City of Oberlin;

(c) Wherever the term "building official" is used in this code, it shall be held to mean the building inspector of the City of Oberlin.
(Ord. 458, Sec. 2)

4-204. OFFICE CREATED. There is hereby created the office of building inspector of the city who shall be appointed by the mayor and with the consent of the city council.
(Ord. 458, Sec. 3)

4-205. PERMITS, DUTIES OF BUILDING INSPECTOR. Any person, firm, or corporation desiring to build, rebuild, repair or otherwise alter or move, remove, or relocate any building within the city shall first secure a building permit therefor from the city by making written application to the building inspector for the permit, and shall furnish the building inspector in such application with such information as may be requested by the inspector and as may be required by the ordinances of the city. Application for such permit shall be made and permit obtained before work is commenced upon the foundation for any such proposed building, and such application shall state the exact site to be occupied, he material dimensions, and estimated cost of the proposed building, structure or portion built or rebuilt, or moved upon any such lot. Plans and specifications of the proposed erection, alteration or addition shall be submitted for inspection and approval before the permit is issued: PROVIDED, That the applicant for the permit shall pay the sum of $25 to the building inspector as compensation for his services. The building inspector shall study all plans, specifications and applications, and grant those which show that they comply fully with the building code and the zoning ordinances. The permit, if granted, shall be valid for 180 days from date of issue. In all cases where the building inspector is of the opinion that the application should be denied, or he is in doubt for any reason, he shall submit the application to the city council for consideration together with his conclusions and recommendations and the city council will decide whether a permit is to be issued or denied. The building inspector also shall inspect or cause to be inspected all violations of the ordinances of the city reported to him with regard to the construction, reconstruction, alteration, repair or use of buildings or premises in the city, and to take all proper and necessary steps to abate and punish the violators.
(Ord. 560, Sec. 1; Code 1989)

4-206. APPEALS. Whenever it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted by the building inspector, the applicant may appeal to the city council within 30 days from the date of the decision appealed. (Ord. 458, Sec. 5)

4-207. LIABILITY. This article shall not be construed to relieve from any liability or lessen the liability of any person, firm or corporation performing any activity connected herewith, nor shall the city be held as assuming any such liability by

reason of any inspection authorized herein, or by reason of any certificate of inspection issued by it. (Ord. 458, Sec. 6)

4-208. RIGHT OF ENTRY. The building inspector, in the discharge of his official duties, and upon proper identification shall have authority to enter any building, structure or premises at any reasonable hour to perform his duties as set out herein. (Ord. 458, Sec. 7)

## ARTICLE 3. ELECTRICAL CODE

4-301. NATIONAL ELECTRICAL CODE INCORPORATED. The certain standard code known as the National Electrical Code, 1990 Edition, published by the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210, is hereby incorporated herein by reference and made a part of this article, save and except such portions as may hereinafter in this article be deleted or amended. There shall be no fewer than three copies of the standard code incorporated by reference and kept on file in the office of the city clerk and kept available for inspection by the public at all reasonable hours. The filed copies of the standard code shall be marked "Official Copy as Incorporated by the Code of the City of Oberlin." All sections or portions of the filed copies of the standard code shall be clearly marked to show deletions from the standard code. (K.S.A. 12-3009:3012; Code 1989)

4-302. ELECTRICAL INSPECTOR'S OFFICE CREATED; INSPECTIONS. There is hereby created the office of electric inspector of the City of Oberlin who is hereby authorized, empowered and directed to regulate and determine the placing of electric wires or other appliances for electric lights, heat or power in the city and to cause all such wires, appliances or apparatus to be placed, constructed and guarded so as not to cause fires or accidents, endangering life or property, and to be constructed so as to keep to a minimum the loss or waste of electric current. The electrical inspector shall enforce all provisions of this article and he is hereby granted the authority to enter all buildings in the city in the performance of his duties between the hours of 8:00 a.m. and 5:00 p.m. daily, except that in emergency and within the limits of reason, the electrical inspector may enter buildings for such purposes at other designated hours. (Ord. 457, Sec. 2)

4-303. PERMITS, BONDING. It shall be unlawful, except as herein otherwise provided, for any person, firm or corporation to place any wires of any kind or description in or about any building in the city intended for the purpose of conveying electric current or furnishing light, heat or power, unless such person, firm or corporation has made application to the city clerk and secured a permit authorizing such person, firm or corporation to engage in the business of electric wiring within such city. Such permit shall not be issued except as herein otherwise provided, until such person, firm or corporation has made payment to the city clerk of a fee of $10 and has filed with the city clerk a good and sufficient bond to the city in the penal sum of $2,500, guaranteeing that such person, firm or corporation will perform the duties of electric wiremen in compliance with the rules set forth in this article, and hold the city harmless against all costs, expenses, damages or injuries, sustained by reason of the carelessness of negligence of the person, firm or corporation or any agent or employee thereof operating under this article or by any rules or regulations made in pursuance thereof or by reason of the laws of the State of Kansas or any ordinance of the city. Such bond shall be subject to the approval of the mayor and council

before such permit is issued, but this section shall not apply to any person in the employ of the city working under the direction of the building inspector or electrical inspector.

Such bonds shall be signed by two or more good and sufficient sureties or executed by a surety company authorized to transact business in the State of Kansas. The person, firm or corporation who shall sign such bond, either as principal or surety, shall be liable thereon, first to the city and second to any person who shall be in any way damaged by the failure of the principal in such bond to perform the duties of electric wireman in compliance with the rules set forth in this article. Such bond shall not be held to guarantee the fulfillment of any contract made by any person, firm or corporation engaged in the business of doing electric wiring, but only that such wiring as is done by such person, firm or corporation, shall be done in compliance with the rules set forth in this article. The electrical inspector is authorized to revoke the permit of any person, firm or corporation engaged in the business of electric wiring in the city in the manner and for cause hereinafter provided; provided, that the electrical inspector may issue a temporary permit to any person, firm or corporation having complied with the provisions of this article in the following circumstances, to-wit:

When the person, firm or corporation seeking such temporary permit is in the employ of a contractor, who has given bond to insure the proper construction of building, and the electrical wiring or apparatus to be installed in the building covered by such contractor's bond. (Ord. 457, Sec. 3; Code 1989)

4-304. PERMIT TO INDIVIDUAL. Any individual desiring to perform his or her own electrical work personally shall not be required to make the required bond, but shall be required to obtain the regular permit and certificate of approval for that particular job. Such work done by an individual must be done by him personally on his own property and not be a way of performing a service to the public generally. (Ord. 457, Sec. 4)

4-305. APPEALS. Whenever the electrical inspector shall disapprove an application or refuse to grant a permit applied for under this article, or when it is claimed that the provisions of this code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the electrical inspector to the city council within 30 days from the date of the decision appealed. (Ord. 457, Sec. 5)

4-306. CERTIFICATE OF APPROVAL. All persons, firms or corporations are hereby forbidden to make any electric connections by means of which electric current may be conveyed or maintained, on or about any building in the city until the owner or his authorized agent shall have secured from the electrical inspector a certificate that the wiring of such building has been inspected and approved. (Ord. 457, Sec. 6)

4-307. NOTICE TO ELECTRICAL INSPECTOR. It shall be the duty of every person, firm or corporation who shall place wiring as above described in any building in the city to report to the electrical inspector immediately upon completion of such wiring and before such wiring has been concealed or covered by any lath, plaster, ceiling or any other material whatsoever, and the electrical inspector shall within 24 hours thereafter make careful inspection of the wiring so reported. Immediately upon completion of such inspection the electrical inspector, if the wiring so inspected has been approved, shall issue to the owner of such building or his agent, a certificate to

the effect that such wiring has been approved, and authorize the delivery and maintenance of electric current to such building. If the electrical inspector's report be that such wiring does not comply with the requirements of the electrical inspector and of this article then no certificate shall be issued until all the requirements of the electrical code shall be complied with, such compliance to be ascertained by the electrical inspector upon actual examination. (Ord. 457, Sec. 7)

4-308. UNLAWFUL CONNECTIONS. Any person, firm or corporation who, without the consent of the governing body of the city shall make a connection of any wire, conduit or device, to any electric service line, or transmission line used to carry electricity, by the electric plant owned and operated by the city for public or private use, or who shall deface, puncture, remove, reverse or alter an electric meter used to measure electricity furnished by the city, or the connection thereof, for the purpose of securing unmeasured electricity or electric current unlawfully, owned by the city, or who shall prevent any such electric meters from properly measuring or registering electricity, or electric current, owned, or furnished over the transmission lines of the city; or any person, firm or corporation who shall knowingly take, receive, use or convert to his own use, or the use of another, any electricity, or electric current which has not been measured, owned or furnished by the city; or who shall cause, procure, permit, aid or abet any person to do any of the aforesaid acts, shall be guilty of a misdemeanor, and upon conviction thereof in the municipal court of the city shall be punished by a fine of not less than $10 nor more than $100. In default of payment of such fine upon such conviction, such person shall be imprisoned in the city jail until the same is fully paid. (Ord. 225, Sec. 1)

4-309. EXISTENCE OF UNMEASURED ELECTRICITY. The existence of any of the connections of meters, alterations for use of unmeasured electricity or electric current as set out in section 4-308 of this article, shall be prima facie evidence of intent to violate, and of the violation of this article, by the person, firm or corporation using or receiving the benefit from the use of the electricity or electric current passing through such connections or meters, or being used unmeasured as aforesaid. (Ord. 225, Sec. 2)

4-310. PENALTY. Any person who shall violate any of the provisions of this article, or who shall violate or fail to comply with any order made thereunder, or any certificates or permit issued thereunder, shall severally for each and every such violation and noncompliance respectively be guilty of a misdemeanor, punishable by a fine of not less than $5 nor more than $100 or by imprisonment for not less than five days nor more than 30 days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue. All such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each 10 days that prohibited conditions are maintained shall constitute a separate offense.

The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions. (Ord. 457, Sec. 10)

## ARTICLE 4. PLUMBING CODE

4-401. UNIFORM PLUMBING CODE INCORPORATED. The Uniform Plumbing Code, Edition of 1988, published by the International Association of Plumbing and

Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032, for the practice of plumbing, including the installation, maintenance, extension, and the alteration of all pipes, fixtures, appliances and appurtenances in connection with sanitary sewers and public and private water systems the same being a standard code obtainable in book or pamphlet form from the International Association of Plumbing and Mechanical Officials at the above address shall be and is hereby incorporated by reference herein as the plumbing code of the city. The code shall be the minimum standard for all plumbing work done or performed under the provisions of this article except as hereinafter provided. Three copies of the Uniform Plumbing Code shall be kept on file by the city clerk for inspection by and use of the public and shall be marked with the words "Official Copy as Incorporated by the Code of the City of Oberlin." (Code 1989)

4-402. AMENDMENTS. The Uniform Plumbing Code incorporated in Section 4-401 of this article shall be amended by the addition of Chapter 2A--Plastic Pipe and Fittings.

CHAPTER 2A. PLASTIC PIPE AND FITTINGS

SECTION 2A01. Use of Plastic Pipe and Fittings for Building Underground Sewers and Drainage. (a) It shall be permissible to use the following plastic pipe for building sewer: Acrylonitrile-Butadiene-Styrene (ABS) pipe and fittings; and Polyvinyl Chloride (PVC) pipe and fittings which meet Commercial Standards established by the United States Department of Commerce and with a minimum pressure rating of one hundred pounds per square inches (100 psi): provided, that all such plastic pipe and fittings shall meet the following standards: Commercial Standard CS254-63, ABS plastic pipe and Commercial Standard CS256-63, PVC plastic pipe.

(b) Only ABS plastic fittings shall be used with ABS plastic pipe, PVC plastic fittings shall be used with PVC plastic pipe. Such ABS fittings shall conform to Commercial Standard CS254-63 and PVC fittings shall conform to Commercial Standard CS256-63. Joints shall be made in accordance with such commercial standards in an approved manner and appropriate recommendations of the manufacturer.

(c) Only an approved type of solvent shall be used for solvent welding as recommended by the manufacturer for the connection of plastic pipe to plastic pipe. The socket and the pipe or fitting which fits in the socket shall be free of dirt, grease, or foreign matter. A solvent cement shall be applied, with a natural bristle brush inside the socket and to the pipe for a length equal to the socket depth. The socket and pipe shall immediately be forced together with a slight twisting motion if possible to insure full engagement of the pipe end into the socket. Connections of solid pipe to other materials shall be sealed by means of solvent cement, cement mortar, poured lead or other material recommended by the manufacturer.

(d) Trench depth for building sewers connecting to sewer mains shall be sufficient to provide a minimum cover depth of 30 inches. Trench width shall be sufficient to provide at least four inches of clearance on both sides of the pipe. A firm, smooth foundation shall be provided for the pipe. The ditch shall be excavated to a depth to provide a minimum of two inches of sand or earth free of rocks or debris under the pipe, except where existing soil is adequately clean and sound. The sewer grade shall be in accordance with good sound engineering practice for a given flow and size of pipe.

(e) Pipe shall be firmly bedded and backfilled with selected backfill materials free of rocks, boulders, and foreign matter to at least three inches above the top of

the pipe. Backfill shall be tamped in thin layers and thoroughly compacted to provide solid support between the sides of the pipe and the sides of the ditch. The remainder of the ditch may be mechanically filled if desired and should be compacted by puddling, flooding or tamping. Stones larger than six inches at their greatest dimension shall not be used in the backfill.

SECTION 2A02. It shall be permissible to use type ABS (Acrylonitrile-Butadiene-Styrene) plastic pipe Schedule 40 system or systems of drainage, waste, and vent piping and fittings conforming to Commercial Standard CS 270-65, and type PVC (Polyvinyl Chloride) plastic pipe Schedule 40 system or systems of drainage, waste, and vent piping and fittings conforming to Commercial Standard CS272-65, for aboveground soil waste and vent systems in residential buildings of frame construction only: provided, that all such plastic pipe and fittings shall meet the following standard: Commercial Standard CS270-65, ABS plastic pipe, and Commercial Standard CS272-65, PVC plastic pipe, and carry the appropriate National Sanitation Foundation Seal of approval for DWV pipe, as shown (NSF-DWV) or the standards as set forth and contained in the publications of the United States Department of Commerce entitled, "Commercial Standard CS270-65--Acrylonitrile - Butadiene - Styrene (ABS) Plastic Drain, Waste, and Vent Pipe and Fittings," and "Commercial Standard CS272-65 -- Polyvinyl Chloride (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings," and amendments thereto.

SECTION 2A03. Only ABS plastic fittings shall be used with ABS plastic pipe, or PVC plastic fittings shall be used with PVC plastic pipe for drainage, waste and vents. Such ABS fittings shall conform to Commercial Standard CS270-65 and PVC fittings shall conform to Commercial Standard CS272-65. Joints shall be made in accordance with such commercial standards in an approved manner and the appropriate recommendations of the manufacturer. ABS fittings and PVC fittings shall carry the National Sanitation Seal of Approval. Only an approved type of solvent shall be used for solvent weld as recommended by the manufacturer. All plastic joints and connection shall be watertight. All design, construction and workmanship shall be performed in accordance with the requirements and recognized standards of practice and by qualified mechanics to secure the results sought to be obtained by this code.

SECTION 2A04. Plastic Pipe and Fittings for Potable Water Service:

| | Specifications |
|---|---|
| Interior Cold Water Distribution Sch. 80 PVC | CS207-60 |
| Water Service Line Sch. 40 PVC | CS207-60 |
| | CS256-63 |
| | CS255-63 |
| 160 No. PE | |

All PVC and PE pipe and fittings used for potable water must be approved by the National Sanitation Foundation and be marked with the NSF seal and conform with the above standards. No under slab installation will be permitted.

All PVC Water Service Lines must have a minimum rated working pressure of 200 P.S.I.

All PE Water Service Lines must have a minimum rated working pressure of 160 P.S.I.

Meter risers from a point 24 inches outside of the meter box on each side shall be installed by the use of copper type K brass or galvanized iron.

Sprinkling Systems, Underground Lawn -- Minimum rated working pressure of 125 P.S.I. An approved anti-syphon device must be installed on all sprinkling systems.

4-403. DEFINITIONS. Wherever the term "administrative authority" is used in the code it shall be held to mean the building inspector of the City of Oberlin, Kansas. (Ord. 455, Sec. 2)

4-404. PERMITS, FEE. It shall be unlawful for any person, firm or corporation, to uncover a public sewer, for any purpose, or to open or take off any manhole, flush tank or inlet cover, or to make, or cause to be made any connections with the mains or laterals of the public sewers of the city, or to build any sewer connections or do any plumbing work except minor repairs as hereinafter defined, on or in any building or structure connected with any part of the public sewer system of the city, at the time such plumbing work is done, without having first received a written plumber's permit from the building inspector of the city, granted upon written application describing contemplated work, the premises to be sewered or on which plumbing work is to be done, and the plumbing fixtures to be put in. This permit will be issued only upon payment to the city clerk of a fee of $10 and no permit shall be issued to any person whose bond has not been approved by the mayor and council. No permit shall be issued to make connection with any main outside of a sewer district or to make connection with a main or lateral for the purpose of sewering any property which has not been specially assessed, or which is not legally liable to special assessment for the cost of sewer laterals until a written application shall have been presented to the mayor and council and the fee which shall be fixed and determined in each application by the council shall have been paid. (Ord. 455, Sec. 5; Code 1989)

4-405. APPEALS. Whenever the building inspector shall disapprove an application or refuse to grant a permit applied for under this article, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the building inspector of the city council within 30 days from the date of the decisions appealed. (Ord. 455, Sec. 6)

4-406. PERMITS NOT REQUIRED. No permit shall be required under this article for minor repair work or temporary repairs in case of an emergency. By minor repair work is meant the repairs of leaks in pipes, traps, or cocks, opening up stoppage in waste or supply pipes, traps or drains, or replacing broken fixtures when waste pipes are not disturbed and replacing frozen pipes inside buildings. (Ord. 455, Sec. 7)

4-407. BONDING NECESSARY; WHEN. No permit as described in section 4-304 of this article shall be issued to any person, firm or corporation until such person, firm or corporation has given to the city a bond in the sum of $2,500 to be approved as to its sufficiency by the mayor and council, conditioned that such person, firm or corporation, will faithfully comply with all the terms and conditions of this article and all rules and regulations made in pursuance thereof, and of all ordinances of the city governing street excavations, and indemnify and hold the city blameless against all costs, expenses, damages or injuries sustained by reason of the carelessness or negligence of the person, firm or corporation or of any agent or employee thereof operating under this article or any amendments thereto, or any rules or regulations made in pursuance thereof, or by the laws of the State of Kansas. No bond for this purpose shall run longer than two years, and the bond shall remain in full force and effect as to any work done or excavation made for six months after such work or excavations had been completed. A permit issued under this article may be revoked when the person, firm or corporation to whom such permit has been issued shall not have in his employ an employee capable of wiping a joint as herein provided, or if by any reason a bond given in accordance with the provision hereof shall become worthless: provided further, that the building inspector may issue a temporary permit to any person, firm or corporation without having complied with the provision of this article as to having given bond, in the following circumstances:

(a) When the person, firm or corporation seeking such temporary permit is in the employ of a public utility corporation, or firm or individual engaged in a business known and designated as a public utility and the particular building in which, or the location at which such plumbing is to be installed is the property of such public utility.

(b) When the person, firm or corporation seeking such temporary permit is in the employ of a contractor, who has given bond to insure the proper construction of building, and the plumbing to be installed is to be installed in the building covered by such contractor's bond.

(Ord. 455, Sec. 8; Code 1989)

4-408. PERMIT TO INDIVIDUAL. Any individual desiring to perform his or her own plumbing work personally shall not be required to make the required bond, but shall be required to obtain the regular permit for that particular job. Such work done by an individual must be done by him or her personally on his or her own particular job, and not be a way of performing a service to the public generally. (Ord. 455, Sec. 9)

4-409. RIGHT OF ENTRY. The building inspector, in the discharge of his official duties and upon proper identification, shall have authority to enter any building, structure or premises at any reasonable hour to perform his or her duties as required in this chapter. (Ord. 455, Sec. 13)

4-410. PENALTY. Any person who shall violate any of the provisions of this article, or who shall violate or fail to comply with any order made thereunder, or any certificate or permit issued thereunder, shall severally for each and every such violation and noncompliance respectively, be guilty of a violation, punishable by a fine of not less

than $5 nor more than $100 or by imprisonment for not less than five days nor more than 30 days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each 10 days that prohibited conditions are maintained shall constitute a separate offense.

The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions. (Ord. 455, Sec. 12)

## ARTICLE 5. DANGEROUS STRUCTURES

4-501. DEFINITIONS. Definitions of the terms as used in this article shall be as follows:

(a) Structure shall mean and include any building, wall or other structure.

(b) Enforcing Officer shall mean the building inspector or other officer designated by this article and charged with the administration of the provisions of this article.

(Ord. 497, Sec. 1)

4-502. DANGEROUS STRUCTURE; REMOVAL AUTHORIZED. Whenever any building or structure in the city shall have become unsafe or dangerous, the governing body shall cause the repair or removal of the structure. (K.S.A. 12-1751; Ord. 497, Sec. 2)

4-503. STATEMENT; RESOLUTION. Whenever the enforcing officer shall file with the governing body of the city a statement in writing that any structure, describing the same and where located is unsafe or dangerous, the governing body shall, by resolution, fix a time and place at which the owner, his agent, any lienholders of record, and any occupants of the structure, may appear and show cause why such structure should not be condemned and ordered repaired or demolished. Such resolution shall be published once each week for two consecutive weeks on the same day of each week. At least 30 days shall elapse between the last publication and the date set for the hearing. A copy of the resolution shall be mailed by certified mail within three days after its first publication to each such owner, agent, lienholder and occupant, at his, her or its last known place of residence, and shall be marked "deliver to addressee only": provided, that if the owner is a resident in Decatur County, the resolution shall be personally served within five days on such owner or delivered to their last known address in lieu of mailing the same, and, in this case, at least one week shall elapse between the service on such owner and the date set for the hearing. (K.S.A. 12-1752; Ord. 497, Sec. 3)

4-504. FINDINGS OF GOVERNING BODY. On the date fixed for hearing or any adjournment thereof, the governing body shall hear all evidence submitted by the owner, his or her agent, lienholders of record and occupants having an interest in such structure as well as evidence submitted by the enforcing officer filing the statement and shall make findings by resolution. If the governing body of the city shall find that such structure is unsafe or dangerous, such resolution shall direct the structure to be repaired or removed and the premises made safe and secure. Such resolution shall be published once in the official city paper and a copy mailed to the owners, agents, lienholders of record, and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the

repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence to repair or remove such structure within the time stated or fails to diligently prosecute the same until the work is completed, the governing body will cause the structure to be razed and removed. (K.S.A. 12-1753; Ord. 497, Sec. 4)

4-505. PREMISES LEFT IN SAFE CONDITION. The owner of any structure, upon removing the same, shall fill any basement or other excavation located upon the premises and take any other action necessary to leave such premises in a safe condition. (K.S.A. 12-1754; Ord. 497, Sec. 5)

4-506. OWNER FAIL TO REMEDY HAZARD; CITY TO PROCEED. If the owner of any structure has failed to commence to repair or remove such structure within the time stated in the resolution or has failed to diligently prosecute the same thereafter, the city may proceed to raze and remove such structure, make the premises safe and secure, or let the same to contract. The city shall keep an account of the costs of such work and may sell the salvage from such structure and apply the proceeds or any necessary portion thereof to pay the cost of removing such structure and making the premises safe and secure. All moneys in excess of that necessary to pay such costs shall, after the payment of all costs, be paid to the owner of the premises upon which the structure was located. If there is no salvageable material or if the moneys received from the sale of salvage is insufficient to pay the costs of such work, such costs or any portion thereof in excess of the amount received from the sale of salvage shall be assessed as a special assessment against the lot or parcel of land on which the structure was located and the city clerk shall, at the time of certifying other city taxes, certify the unpaid portion of the aforesaid costs and the county clerk shall extend the same on the tax rolls of the county against the lot or parcel of land. (K.S.A. 12-1755; Ord. 497, Sec. 6)

4-507. STRUCTURE REMOVED, COUNTY ASSESSOR NOTIFIED. Whenever any structure shall be removed from any premises under the provisions of this article, the city clerk shall certify to the county assessor that such structure, describing the same, has been so removed. (K.S.A. 12-1755; Ord. 497, Sec. 6)

4-508. NO-FUND WARRANTS. If there is no salvageable material or if the moneys received from the sale of salvage is insufficient to pay the costs of the work, such costs or any portion thereof in excess of that received from the sale of salvage may be financed, until the assessment is paid, out of the general fund or by the issuance of no-fund warrants. Whenever no-fund warrants are issued under the authority of this article, the governing body shall make a tax levy at the first tax levying period for the purpose of paying such warrants and the interest thereof. All such tax levies shall be in addition to all other levies authorized or limited by law and shall not be subject to the aggregate tax levy prescribed in Article 19 of Chapter 79 of the Kansas Statutes Annotated and Amendments thereto. Such warrants shall be issued, registered, redeemed and bear interest in the manner and in the form prescribed by K.S.A. 79-2940, except they shall not bear the notation required by such section and may be issued without the approval of the State Board of Tax Appeals. All moneys received from special assessments levied under the provisions of this article shall, when and if paid, be placed in the general fund of the city. (K.S.A. 12-1755; Ord. 497, Sec. 6)

4-509. IMMEDIATE HAZARD; ACTION. When, in the opinion of the enforcing officer, any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, such officer may erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay and such action may, under such circumstances, be taken without prior notice to or hearing of the owners, agents, lienholders and occupants. The cost of any such action shall be assessed against the property and paid in the manner provided by Sections 4-406:408 of this article. (K.S.A. 12-1756; Ord. 497, Sec. 7)

## ARTICLE 6. NUMBERING BUILDINGS

4-601. LOTS NUMBERED. All lots, parts of lots and other property abutting on any street or avenue shall be numbered. The plan of numbering so far as practicable shall be known as the Philadelphia plan. (Ord. 187, Sec. 1)

4-602. BASELINES. Penn Avenue shall constitute the base line for all numbering on streets running east and west, and Commercial Street shall constitute the baseline for all streets running north and south. (Ord. 187, Sec. 2)

4-603. BUSINESS DISTRICT. In the business district from the corner of each block nearest its respective baseline each 12½ feet of frontage shall be given a number. (Ord. 187, Sec. 3)

4-604. RESIDENCE DISTRICT. In the residence district comprising all of the municipality outside of the business district, from the corner of each block next to its respective baseline, each 50 feet of frontage shall be given a number, except where lots vary from 50 feet in width such lots shall be numbered to conform to the size of the lots. Where two dwellings are located on the same lot, the second dwelling shall have the same number as the first with the number ½ added. (Ord. 187, Sec. 4)

4-605. DESIGNATION OF STREETS. All lots, parts of lots, houses and places of business on those portions of any street extending north and south and being north of Commercial Street baseline shall be known and designated as North, and all located south of Commercial Street baseline shall be known and designated as South. All streets located on all those portions of any street extending east and west and being east of Penn Avenue baseline shall be known and designated as East and all west of Penn Avenue baseline shall be known and designated as West. The prefixes to be placed before the proper name of the street, as "North Penn Avenue," or "East Commercial Street." (Ord. 187, Sec. 5)

4-606. PLAN OF NUMBERING. On all streets the numbers shall run in consecutive order, alternating from side to side. The odd numbers shall be on the right hand side of the street when going away from the baseline; or on the east side of the streets, running north from Commercial Street; and on the west side of the streets running south from Commercial Street; and on the north side of the streets running west from Penn Avenue; and on the south side of the street running east from Penn Avenue. (Ord. 187, Sec. 6)

4-607. PLAN OF NUMBERING. The numbers shall run one hundred to each block or distance between two street intersections on the same street. Where the streets

intersect but do not cross, the numbers shall run in each case to a street intersecting on both sides of the street being numbered. The respective blocks located upon the streets which do not intersect the baseline shall bear the hundred number of the corresponding block nearest the same location on the nearest street, extending in the same direction, which does intersect the baseline. (Ord. 187, Sec. 7)

4-608. CLERK CONTROLS. In case of doubt or where a question arises as to the proper number to be assigned to any lot or building, the city clerk shall decide the question and fix the number of such lot or building. (Ord. 187, Sec. 8)

4-609. NUMBERS REQUIRED. All buildings now or hereafter erected fronting on any street or alley shall have conspicuously placed on such buildings, the number as provided in this article. (Ord. 187, Sec. 9)

4-610. STYLE OF NUMBER. The number plate placed upon any building shall be placed upon the front of the building, doorpost, transom or other place. The numbers shall be at least three inches in height so as to be easily seen from the street. (Ord. 187, Sec. 10)

4-611. PENALTY. Any one violating any provisions of this article shall, upon conviction, be subject to imprisonment not to exceed 30 days, or a fine not exceeding $100. Whenever the fine imposed for the violation of this article is not paid the person convicted may be committed to jail until the fine is paid. (Ord. 187, Sec. 11)

# CHAPTER V. ELECTIONS

Article 1. City Elections

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## ARTICLE 1. CITY ELECTIONS

5-101. CONDUCT OF ELECTIONS. All elections in this city shall be conducted by the county election officer in accordance with the laws of the State of Kansas, and shall be conducted jointly with other elections held at the same time insofar as practicable. (K.S.A. Supp. 25-2114)

Ref.: Election of city officers see Charter Ord. No. 3, Appendix B.

5-102. VOTING HOURS. Hereafter in all general elections, primary elections and all special or regular city elections conducted in or by the city, the hours of voting shall be from 7:00 a.m. to 7:00 p.m. of the election day or as otherwise provided by statute. (K.S.A. Supp. 25-2111)

5-103. PLACES OF VOTING. The place of holding city elections shall be designated by the county election officer. (K.S.A. Supp. 25-2111)

# CHAPTER VI. FIRE PROTECTION

Article 1. Fire Department
Article 2. Fire Prevention
Article 3. Fireworks

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## ARTICLE 1. FIRE DEPARTMENT

6-101. ESTABLISHED. There is hereby established a fire department in the City of Oberlin, consisting of a city fire company and a rural fire company. The fire department shall consist of a chief, an assistant chief, and not less than 10 nor more than 15 persons per company. The city fire company shall be hired by the fire chief and confirmed by the council members and the rural fire company shall be appointed by the county commissioners of Decatur County. Both companies may have the same fire chief. (Ord. 443, Sec. 1)

6-102. MEMBERS, VOLUNTEERS; DUTIES. Members of the fire department shall be volunteers. They shall meet at least once each month for practice and drill. The chief shall keep a record of attendance of such meetings. Any member who shall fail to attend six meetings in any 12 month period shall automatically become expelled from membership. The chief and each member shall receive as compensation such amounts as shall be determined from time to time by the governing body of the city, except for those members who are appointed by the board of county commissioners who shall receive such compensation as is determined by the commissioners. (Ord. 443, Sec. 2)

6-103. CHIEF; SUPERVISION. The chief shall be under the supervision of the City Administrator and shall have superintendency and control over and be responsible for the care and condition of the fire apparatus and equipment. It shall be his duty to see that all such apparatus and equipment shall be at all times ready for immediate use. The chief shall submit a written report as to its condition to the mayor and council at their first meeting in June of each year. (Ord. 443, Sec. 3)

6-104. CHIEF; RESPONSIBILITY. The chief shall have responsibility for hiring all fire persons. The chief of the fire department shall be responsible for the discipline of members and is hereby given the authority to suspend or expel any member for the refusal to obey orders, or for misconduct or failure to do his duty at a fire. The chief shall also have the right to summon any and all able-bodied persons of legal age present to aid in extinguishing a fire or to aid in removing personal property from any building on fire or in danger thereof, and in guarding the same, until such time as the sheriff's department or city police shall arrive to serve such purpose. (Ord. 443, Sec. 4)

6-105. CHIEF; POWERS, DUTIES. The chief of the fire department shall have full power, control and command over all persons whomsoever present at fires, and he shall direct the use of all fire apparatus and equipment, and command all firefighters in the discharge of their duties. The chief shall take such measures as he may deem

necessary in the preservation and protection of property and the extinguishing of fires. (Ord. 443, Sec. 5)

6-106. RECORDS. The chief of the fire department shall keep in convenient form a complete record of all fires. Such information shall include the time and location, construction of building, owner, occupancy, how extinguished, value of building and contents, loss on building and contents, insurance on building and contents, members responding to the alarm, and any other information deemed advisable. (Ord. 443, Sec. 6)

6-107. CHIEF; PREVENTION OF FIRES. It shall be the duty of the chief of the fire department to adopt all prudent measures for the prevention of fires and for this purpose he or his designated assistant may, upon request of the legal resident of any building enter the same; or wherever the fire chief has visual or other actual knowledge that the safety of life and property demands it, enter any building, yard or premises in the city for the purpose of inspection and where dangerous, unsafe or hazardous conditions are found to exist the chief shall give such directions for the alteration, change or removal or better care or management of the same as he may deem proper. Such directions shall be obeyed and complied with by the property owner or resident at their expense when the property owner, acting upon the advice of a qualified electrician, disagrees with the opinion of the fire chief or the assistant the changes deemed necessary by the fire chief shall be subject to review by the mayor. (Ord. 443, Sec. 7)

6-108. ASSISTANT FIRE CHIEF. In the absence of the fire chief, the assistant chief shall perform all the duties and have all the authority and responsibility of the chief as conferred by this article. (Ord. 443, Sec. 8)

6-109. RIGHT-OF-WAY; APPARATUS, EQUIPMENT. All fire apparatus and equipment is hereby given and granted the exclusive right-of-way over and through all streets, avenues, alleys and public thoroughfares in the city while en route to fires or in response to any alarm of fire, and no person or persons shall in any manner obstruct or hinder the apparatus as aforesaid stated. (Ord. 443, Sec. 9)

6-110. DRIVE OVER FIRE HOSE. It shall be unlawful for any person or persons to drive any wagon, carriage, automobile, truck, locomotive, railroad car or any other vehicle over any fire hose laid in any street, avenue, alley, bridge or vacant lot: PROVIDED, That this section shall not apply to any apparatus or vehicle belonging to the fire department. (Ord. 443, Sec. 10)

6-111. FIRE HYDRANT; OBSTRUCTIONS. No person shall place or cause to be placed upon or about any fire hydrant any rubbish, building material, fence, or other obstruction of any character whatsoever in any manner to obstruct, hinder, or delay the fire department in the performance of its duties in case of fire. Nor shall any person hitch or cause to be hitched to any fire hydrant, any animal or animals, nor fasten to same any guy rope or brace, nor back or stand any wagon, truck, automobile or other vehicle within 15 feet of any such hydrant. (Ord. 443, Sec. 11)

6-112. FALSE ALARM. It shall be unlawful for any person to make or sound or cause to be made or sounded or by any other means any false alarm of fire without reasonable cause. (Ord. 443, Sec. 12)

6-113. PRIVATE USE OF EQUIPMENT. No person shall use any fire apparatus or equipment for any private purpose, nor shall any person willfully and without proper authority, remove, take away, keep or conceal any tool, appliance or other article used in any way by the fire department. (Ord. 443, Sec. 13)

6-114. PENALTY. Any person violating any of the provisions of this article or refusing or neglecting to comply with any of the requirements thereof, shall, upon conviction, be deemed guilty of a misdemeanor, and fined not more than $100 or be imprisoned for not more than three months, or may be both so fined and imprisoned. (Ord. 443, Sec. 14)

## ARTICLE 2. FIRE PREVENTION

6-201. FIRE PREVENTION CODE INCORPORATED. There is hereby adopted and incorporated by reference by the City of Oberlin, under the provisions of Section 12-3009:3012 of the Kansas Statutes Annotated, the Fire Prevention Code, 1976 Edition, Supplemented by the November, 1982 Amendments, recommended by American Insurance Association, 85 John Street, New York, New York 10038 of which edition no fewer than three copies are filed in the office of the city clerk and the same is hereby incorporated by reference as if set out at length herein. (Ord. 456, Sec. 1; Code 1985)

6-202. DEFINITION. Wherever the word "municipality" is used in the code hereby incorporated by reference, it shall be held to mean the City of Oberlin. (Ord. 456, Sec. 2)

6-203. FIRE PREVENTION INSPECTOR. There is hereby created the office of fire prevention inspector, who shall have the duty of enforcing this code. (Ord. 456, Sec. 3)

6-204. RESTRICTED DISTRICTS. (a) The limits referred to in Section 16.22 of the code are hereby adopted in which storage of flammable liquids in outside above ground tanks is restricted; (b) the limits referred to in section 21.6 of the code are hereby adopted in which bulk storage of liquified petroleum gas is restricted.; (c) the limits referred to in section 12.5 of the code are hereby adopted in which storage of explosives and blasting agents is prohibited; (d) No above ground storage of section 16.22 and section 21.6 items in excess of 50 gallons are permitted except where in existence on February 5, 2004; (e) no section 12.5 items are permitted in the city limits. (Ord. 787, Sec. 1)

6-205. MODIFICATIONS. The fire prevention inspector shall have power to modify any of the provisions of the Fire Prevention Code upon application in writing by the owner or lessee, or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code: provided, that the spirit of the code shall be observed, public safety secured, and substantial justice done. The particulars of

such modification when granted or allowed and the decision of the fire prevention inspector thereon shall be entered upon the records of the department and a signed copy shall be furnished the applicant. (Ord. 456, Sec. 5)

6-206. APPEALS. Whenever the fire prevention inspector shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire prevention inspector to the city council within 30 days from the date of the decision appealed. (Ord. 456, Sec. 6)

6-207. PENALTY. Any person who shall violate any of the provisions of the Fire Prevention Code incorporated by reference in section 6-201 of this article or fail to comply thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance respectively, for which a penalty is not otherwise provided, be guilty of a misdemeanor, punishable by a fine of not less than $5 nor more than $100 or by imprisonment of not less than five days nor more than 30 days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue. All such persons shall be required to correct or remedy such violation or defects within a reasonable time. When not otherwise specified, each 10 days that prohibited conditions are maintained shall constitute a separate offense.

The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions. (Ord. 456, Sec. 9)

## ARTICLE 3. FIREWORKS

6-301. SALE, DISCHARGE. It shall be unlawful for any person to sell, offer for sale or fire any fireworks or pyrotechnics within the city except from the 27th day of June to the 5th day of July of each year, inclusive. (Ord 669, Sec. 1)

6-302. DISCHARGE OF FIREWORKS; LOCATION. It shall be unlawful for any person to discharge or set off any fireworks or pyrotechnics within the city limits between the hours of 12:00 midnight and 6:00 a.m. of any day on which it is otherwise lawful to fire or set off fireworks. It shall be unlawful for any person to discharge or set off any fireworks or pyrotechnics, within the following areas within the city limits at any time whatever, to wit:

On Penn Avenue, between Maple Street on the north to Victoria Street on the south.

(Ord. 669, Sec. 2)

6-303. STATE LAWS; REGULATIONS. It shall be unlawful and a violation of this article for any person to violate any of the laws, rules and regulations of the State of Kansas, made by the legislature thereof, or by the State Fire Marshal. (Ord. 669, Sec. 3)

# CHAPTER VII. HEALTH AND WELFARE

Article 1. Board of Health
Article 2. Health Nuisances
Article 3. Weeds
Article 4. Junked Motor Vehicles on Private Property
Article 5. Minimum Housing Code
Article 6. Insurance Proceeds Fund

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## ARTICLE 1. BOARD OF HEALTH

7-101. BOARD OF HEALTH. There hereby is created a board of health for the city. The board shall consist of the mayor, city clerk and the city marshal-chief of police of the city. The mayor of the city shall be the chairperson of the board, and the city clerk shall be the secretary of the board. The board may adopt such rules and regulations as may be deemed necessary to carry out the provisions of this article, ordinances of the city and the statutes of the State of Kansas, in regard to health and vital statistics. (Ord. 265, Sec. 1)

7-102. DUTIES OF THE BOARD. It shall be the duty of the board of health to prescribe rules and regulations to be approved by the city council of the city for carrying out the ordinances of the city and for carrying out the laws of the State of Kansas, relating to public health and vital statistics, and it shall perform such duties and have such powers as are imposed upon it by the ordinances of the city, and the laws of the State of Kansas. (Ord. 265, Sec. 2)

7-103. PENALTY. Any person violating, refusing or neglecting to obey any of the rules and regulations or procedures made by the board of health of the city or by the state board of health for the prevention, suppression and control of a dangerous, contagious, infectious or communicable diseases, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in an amount of not more than $500 for each offense, or to imprisonment not to exceed 30 days, or to both such fine and imprisonment. Upon failure to pay such fine he or she shall be imprisoned in the city jail until same are paid. (Ord. 265, Sec. 3, Ord. 857)

## ARTICLE 2. HEALTH NUISANCES

7-201. NUISANCES UNLAWFUL; DEFINED. It shall be unlawful for any person to maintain or permit any nuisance within the city as defined, without limitation, as follows:

(a) Excrement, lumber, rocks, dirt, cans, paper, trash, metal or any other substance thrown or left or deposited upon any street, avenue, alley, sidewalk, park, public enclosure or lot whether vacant or occupied;

(b) All dead animals not removed within 24 hours after death;

(c) Any place or structure or substance which emits or causes any offensive, disagreeable or nauseous odors;

(d) All stagnant ponds or pools of water;

(e) Abandoned freezers or refrigerators kept on the premises under the control of any person, or deposited on the sanitary landfill, or any freezer or refrigerator not in actual use unless the door, opening or lid thereof is unhinged, or unfastened and removed therefrom, provided however that said freezer or refrigerator may be locked with a hasp and padlock or with a chain and padlock;

(g) All articles or things whatsoever caused, kept, maintained or permitted by any person to the physical injury or inconvenience of the public or of any neighborhood;

(h) Any fence, structure, thing or substance placed upon or being upon any street, sidewalk, alley or public ground so as to obstruct the same, except as permitted by the laws of the city.

(K.S.A. 21-4106:4107; Code 1989, Ord 857)

7-202. PUBLIC OFFICER. The governing body shall designate a public officer to be charged with the administration and enforcement of this article. (Code 1989)

7-203. COMPLAINTS; INQUIRY AND INSPECTION. The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing that specify the precise conditions alleged to be in violation of the health nuisance provision, signed by two or more persons who are residents of the city or whom own real property in the city and who are over the age of eighteen (18) stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when complaints are made in accordance with this section. Upon making any inquiry and inspection the public officer shall make a written report of findings. (Code 1989, Ordinance 846, Ordinance 849, Ord.857)

7-204. RIGHT OF ENTRY. It shall be a violation of this code to deny the public officer the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists. (Code 1989)

7-205. NOTICE. Any person, corporation, partnership or association found by the public officer to be in violation of section 7-201 shall be served a notice of such violation. The notice shall be served by certified mail, postage prepaid, return receipt requested; provided, that if the owner or his or her agent in charge of the property is a resident of

Decatur County, Kansas, the notice shall be personally served by the public officer or a law enforcement officer. (K.S.A. 12-1617e; Code 1989)

7-206. SAME; CONTENTS. The notice shall state the condition(s) which is (are) in violation of section 7-201. The notice shall also inform the person, corporation, partnership or association that

(a) He, she or they shall have 10 days from the date of receiving the notice to abate the condition(s) in violation of section 7-201; or

(b) He, she or they have 10 days from the date of receiving the notice to request a hearing before the governing body of the matter as provided by section 7-209;

(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 7-207 and/or abatement of the condition(s) by the city as provided by section 7-208.

(d) Receipt of notice occurs the date when actual receipt occurs or the date when the notice is refused or undelivered.

(Code 1989, Ord 857)

7-207. FAILURE TO COMPLY; PENALTY. Should the person, corporation, partnership or association fail to comply with the notice to abate the nuisance or request a hearing the public officer may file a complaint in the municipal court of the city against such person, corporation, partnership or association and upon conviction of any violation of provisions of section 7-201, be fined in an amount not to exceed $100 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense. (Code 1989)

7-208. ABATEMENT. In addition to, or as an alternative to prosecution as provided in section 7-207, the public officer may seek to remedy violations of this section in the following manner. If a person to whom a notice has been sent pursuant to section 7-205 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 7-206, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in section 7-210. A copy of the resolution shall be served upon the person in violation in one of the following ways:

(a) Personal service upon the person in violation;

(b) Service by restricted mail, postage prepaid, return receipt requested; or

(c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive

weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.
(Code 1989)

7-209. HEARING. If a hearing is requested within the 10 day period as provided in section 7-206, such request shall be made in writing to the city office. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer before the governing body. The hearing shall be held by the governing body as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the governing body shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person in the manner provided in section 7-208. (Code 1989, Ord 857)

7-210. COSTS ASSESSED. If the city abates the nuisance pursuant to section 7-208, the cost of abatement shall be charged against the lot or parcel of ground on which the nuisance was located. The city clerk shall, at the time of certifying other taxes to the county clerk, certify the costs as provided in this section. The county clerk shall extend the same on the tax roll and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. (Code 1989)

## ARTICLE 3. WEEDS

7-301. WEEDS TO BE REMOVED. It shall be unlawful for any owner, agent, lessee, tenant, or other person occupying or having charge or control of any premises to permit weeds to remain upon said premises or any area between the property lines of said premises and the centerline of any adjacent street or alley, including but not specifically limited to sidewalks, streets, alleys, easements, rights-of-way and all other areas, public or private. All weeds as hereinafter defined are hereby declared a nuisance and are subject to abatement as hereinafter provided. (Code 1989)

7-302. DEFINITIONS. Weeds as used herein, means any of the following:

(a) Weeds and indigenous grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;

(b) Weeds which bear or may bear seeds of a downy or wingy nature.

(c) Weeds which are located in an area which harbors rats, insects, animals, reptiles, or any other creature which either may or does constitute a menace to health, public safety or welfare;

(d) Weeds and indigenous grasses on or about residential property which, because of its height, has a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed 12 inches in height.
(Code 1989, Ord 857)

7-303. PUBLIC OFFICER; NOTICE TO REMOVE. The governing body shall designate a public officer to be charged with the administration and enforcement of this article. The public officer or an authorized assistant shall notify the owner, or his or her agent in charge of any premises in the city upon which weeds exist in violation of this article, by mail or by personal service. Such notice shall include the following:

(a) That the owner, occupant or agent in charge of the property is in violation of the city weed control law.

(b) That the owner, his or her agent, or the person in charge of the property is ordered to cut the weeds within 10 days of the mailing of the notice and to keep such weed cut during the remainder of the calendar year.

(c) That the owner, his or her agent, or the person in charge of the property may request a hearing before the governing body or its designated representative within seven days of the mailing of the notice.

(d) That if the owner, his or her agent, or the person in charge of the property does not cut the weeds and keep the weeds cut for the remainder of the calendar year, the city or its authorized agent will cut the weeds and assess the cost of the cutting, including a progressively increasing administrative fee, against the owner, his or her agent, or the person in charge of the property.

(e) That the owner or his or her agent in charge of the property will be given an opportunity to pay the assessment, and, if it is not paid, it will be added to the property tax as a special assessment.

(f) That the public officer should be contacted if there are any questions regarding the order.

(g) Only one notice is required to be mailed as to any one property during a calendar year. Even if the owner, his or her agent, or the person in charge of the property mow such weeds once upon receipt of the notice, if they fail to continue mowing such weeds to the point that the property is in violation of the city code again during the calendar year, the city is entitled to mow the property without notice during the calendar year.

If the owner or his or her agent in charge of the property cannot be served in the above manner, service may be made by publishing one notice in the official city newspaper. If notice is made by publication, the owner or his or her agent in charge of the property will be ordered to cut the weeds within 10 days from the date of publication. (Code 1989, Ordinance 735)

7-304. ABATEMENT; ASSESSMENT OF COSTS. (a) Upon the expiration of 10 days after the mailing of the notice required by section 7-303, and in the event that the

owner or his or her agent in charge of the premises shall neglect or fail to comply with the requirements of section 7-301, the public officer or an authorized assistant shall cause to be cut, destroyed and/or removed all such weeds and abate the nuisance created thereby at any time during the current calendar year. Nothing shall require the mailing of more than one notice in any calendar year.

(b) The public officer or an assistant shall give notice to the owner or his or her agent in charge of the premises by restricted mail of the costs of abatement of the nuisance. The notice shall state that payment of the costs is due and payable within 30 days following receipt of the notice.

(c) If the costs of removal or abatement remain unpaid after 30 days following receipt of notice, a record of the costs of cutting and destruction and/or removal shall be certified to the city clerk who shall cause such costs to be assessed against the particular lot or piece of land on which such weeds were so removed, and against such lots or pieces of land in front of or abutting on such street or alley on which such weeds were so removed. The city clerk shall certify the assessment to the county clerk at the time other special assessments are certified for spreading on the tax rolls of the county.

(K.S.A. 12-1617f; Code 1989, Ordinance 735)

7-305. RIGHT OF ENTRY. The public officer, and the public officer's authorized assistants, employees, contracting agents or other representatives are hereby expressly authorized to enter upon private property at all reasonable hours for the purpose of cutting, destroying and/or removing such weeds in a manner not inconsistent with this article. (Code 1989)

7-306. UNLAWFUL INTERFERENCE. It shall be unlawful for any person to interfere with or to attempt to prevent the public officer or the public officer's authorized representative from entering upon any such lot or piece of ground or from proceeding with such cutting and destruction. Such interference shall constitute a code violation. (Code 1989) Punishment for conviction of said code violations shall be as provided in Chapter 12-212(d). (Fine not to exceed $500.00.)

7-307. NOXIOUS WEEDS. (a) Nothing in this article shall affect or impair the rights of the city under the provisions of Chapter 2, Article 13 of the Kansas Statutes Annotated, relating to the control and eradication of certain noxious weeds.

(b) For the purpose of this section, the term noxious weeds shall mean kudzu (Pueraria lobata), field bindweed (Convolvulus arvensis), Russian knapweed (Centaurea picris), hoary cress (Lepidium draba), Canada thistle (Cirsium arvense), quackgrass (Agropyron repens), leafy spurge (Euphorbia esula), burragweed (Franseria tomentosa and discolor), pignut (Hoffmannseggia densiflora), musk (nodding) thistle (Carduus nutans L.), and Johnson grass (Sorghum halepense).

(K.S.A. 2-1314; Code 1989)

## ARTICLE 4. JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY

7-401. FINDINGS OF GOVERNING BODY. The governing body finds that junked, wrecked, dismantled, inoperative or abandoned vehicles affect the health, safety and general welfare of citizens of the city because they:

(a) Service as a breeding ground for flies, mosquitoes, rats and other insects and rodents;

(b) Are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or other supports;

(c) Are a ready source of fire and explosion;

(d) Encourage pilfering and theft;

(e) Constitute a blighting influence upon the area in which they are located;

(f) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures.

(Code 1997, Ord 775)

7-402. DEFINITIONS. As used in this article, unless the context clearly indicates otherwise:

(a) Vehicle means, without limitation, any automobile, truck, semi-tractor, farm tractor or motorcycle which as originally built contained an engine, regardless of whether it contains an engine at any other time.

(b) Junked means a state of ruin. Vehicles in the state of decay or dilapidation. Vehicles that are demolished, squandered or in a state of dangerous destruction.

(c) Wrecked means a state of ruin. Vehicles damaged by accident containing broken glass and sharp metal protrusions that pose a danger to citizens and especially children. A state of dangerous destruction, demolition, dilapidation or decay.

(d) Abandoned means to be deserted, left behind or discarded.

(e) Inoperable means not working or functioning properly; unable to perform the function or purpose for which it was originally constructed; (Ord 775)

7-403 NUISANCES UNLAWFUL; DEFINED; EXCEPTIONS. It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.

(a) A motor vehicle nuisance is any motor vehicle upon which taxes are not being paid unless otherwise exempt from taxation, parked in violation of city ordinance, or in a junked, wrecked or abandoned condition. Any one of the following conditions shall raise the presumption that a vehicle is junked, wrecked or abandoned:

(1) Failure to list and/or register the vehicle for tax purposes and to pay said tax unless said vehicle is exempt from taxation;

(2) Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;

(3) Vehicle is grown up in weeds, or where signs of broken glass, no wheels or sharp metal protrusions exist;

(b) The provisions of this section shall not apply to:

(1) Any vehicle which is enclosed in a garage or other building;

(2) To any person conducting a business enterprise in compliance with existing zoning regulations

(3) To any person who places such vehicles behind screening of sufficient size, strength and density, as approved by the Board of Zoning Appeals, to screen such vehicles from the view of the public and to prohibit ready access to stored vehicles by children. However, nothing in this subsection shall be construed to authorize the maintenance of a public nuisance.

(4) To any demolition derby vehicle being actively used during the derby season.

(5) To any race car being actively maintained for use.

(6) To the parking or storage of a vehicle inoperable for a period of 60 consecutive days.

(7) To any classic, antique, or collector vehicle provided it is listed and/or registered for tax purposes and the tax is actually paid. Consideration may be given to vehicles used for parts. This does not however, in any way, authorize the maintenance of a public nuisance. (Ord 775)

7-404 PUBLIC OFFICER. The mayor with the consent of the council shall designate a public officer to be charged with the administration and enforcement of this article. (Ord 775)

7-405 COMPLAINTS; INQUIRY AND INSPECTION. The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings. (Ord 775)

7-406 RIGHT OF ENTRY. It shall be a violation of this article to deny the public officer the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists. (Ord 775)

7-407. NOTICE. Any person found by the public officer to be in violation of section 3 shall be served a notice of such violation. The notice shall be served by restricted mail, postage prepaid, return receipt requested; provided, that if the owner or his or her agent in charge of the property is a resident of Decatur County, Kansas, the notice shall be personally served by the public officer or a law enforcement officer. (Ord 775)

7-408 SAME; CONTENTS. The notice shall state the condition(s) which is (are) in violation of 7-403. The notice shall also inform the person that:

(a) He, she or they shall have 20 days from the date of serving the notice to abate the condition(s) in violation of section 3; or

(b) He, she or they have 20 days from the date of serving the notice to request a hearing before the governing body of the matter as provided by section 11;

(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by 7-409. (Ord 775)

7-409 FAILURE TO COMPLY; PENALTY. Should the person fail to comply with the notice to abate the nuisance or request a hearing, the public officer may file a complaint in the municipal court of the city against such person and upon conviction of any violation of provisions of section 3, be fined in an amount not to exceed $500 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense. Upon conviction, the court may also order the public officer to abate the nuisance and assess the cost of same to the person convicted. (Ord 775, Ord 857)

7-410 DISPOSITION OF VEHICLE. Disposition of any motor vehicle removed and abated from private property pursuant to this article shall be as provided by K.S.A. Supp. 8-1102, as amended. (Ord 775)

7-411 HEARING. If a hearing is requested within the 20 day period as provided in section 8, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer before the governing body. The hearing shall be held by the governing body as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the governing body shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person in the matter provided in 7-407. (Ord 775)

7-412 COSTS ASSESSED. If the city abates the nuisance pursuant to this ordinance, the cost of abatement shall be charged against the lot or parcel of ground on which the nuisance was located. The city clerk shall, at the time of certifying other taxes to the county clerk, certify the costs as provided in this section. The county clerk shall extend the same on the tax roll and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. (Ord 775)

## ARTICLE 5. MINIMUM HOUSING CODE

7-501. TITLE. This article shall be known as the "Minimum Standard for Housing and Premises Code," and will be referred to herein as "this code" or "this article." (Ord. 459, Sec. 1)

7-502. GENERAL. Buildings used in whole or in part as a home or residence of a single family or person and every building used in whole or in part as a home or residence of two or more persons or families living in separate apartments and all premises, either residential or non-residential, shall conform to the requirements of this article. (Ord. 459, Sec. 2)

7-503. DECLARATION OF POLICY. The city council declares the purpose of this article is to protect, preserve, and promote the physical and mental health of the people, investigate and control communicable diseases, regulate privately and publicly-owned structures or

dwellings, and all premises for the purpose of sanitation and public health, general appearance, and protect the safety of the people and promote the general welfare by legislation which shall be applicable to all dwellings, structures and premises now in existence or hereafter constructed or developed and which legislation provides for:

(a) Establishes minimum standards for basic equipment and facilities for light, ventilation and heating, for safety from fire, for the use and location and amount of space for human occupancy, and for safe and sanitary maintenance;

(b) Establishment of standards concerning unsightly and blighted buildings and premises, both residential and non-residential structures.

(c) Determining the responsibilities of owners, operators and occupants.

(d) The administration and enforcement thereof.

(Ord. 459, Sec. 3)

7-504. DEFINITIONS. The following definitions shall apply to the enforcement of this article:

(a) Basement shall mean a portion of a building located partly underground, but having less than half its clear floor-to-ceiling height below the average grade of the adjoining ground;

(b) Cellar shall mean a portion of a building located partly or wholly underground, and having half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground;

(c) Dwelling shall mean any building which is wholly or party used or intended to be used for living or sleeping by human occupants: provided, that temporary housing hereinafter defined shall not be regarded as a dwelling;

(d) Dwelling Unit shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used, or intended to be used for living, sleeping, cooking and eating;

(e) Habitable Dwelling shall mean any structure or part thereof that shall be used as a home or place of abode by one or more persons;

(f) Habitable Room shall mean a room designed to be used for living, sleeping, eating or cooking purposes, excluding bathrooms, toilet rooms, closets, halls and storage places, or other similar places, not used by persons for extended periods;

(g) Infestation shall mean the presence, within or around a dwelling, of insects, rodents, or other pests;

(h) Multiple Dwelling shall mean any dwelling containing more than two dwelling units;

(i) Occupant shall mean any person, over one year of age, living, sleeping, cooking, or eating in, or having actual possession of, a dwelling unit or rooming unit;

(j) Operator shall mean any person who has charge, care, owns, or has control of a premise or of a building or structure or part thereof, in which dwelling units or rooming units are let;

(k) Owner shall mean any person, firm, or corporation, who jointly or severally along with others, shall be in actual possession of, or have charge, care and control of any structure or dwelling unit or premises within the city as owner, employee, or agent of the owner, or as trustee or guardian of the estate or person of the title holder, and such person shall be deemed and taken to be the owner or owners of such property within the true intent and meaning of this article and shall be bound to comply with the provisions to the same extent as the record owner and notice to any such person shall be deemed and taken to be a good and sufficient

notice as if such person or persons were actually the record owner or owners of such property;

(l) Person shall mean and include any individual, firm, corporation, association or partnership;

(m) Plumbing shall mean and include all of the following supplied facilities and equipment:

(1) Gas or fuel pipes,
(2) Gas or fuel burning equipment,
(3) Water pipes,
(4) Garbage disposal units,
(5) Waste pipes,
(6) Water closets,
(7) Sinks,
(8) Installed dishwashers,
(9) Lavatories,
(10) Bathtubs,
(11) Shower baths,
(12) Installed clothes- washing machines,
(13) Catch basins,
(14) Drains,
(15) Vents and any other similar supplied fixtures, together with connections to water, sewer, gas or fuel lines.

(n) Premise shall mean any lot or land area, either residential or non- residential, not covered by a structure and which is within the limits of the city;

(o) Public Officer shall mean the city building inspector;

(p) Rooming House shall mean any dwelling, or that part of a dwelling containing one or more rooming units, in which space is let by the owner or operator to three or more persons who are not husband and wife, son or daughter, mother or father, or sister and brother of the owner or operator;

(q) Rooming Unit shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes;

(r) Refuse. For the purpose of this article refuse shall include garbage, and trash;

(1) Garbage shall mean any accumulation of animal, fruit or vegetable waste matter that attends the preparation of, use of, cooking of, delivering of, or storage of meats, fish, fowl, fruit or vegetable.

(2) Trash (Combustible). For the purpose of this article combustible trash shall mean waste consisting of papers, cartons, boxes, barrels, wood and excelsior, tree branches, yard trimmings, wood furniture, bedding and leaves, or any other combustible materials.

(3) Trash (Non-Combustible). For the purpose of this article non-combustible trash shall mean waste consisting of metals, tin cans, glass, crockery, other mineral refuse and ashes and street rubbish and sweepings, dirt, sand, concrete scrap, or any other non-combustible material.

(s) Structure shall mean anything constructed or erected on the ground or attached to something having a location on the ground.

(t) Supplied shall mean paid for, furnished, or provided by or under the control of, the owner or operator.

(u) Temporary Housing shall mean any tent, trailer, or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, house or building or another structure, or to any utilities system on the same premises for more than 30 consecutive days, except when located in a mobile home court duly licensed under ordinances of the city;

(v) Words - Meanings. Whenever the words "dwelling," "dwelling unit," "rooming house," "rooming unit," "premises," are used in this article, they shall be construed as though they were followed by the words "or any part thereof."
(Ord. 459, Sec. 4)

7-505. DUTY OF OCCUPANT OR OWNER OF OCCUPIED OR UNOCCUPIED BUILDING; PREMISES. Provisions relating to the duty of occupants or owners of occupied or unoccupied buildings and premises or vacant premises shall be as follows:

(a) It shall be the duty of the owner of every occupied or unoccupied dwelling, building and premises or vacant premise, including all yards, lawns and courts to keep such property clean and free from any accumulation of filth, rubbish, garbage, or any similar matter as covered by sections 7-508:509 of this article;

(b) It shall be the duty of each occupant of a dwelling unit to keep in clean condition the portion of the property which he or she occupies and of which he or she has exclusive control, to comply with the rules and regulations, to place all garbage and refuse in proper containers. Where care of the premise is not the responsibility of the occupant then the owner is responsible for violations of this article applicable to the premise;

(c) If receptacles are not provided by the owner, then the occupant shall provide receptacles as may be necessary to contain all garbage and trash;

(d) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his or her dwelling unit is the unit primarily infested;

(e) Notwithstanding, the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a vermin proof or reasonable insect-proof condition, extermination shall be the responsibility of the owner and operator;

(f) Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner.
(Ord. 459, Sec. 5)

7-506. REGULATIONS; USE; OCCUPANCY OF DWELLINGS. No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living, sleeping, cooking, or eating therein, which does not comply with the following requirements. The following requirements are hereby

declared essential to the health and safety of the occupants of such dwelling or dwelling unit:

(a) Basement or Cellar. The basement or cellar of any dwelling shall be reasonably dry and ventilated and shall be kept free from rubbish accumulation;

(b) Basement Dwelling Units. The use of basements or cellars for dwelling units is prohibited unless they comply with subsection (r) of this section governing ventilation, provided however, if occupied at the time of the passage of this code, the public officer may approve less than the required windows, if in his or her opinion, the window area is not detrimental to the occupants;

(c) Bathing Facilities. Every dwelling unit shall contain within a room which affords privacy to a person in the room, a bathtub or shower in good working condition and properly connected to an approved water and sewer system;

(d) Boarding and Rooming Houses. No room shall be used for sleeping purposes unless the ceiling height is at least seven feet and there are at least 400 cubic feet of air space for each occupant over six years of age. For sleeping rooms with sloping ceilings, the ceiling height shall be at least seven feet over at least 50 percent of the floor area;

(1) Bathing facilities shall be provided in the form of a tub or shower for each eight occupants. Separate facilities shall be provided for each sex and plainly marked.

(2) A flush water closet shall be provided for each six occupants and shall be separated with the separate access from bathing facilities if more than four occupants are served by each. Separate facilities shall be provided for each sex and shall be plainly marked.

(e) Drainage. All courts, yards or other areas on the premises of any dwelling shall be so graded and drained that there is no pooling of the water thereon. Properly constructed wading and swimming pools and fish ponds are excepted from this section;

(f) Entrances.

(1) There shall be for each dwelling unit a separate access either to a hallway, stairway, or street, which is safe and in good repair.

(2) A secondary exit to the ground shall be available in case of fire through windows, porch roofs, ladders or any combination that is free of hazard or egress.

(g) Floor Area. Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof. The floor space shall be calculated on the basis of total habitable room area, inside measurements. No floor space shall be included in determining habitable room area over which the ceiling is less than six feet above the floor for the purpose of this subsection;

(h) Garbage and Trash Receptacles. Every dwelling and every dwelling unit shall be provided with refuse containers as provided in section 7-205 of this code;

(i) Heating. Every dwelling and every dwelling unit shall be so constructed, insulated, and maintained and be provided by owner or occupant with heating units so

that it is capable or reaching an air temperature of 70 degrees Fahrenheit under ordinary winter conditions. The chimney of the dwelling or dwelling unit shall be maintained in good order, and the owner of the approved heating equipment shall maintain it in good order and repair;

(j) Kitchen Sink. In every dwelling unit containing two or more rooms, there shall be at least one kitchen sink with public water under pressure and connected to the public sewer, or if that sewer system is not available, to a sewage disposal system approved by the city health officials;

(k) Lavatory Facilities. Every dwelling unit shall contain within its walls a lavatory basin in good working condition and properly connected to an approved water and sewer system and located in the same room as the required flush water closet or as near to the room as practicable;

(l) Lighting. Every habitable room shall have a ceiling electric outlet and a duplex outlet in wall or floor, or at least two wall or floor outlets;

(m) Lighting of Toilets and Bathrooms. Every toilet and every bathroom in every dwelling shall have at least one electric light in either the ceiling or on the wall;

(n) Plumbing. All plumbing, water closets and other plumbing fixtures in every dwelling or dwelling unit shall be maintained in good working order;

(o) Privies. All pit privies, privy vaults, "dry hopper" sewer-connected privies and frost-proof closets are hereby declared to be a public nuisance;

(p) Toilet Facilities. There shall be at least one flush water closet in good working condition for each dwelling unit, which flush water closet shall be located within the dwelling and in a room which affords privacy;

(q) Ventilation. Every habitable room in a dwelling or dwelling unit shall contain a window or windows openable directly to the outside air and the total area of such window or windows shall be not less than five percent of the floor area of such room. An approved system of mechanical ventilation or air conditioning may be used in lieu of openable windows;

(r) Water Heating Facilities. Every dwelling shall have supplied water heating facilities which are installed in an approved manner and are maintained and operated in a safe and good working condition and are properly connected with the hot water lines to the kitchen sink, lavatory and bathtub or shower;

(s) Windows and Doors. Every window and exterior door shall be reasonably weather-tight, lockable, and rodent-proof and shall be kept in good working condition and good repair;

(Ord. 459, Sec. 6)

7-507. MAINTENANCE AND REPAIR; DWELLINGS. Every dwelling and every part thereof shall be maintained in good repair by the owner or agent and be fit for human habitation. The roof shall be maintained so as not to leak and all rainwater shall be drained therefrom so as not to cause dampness in the walls or ceilings. All floors, stairways, doors, porches, windows, skylights, chimneys, toilets, sinks, walls, and ceilings shall be kept in good repair and usable condition. (Ord. 459, Sec. 7)

7-508. UNFIT DWELLINGS. Dwellings or dwelling units shall be declared as unfit for human habitation and placarded as unfit for human use or habitation whenever conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such structures, the occupants of neighboring structures or other residents of the neighborhood or which shall have a blighting influence on properties in the area.

(a) Such Conditions may include the following without limitation:

(1) Defects therein increasing the hazards of fire, accident, or other calamities.

(2) Lack of:

(i) Adequate ventilation.

(ii) Air pollution.

(iii) Light.

(iv) Cleanliness.

(v) Sanitary facilities.

(3) Dilapidation.

(4) Disrepair.

(5) Structural defects.

(6) Overcrowding.

(7) Inadequate ingress and egress.

(8) Unsightly appearance that constitute a blight to the adjoining property, the neighborhood or the city.

(b) Any dwelling or dwelling unit condemned as unfit for human habitation, and so designated and placarded by the public officer shall be vacated within a reasonable time as so ordered;

(c) No dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by the public officer;

(1) The public officer shall remove such placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated.

(2) It shall be unlawful for anyone to let, lease, occupy or permit the occupancy, whether for a consideration or not, of any dwelling so posted and any violation of this provision shall constitute a public offense within the meaning of this code.

(3) It shall be unlawful for any person to deface or remove the placard from any dwelling or dwelling unit which has been condemned as unfit for human habitation and placarded as such, except the public officer as herein provided, and any violation of this provision shall constitute a public offense within the meaning of this code.

(Ord. 459, Sec. 8)

7-509. DESIGNATION; BLIGHTED. Any premise may be declared unsightly and blighted whenever it is found that the appearance of the property is not commensurate

with the character of other properties in the neighborhood or that it otherwise constitutes a blight to the adjoining property, the neighborhood or the city for such reasons as, but not limited to:

(1) Dead trees or other unsightly natural growth.

(2) Unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation, inadequate drainage.

(3) Or other law or regulations relating to the use of land and the use and occupancy of the buildings and improvements.

(Ord. 459, Sec. 9)

7-510. INSPECTION; BUILDINGS, STRUCTURES, PREMISES. Provisions relating to the inspection of buildings, structures and premises shall be as follows:

(a) For the purpose of determining compliance with the provisions of this code, the public officer or his or her authorized representative is hereby authorized to make inspections to determine the condition, use, and occupancy of dwellings, dwelling units, rooming units, and the premises upon which the same are located. This requirement is applicable to existing dwellings or buildings.

(b) The Public Officer is not limited by the conditions in the above subsection (a) where new construction or vacant premises are involved and may make such inspections at any appropriate time.

(c) The Owner, Operator, and Occupant of every dwelling, dwelling unit, and rooming unit shall give the public officer, or his or her authorized representative, during reasonable hours, free access to such dwelling, dwelling unit, and rooming unit, and its premises, for the purpose of such inspection, examination and survey after identification by proper credentials.

(d) Every Occupant of a dwelling shall give the owner thereof, or his or her authorized agent or employee, access to any part of such dwelling, or its premises, at all reasonable times, for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this code or with any rule or regulation adopted and promulgated, or any order issued pursuant to the provisions of this article.

(Code 1997)

7-511. NOTICE OF VIOLATIONS; PROCEDURES. Rules and regulations pertaining to notices of violations and procedures in serving notices shall be as follows:

(a) Whenever a petition is filed with the public officer or by at least five residents of the municipality in writing charging any violation under this article, or whenever it appears to the public officer (on his or her own motion) that any structure or premises is unfit for human use or habitation, or that there is any violation of this code or these standards, he or she shall, if his or her preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner, every mortgagee of record and all parties in interest in such structure or premises (including persons in possession) a complaint stating the charges in that respect. Such complaint shall contain a notice that a hearing will be held before the public officer or his or her

designated agent at a place therein fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner, mortgagee and parties in interest shall be given the right to file and answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint, and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer;

(1) After such notice, if it is determined that the structure or premises under consideration is unfit for human use or habitation, or that there is any violation of this article or of the standards set out in this code, the public officer shall state in writing of his or her findings of facts in support of such determinations and shall issue and cause to be served upon the owner thereof an order which provides for the removal, alteration or improvement of the cause of the violation of this code; provided, that if the violation consists of a deficiency of any kind in regard to the standards set out in this code as regards a building or structure, then there shall be served upon the owner thereof an order which:

(A) If the repair, alteration or improvement of the structure can be made at reasonable cost in relation to the value of the structure which cost in no case shall exceed 60 percent of the reasonable value of the structure, requires the owner, within the time specified in the order, to repair, alter, or improve such structure to render it fit for human use or habitation or to vacate and close the structure until conformance with this code; or

(B) If the repair, alteration or improvement of the structure cannot be made at a reasonable cost in relation to the value of the structure based on the limits as set out in (A) above, requires the owner, within the time specified in the order, to remove or demolish such structure.

(2) If the owner fails to comply with an order to remove or demolish the structure, the public officer may cause such structure to be removed or demolished;

(3) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the structure or premise, or to comply with any other reasonable order made hereunder, the public officer may cause such structure or premises to be repaired, altered or improved, or to be vacated and closed;

(4) The amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred and such lien, including as part thereof allowance of his or her costs and the necessary attorneys' fees, may be foreclosed in judicial proceedings in the manner provided or authorized by law for loans secured by liens on real property or shall be assessed as a special assessment against the lot or parcel of land on which the structure was located and the city clerk shall at the

time of certifying other city taxes, certify the unpaid portion of the aforesaid costs and the county clerk shall extend the same on the tax rolls of the county against the lot or parcel of land. If the structure is removed or demolished by the public officer he or she shall sell the materials of such structure and shall credit the proceeds of such sale against the cost of the removal or demolition and if there be any balance remaining it shall be paid to the parties entitled thereto as determined by proper judicial proceedings, including his or her necessary attorney's fees incurred therein, as determined by the court;

(5) Complaints or orders issued by the public officer pursuant to this article shall be served upon persons either personally or by registered or certified mail, but if the whereabouts of such persons is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two consecutive weeks in the official newspaper of Decatur County. A copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order shall be filed with the clerk of the district court of the county in which the structure is located and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law;

(6) Any person affected by an order issued by the public officer may petition the review board as provided in section 7-514 of this article. No action shall the county in which the property is located for an injunction restraining the public officer be taken to enforce any order of the public offices pending the final disposition of the cause; provided, that within 30 days after the posting and service of the order of the public officer, such person shall petition such court. Hearings shall be had by the court on such petition as soon thereafter as possible, and shall be given preference over other matters. (Ord. 459, Sec. 12)

7-512. PUBLIC OFFICER: AUTHORITY. The public officer referred heretofore is hereby authorized to enforce provisions of this code and all other ordinances which regulate or set standards affecting buildings and premises. (Ord. 459, Sec. 13)

7-513. DISCRETIONARY AUTHORITY. Discretionary authority may be exercised in specific cases where variance from the terms of the code:

(a) Will not adversely affect the public health, safety or welfare of inhabitants of the city;

(b) Is in harmony with the spirit of this code;

(c) Where literal enforcement of the code will result in unnecessary hardship. (Ord. 459, Sec. 14)

7-514. REVIEW BOARD; TERMS, VACANCIES. There is hereby created a review board which shall consist of three members all of whom shall be residents of the city. Members of the review board shall be appointed by the mayor with the consent of the city council. One member of the board shall be appointed to serve for a period of one year, one for a period of two years, and one for a period of three years from January 1, 1968. Thereafter members shall be filled by appointment for the term only. To provide liaison between the review board, the public officer and the city council, the mayor shall appoint one member of the city council as a fourth nonvoting member of the board. Members of the board shall serve without compensation. (Ord. 459, Sec. 15)

7-515. SAME; MEETINGS. The review board shall meet on call of the chairperson at such time and place as they may fix by resolution. They shall select one of their members as chairperson and one as vice chairperson and one as secretary, who shall serve one year and until their successors have been selected. A majority of the board shall constitute a quorum for the transaction of business. The board shall cause a proper record to be kept by the secretary of its proceedings. (Ord. 459, Sec. 16)

7-516. SAME; AUTHORITY, BUDGET. The review board is authorized to review all alleged violations of this code, and to hear appeals when any person feels aggrieved by any order, requirement, decision or determination by the public officer in enforcement of this article. On or before the first day of July of each year the review board shall submit to the mayor and city council its budget of expenditures for the ensuring fiscal year, itemizing the expenses and amounts. The city council shall thereupon consider the budget and make such allowances to the board as it shall determine proper and shall add the same to the general budget of the city. (Ord. 459, Sec. 17)

7-517. SAME; APPEALS. Any person, firm, or corporation considering themselves aggrieved by the decision of the public officer is hereby authorized and empowered to appeal to the review board in writing, within 10 days from the time of the decision, notice of which appeal shall be filed with the office of the city clerk. Upon receipt of such notice to appear, the city clerk shall notify in writing the secretary of the board of such appeal. The board shall, within 30 days of receipt of such notice determine a date for the hearing. Notice of the date for the hearing shall be sent to the appellant at least 10 days before the hearing. Every decision of the board of appeals shall be final, subject, however, to such remedy as any aggrieved party might have at law on in equity. (Ord. 459, Sec. 18)

7-518. CONFLICT OF ORDINANCES; EFFECT OF PARTIAL INVALIDITY. Whenever a conflict arises between the provisions of this article with any provision of any zoning, building, fire, safety, or health ordinance or code of the city, existing on the effective date of this article, the provisions shall prevail which establish the higher standard. If there are conflicts between this article with a provision of any other

ordinance or code of the city existing on the effective date of this code which established a lower standard, then the provisions of this article shall be deemed to prevail and such other ordinances or code are hereby declared to be repealed to the extent that they may be found in conflict with this article. (Ord. 459, Sec. 19)

7-519. VALIDITY. If any section, subsection, paragraph, sentence, clause, or phrase of this article should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this article which shall remain in full force and effect, and to this end the provisions of this article are hereby declared to be severable. (Ord. 459, Sec. 20)

7-520. PENALTY. Any person who shall violate any of the provisions of this article, or who shall violate or fail to comply with any order made thereunder, or any certificate or permit issued thereunder, shall severally for each and every such violation and noncompliance respectively, be guilty of a misdemeanor, punishable by a fine of not more than $500 or by imprisonment for not less than five days nor more than 30 days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each 10 days that prohibited conditions are maintained shall constitute a separate offense. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions. (Ord 857)

## ARTICLE 6. INSURANCE PROCEEDS FUND

7-601. SCOPE AND APPLICATION. The city is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the city, arising out of any fire, explosion, or windstorm, where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this article. (Code 1997)

7-602. LIEN CREATED. The governing body of the city hereby creates a lien in favor of the city on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the city, caused by or arising out of any fire, explosion, or windstorm, where the amount recoverable for all the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy(s) covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property by or on behalf of the city which is an encumbrance on real property, whether or not evidenced by written

instrument, or such tax, levy, assessment, expense or other charge that has remained undischarged for at least one year prior to the filing of a proof of loss. (Code 1997)

7-603. SAME; ENCUMBRANCES. Prior to final settlement on any claim covered by section 7-602, the insurer or insurers shall contact the county treasurer, Decatur County, Kansas, to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the county treasurer, Decatur County, Kansas. (Code 1989)

7-604. SAME; PRO RATA BASIS. Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure. (Code 1989)

7-605. PROCEDURE. (a) When final settlement on a covered claim has been agreed to or arrived at between the named insured or insureds and the company or companies, and the final settlement exceeds 75 percent of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto, shall have been paid, the insurance company or companies shall execute a draft payable to the city treasurer in an amount equal to the sum of 15 percent of the covered claim payment, unless the chief building inspector of the city has issued a certificate to the insurance company or companies that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt, or otherwise made the premises safe and secure.

(b) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.

(c) Upon the transfer of the funds as required by subsection (a) of this section, the insurance company shall provide the city with the name and address of the named insured or insureds, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the chief building inspector shall contact the named insured or insureds by registered mail, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this article.
(Code 1997)

7-606. FUND CREATED; DEPOSIT OF MONEYS. The city treasurer is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city treasurer as provided for by this article shall be placed in said fund and deposited in an interest-bearing account. (Code 1989)

7-607. BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE. (a) Upon receipt of moneys as provided for by this article, the city treasurer shall

immediately notify the chief building inspector of said receipt, and transmit all documentation received from the insurance company or companies to the chief building inspector.

(b) Within 20 days of the receipt of said moneys, the chief building inspector shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. 12-1750 et seq., as amended.

(c) Prior to the expiration of the 20 days established by subsection (b) of this section, the chief building inspector shall notify the city treasurer whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

(d) If the chief building inspector has determined that proceedings under K.S.A. 12-1750 et seq., as amended shall be initiated, he or she will do so immediately but no later than 30 days after receipt of the moneys by the city treasurer.

(e) Upon notification to the city treasurer by the chief building inspector that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the city treasurer shall return all such moneys received, plus accrued interest, to the insured or insureds as identified in the communication from the insurance company or companies. Such return shall be accomplished within 30 days of the receipt of the moneys from the insurance company or companies. (Code 1989)

7-608. REMOVAL OF STRUCTURE; EXCESS MONEYS. If the chief building inspector has proceeded under the provisions of K.S.A. 12-1750 et seq., as amended, all moneys in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured. (Code 1989)

7-609. SAME; DISPOSITION OF FUNDS. If the chief building inspector, with regard to a building or other structure damaged by fire, explosion, or windstorm, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the city treasurer under the authority of section 7-605(a) relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the chief building inspector shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the insurance proceeds paid over to the city treasurer under section 7-605(a), the chief building inspector shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred. (Code 1997)

7-610. EFFECT UPON INSURANCE POLICIES. This article shall not make the city a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy. (Code 1989)

7-611. INSURERS; LIABILITY. Insurers complying with this article or attempting in good faith to comply with this article shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any

amendments thereto, including withholding payment of any insurance proceeds pursuant to this article, or releasing or disclosing any information pursuant to this article. (Code 1989)

# CHAPTER VIII. LICENSES AND BUSINESS REGULATIONS

Article 1. Licenses Generally
Article 2. Green River Ordinance

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## ARTICLE 1. LICENSES GENERALLY

8-101. LICENSES. No person, firm or corporation, either as principal, agent or employee, shall peddle, canvas or solicit within the city, any of the occupations specified in section 8-102 of this article without having first obtained a license so to do, and having paid the occupation and/or license taxes hereinafter respectively prescribed therefor: provided, that such of the licenses as are required to vend or peddle in the city shall be issued free to those veterans and members of the American nurse corps described in K.S.A. 73-207 and 73-220, who have resided in Decatur County, Kansas, for six months prior to the time of issuance of the license. (Ord. 602, Sec. 1)

8-102. TAXES LEVIED. Peddlers, street vendors, solicitors, book agents, magazine salesmen or saleswomen, itinerant merchants and dealers, and transient vendors of merchandise, and each and every employee thereof, who intend to, or do, peddle, canvass or solicit from place to place, from house to house, on the streets of the city, or from vehicles in the city, for the purpose of selling or taking orders for goods, wares, merchandise, books or magazines, and owners, operators and employees of each temporary street stand, temporary place of business, or vehicle, on or adjacent to any street in the city at which goods, wares or merchandise are offered for sale shall pay the sum of $25 per day; provided, that no license issued under this article shall authorize the holder thereof to perform any acts other than in compliance with Article 2 of this chapter: provided further, that no license shall be required for the sale or delivery of daily newspapers. (Ord. 602, Sec. 2)

8-103. PRODUCERS, GROWERS. Producers and growers, or their agents or employees engaged in the sale of farm, or garden products, or fruits, grown within the State of Kansas, shall not be considered to be conducting, carrying on, operating or pursuing any of the callings, trades, businesses, professions or occupations classified in section 8-102 of this article, and no license shall be required from such persons described in this section. (Ord. 602, Sec. 5)

8-104. LICENSES ISSUED, EXPIRED. All licenses issued under this article shall give the following information:

(a) Dates on which same are issued;

(b) Dates on which same respectively shall expire.

(Ord. 602, Sec. 5)

## ARTICLE 2. GREEN RIVER ORDINANCE

8-201. GOING UPON PRIVATE PREMISES. The practice of going in and upon private residences in the city by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise, not having been requested or invited so to do by the owner or owners, occupant or occupants of the private residences, for the purpose of soliciting orders for the sale of goods, wares and merchandise, and/or for the purpose of disposing of and/or peddling or hawking the same, is hereby declared to be a nuisance, and punishable as a misdemeanor. (Ord. 431, Sec. 1)

# CHAPTER IX. RESERVED

# CHAPTER X. MUNICIPAL COURT

Article 1. Municipal Court

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## ARTICLE 1. MUNICIPAL COURT

10-101. ESTABLISHED. A municipal court of the City of Oberlin, Kansas, is hereby created and established to be presided over by a municipal judge. (Ord. 597, Sec. 1)

10-102. CODE OF PROCEDURE. The provisions of the Kansas Code of Procedure for Municipal Courts, being Chapter 12, Articles 41 to 46, inclusive, Kansas Statutes Annotated, are by this reference incorporated into and made a part of this article, as if the same had been set out in full herein, except as provided herein. (Ord. 597, Sec. 2; Ord. 695)

10-103. PLACE; TIME. The municipal judge shall hold court in a room to be supplied by the city and said court shall be held at a designated time between 9:00 a.m. and 10:00 p.m. on a weekday, except Saturdays, Sundays and legal holidays. (Ord. 597, Sec. 3)

10-104. COURT COSTS. Any person found guilty of violating any provision of this code or ordinances of the city may be assessed court costs for the amount of any court reporter or stenographic charges, fees or mileage of witnesses, expenses incurred in the service of process, costs of publication of notices and such other charges as are authorized by the statutes of the State of Kansas and, in addition thereto, court costs as set by the city council, not to exceed $75 per count. (C.O. No. 7, Sec. 2; Code 1989; Ord. 695, Ord. 818)

# CHAPTER XI. POLICE DEPARTMENT

Article 1. Police Department

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## ARTICLE 1. POLICE DEPARTMENT

11-101. DEPARTMENT CREATED. The police department of the city shall consist of regularly appointed police officers, one of whom shall be the city marshal-chief of police and such other necessary members as may be appointed by the mayor from time to time.

11-102. DUTIES, CHIEF OF POLICE. The city marshal-chief of police shall have general charge and control of the police department. The city marshal-chief of police shall be subject to the orders of the mayor and shall perform such other duties as are prescribed or authorized by law or ordinance and as may be assigned by the mayor. All other police officers shall perform the duties and exercise the powers as are prescribed or authorized by law or ordinance or as may be assigned to them by the city marshal-chief of police and mayor.

11-103. DUTIES OF POLICEMEN. Police officers shall at all times to the best of their ability preserve good order, peace, quiet and to enforce the city ordinances and the laws of Kansas throughout the city. It shall be their further duty to arrest all persons found at any time, day or night, in the act of violating any such ordinance or law, or aiding or abetting any such violation. They shall make complaint against any and every person so arrested and shall cause such person to be brought to trial.

11-104. POWER TO ARREST. The city marshal-chief of police and all policemen shall at all times have power to make or order an arrest with proper process for any offense against the ordinances of the city or the laws of Kansas and to arrest without process in all cases where any such offense shall be committed in his presence, and keep persons arrested in the city jail or other safe place to prevent their escape, until a trial can be had before the municipal court or other court having jurisdiction of the offense alleged.

Ref.: For Municipal Court, See Chapter X of this code.

# CHAPTER XII. PUBLIC OFFENSES

Article 1. Uniform Offense Code
Article 2. Local Regulations

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## ARTICLE 1. UNIFORM OFFENSE CODE

12-101. INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Oberlin, Kansas, that certain code known as the "Uniform Public Offense Code," Edition of 2011, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Oberlin, Kansas," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this section, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. (Ord. 820, 829, 841, 853, 865)

## ARTICLE 2. LOCAL REGULATIONS

12-201. RESISTING ARREST. A person is not authorized to use force to resist arrest which he or she knows is being made either by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person arrested believes that the arrest is unlawful.

Resisting Arrest is a class C violation. (Ord. 598, Sec. 1)

12-202 WIND POWERED ELECTRICAL GENERATING UNITS PROHIBITED. No wind powered electrical generating units or towers shall be constructed within the corporate limits of the City of Oberlin. (Ord. 824)

12-203 SMOKING IN CITY OWNED BUILDINGS OR VEHICLES PROHIBITED.

(a) Pursuant to powers granted by the Legislature to cities, smoking is hereby prohibited in all city-owned or occupied buildings. Smoking is also prohibited in any city owned motor vehicles, including all emergency vehicles and vehicles with permanent license plates.

(b) The penalty for violations of this ordinance are as set forth in K.S.A. 21-4012.

(c) Appropriate signage in each building and vehicle covered by this ordinance shall be placed by the respective department head or person in charge of each particular building or vehicle. (Ord. 817)

12-204 SECTION RESERVED.

12-205. DISTURBANCE OF RELIGIOUS ASSEMBLIES. Disturbance of religious assemblies is the disturbing of any congregation or assembly met for religious worship by making a noise or by rude and indecent behavior within their place of worship or so near the same as to disturb the order and solemnity of the meeting.

Disturbance of religious assemblies is a Class C violation. (Code 1981, 12-1011)

12-206. LOITERING IN STREETS AND OTHER PUBLIC PLACES. Loitering in streets and other public places is the loitering on the public streets, school buildings or school grounds or any other public place or place accessible to the public without being engaged in some business demanding the person's presence upon such street, school building, school grounds or at such public place or place accessible to the public or habitually lurking in a public place or a place accessible to the public without being engaged in some legal business.

Loitering in streets and other public places is a Class C violation. (Code 1981, 12-1012)

12-207. PEEPING TOM. It shall be unlawful for any person to trespass upon the property owned or occupied by another in this city for the purpose of looking or peeping into any window, door, skylight or other opening in a house, room or building, or to loiter in a public street, alley, parking lot or other public place for the purpose of wrongfully observing the actions of occupants of any such house, room or building.

Violation of this section is a Class C violation. (Code 1981, 12-1012)

12-208. SECTION RESERVED.

12-209. UNLAWFUL INHALATION OF CERTAIN TOXIC VAPORS. The unlawful inhalation of certain toxic vapors from glue and related products and the sale of same in the city shall be as follows:

(a) As used in this section, the phrase "glue containing a solvent having the property of releasing toxic vapors or fumes" shall mean and include any glue, cement or other adhesive, the contents of which may include, but are not limited to, one or more of the following chemical compounds: acetone, acetate, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether or tolune (toluol);

(b) No person shall, for the purpose of causing a condition of intoxication, inebriation, excitement, stupification, or the dulling of his brain or nervous system,

intentionally smell or inhale the fumes from any glue containing a solvent having the property of releasing toxic vapors or fumes: provided, that nothing in this section shall be interpreted as applying to the inhalation of any anesthesia for medical or dental purposes;

(c) No person shall, for the purpose of violating subsection "b" of this section use or possess for the purpose of so using any glue containing a solvent having the property of releasing toxic vapors or fumes;

(d) No person shall sell, give or offer to sell or give to any person any tube or other container of glue containing a solvent having the property of releasing toxic vapors or fumes, if he or she has knowledge that the product sold, given or offered to be sold or given will be used for the purpose set forth in subsection "b" of this section.

A violation of this section is a Class B violation. (Code 1981, 12-1114)

12-210. UNLAWFUL POSSESSION, USE, TRANSPORTATION; MOLOTOV COCKTAILS. Unlawful possession, use and transportation of "Molotov Cocktails" is the transporting, use of possession or control of a container of incendiary or explosive material, liquid, solvent or mixture, equipped with a fuse, wick or other detonating device of a kind commonly known as "Molotov Cocktail."

Unlawful possession, use and transportation of "Molotov Cocktails" is a Class A violation. (Code 1981, 12-1115)

12-211. CLASSES OF VIOLATIONS AND CONFINEMENT. Regulations relating to the classification of violations and confinement in the city shall be as follows:

(a) For the purpose of sentencing, the following classes of violations and the punishment and the terms of confinement authorized for each class are established:

(1) Class A -- the sentence for which shall be a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed one year;

(2) Class B -- the sentence for which shall be a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed six months;

(3) Class C -- the sentence for which shall be a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed 30 days;

(4) Unclassified violations, which shall include all crimes declared to be violations without specifications as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be a definite term of confinement in the city or county jail fixed by the court which shall not exceed six months;

(b) Upon conviction of a violation, a person may be punished by a fine as provided in section 12-212 of this article, instead of or in addition to confinement, as provided in this section.

(Code 1981, 12-1201; Code 1989)

12-212. FINES. A person who has been convicted of a violation may, in addition to or instead of the confinement authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(a) For a Class A violation, a sum not exceeding $2,500;
(b) For a Class B violation, a sum not exceeding $1,000;
(c) For a Class C violation, a sum not exceeding $500;
(d) For an unclassified violation, any sum authorized by the statute that defines the crime; if no penalty is provided in such law, the fine shall not exceed $500.

(Code 1981, 12-1202; Code 1989)

12-213. LP GAS PROHIBITED IN CITY LIMITS IN CERTAIN CASES.

(a) No person, firm, association or corporation shall hold or store liquified petroleum gas in quantities in excess of fifty (50) gallons within the city limits of the City of Oberlin, Kansas. This shall include residential or commercial liquified petroleum gas tanks used for heating of premises or other residential or commercial uses.

(b) Nothing in this section shall prohibit the following:

1) Operation of a liquified petroleum gas bulk storage facility which complies with the city's zoning ordinance in all respects;
2) Operation of liquified petroleum gas-fueled vehicles;
3) Residential or commercial liquified petroleum gas tanks for heating of premises or other residential or commercial uses when approved by the city zoning administrator. In making such approval, the City Zoning Administrator shall grant such approval only if natural gas service cannot be obtained. The cost of providing such service shall not be a factor in the approval process.

(c) Any person, Firm, association or corporation who violates this section shall be guilty of a misdemeanor and may be fined up to Five Hundred Dollars for each offense. Each separate day shall constitute a separate violation. (Ord. 742)

12-214. OPERATION OF GOLF CARTS, ALL TERRAIN VEHICLES, WORK SITE UTILITY VEHICLES and MICRO UTILITY VEHICLES.

_____(a) GOLF CARTS

1. Golf Carts may be operated upon the public highway, street, roads and alleys within the corporation limits of the City. Golf carts are defined by 2009 H.B. 2152 and any amendments thereto.
2. Nothing herein shall permit golf carts to drive on a state or federal highway other than for purposes of crossing it from one side to the other.
3. Operators of the golf cart shall possess at least a valid Class C drivers license. Drivers must be age 17 or older.

4. There shall be no riders on the golf cart under the age of 12.
5. All golf carts shall be insured for the same amount of insurance as is required for automobiles in the State of Kansas, pursuant to K.S.A. 40-3101 et seq. and any amendments thereto. _
6. Golf carts shall be operated only if persons riding in the golf cart are seated in a place originally designed for seating.
7. Golf carts shall have adequate braking capabilities and brake lights; shall have adequate steering; shall have a rear view mirror; shall have a reflectorization on the front and back and shall contain a "slow moving vehicle" emblem on the rear. The golf cart shall have turn signals.
8. Golf carts shall be required to have seat belts and any operators or passengers in the vehicle shall wear seat belts at all times when the vehicle is in operation.
9. Golf carts shall be operated only between the hours of sunrise and sunset.
10. All traffic rules and regulations contained in the Kansas Uniform Traffic Code or in the standard traffic ordinances of the City of Oberlin shall be complied with.
11. Golf carts shall be subject to and shall not be operated on the city highways, roads, streets or alleys until such time as an inspection by the Oberlin Police Department has been obtained confirming the existence of the required equipment and a sticker shall be affixed to the vehicle to be displayed at all times. A reinspection shall occur on an annual basis. The fee for inspection shall be established by the city council. Such registration shall not be transferrable to any other owner. Registration stickers shall not be issued until proof of insurance has been provided.
12. A violation of any provisions of this ordinance shall be deemed to be an ordinance traffic infraction and upon an entry of a plea of guilty or no contest and upon being convicted of such violation, the penalty imposed shall be not greater than $500.00.

(b) ALL TERRAIN VEHICLES

1. All Terrain Vehicles may be operated upon the public highways, street, roads and alleys within the corporate limits of the City of Oberlin, Kansas. All Terrain Vehicles shall mean any vehicle defined as an all terrain vehicle under K.S.A. 8-1402a, and any subsequent amendments thereto.
2. Nothing herein shall permit all terrain vehicles to drive on a state or federal highway other than for purposes of crossing it from one side to the other.
3. Operators of the all terrain vehicle shall possess at least a valid Class C drivers license. Drivers must be age 17 or older.
4. There shall be no riders on the vehicle under the age of 12.
5. All Terrain Vehicles shall be insured for the same amount of insurance as is required for automobiles in the State of Kansas, pursuant to K.S.A. 40-3101 et seq. and any amendments thereto. In the event that any driver

or rider is under the age of 18, they shall be required to have helmets and eye protection. Helmets shall comply with minimum guidelines established by the National Highway Traffic Safety Administration pursuant to the National Traffic and Motor Vehicle Safety Act of 1966 where helmets designed for use by motorcyclists and other motor vehicle users. No person shall operate an all terrain vehicle unless the person is wearing an eye protective device which consists of protective glasses, goggles or transparent face shields which are shatterproof and impact resistant except when the all terrain vehicle is equipped with a wind screen which has a minimum height of 10 inches measured from the center of the handlebars.

6. All Terrain Vehicles shall be operated only if persons riding in the all terrain vehicles are seated in a place originally designed for seating.
7. No all terrain vehicle shall be operated on any public highway, street, road or alley between sunset and sunrise.
8. No all terrain vehicle shall be operated on any public highway, street, road or alley unless the vehicle shall comply with all the equipment requirements under provisions of Article 17, Chapter 8 of the Kansas Statutes Annotated.
9. All terrain vehicles shall have adequate braking capabilities and brake lights; shall have adequate steering; shall have a rear view mirror and shall have a reflectorization on the front and back. The all terrain vehicle shall have turn signals.
10. All other traffic rules and regulations contained in the Kansas Uniform Traffic Code or in the standard traffic ordinances of the City of Oberlin shall be complied with.
11. All terrain vehicles shall be subject to and shall not be operated on the city streets or alleys until such time as an inspection by the Oberlin Police Department has been obtained confirming the existence of the required equipment and a sticker shall be affixed to the vehicle to be displayed at all times. A reinspection shall occur on an annual basis. The fee for inspection shall be established by the city council. Such registration shall not be transferrable to any other owner. Registration stickers shall not be issued until proof of insurance has been provided.
12. A violation of any provisions of this ordinance shall be deemed to be an ordinance traffic infraction and upon an entry of a plea of guilty or no contest and upon being convicted of such violation, the penalty imposed shall be not greater than $500.00.

(c) WORK SITE UTILITY VEHICLES

1. Work Site Utility Vehicles may be operated upon the public highways, streets, roads and alleys within the corporation limits of the City. Work site utility vehicles shall mean any vehicle defined as a work site utility vehicle under K.S.A. 8-1493 and any amendments thereto.

2. Nothing herein shall permit work site utility vehicles to drive on a state or federal highway other than for purposes of crossing it from one side to the other.
3. Operators of the work site utility vehicle shall possess at least a valid Class C drivers license. Drivers must be age 17 or older.
4. There shall be no riders on the vehicle under the age of 12.
5. All work site utility vehicles shall be insured for the same amount of insurance as is required for automobiles in the State of Kansas, pursuant to K.S.A. 40-3101 et seq. and any amendments thereto.
6. Work site utility vehicles shall have adequate braking capabilities and brake lights; shall have adequate steering; shall have a rear view mirror; shall have a reflectorization on the front and back and shall contain a "slow moving vehicle" emblem. The work site utility vehicle shall have turn signals. Work site utility vehicles shall be operated only if persons riding in the work site utility vehicles are seated in a place originally designed for seating.
7. No work site utility vehicle shall be operated on any public highway, street, road or alley between sunset and sunrise.
8. No work site utility vehicle shall be operated on any public highway, street, road or alley unless the vehicle shall comply with all the equipment requirements under provisions of Article 17, Chapter 8 of the Kansas Statutes Annotated. The work site utility vehicle shall be required to have seat belts and any operators or passengers in the vehicle shall wear seat belts at all times when the vehicle is in operation.
9. Work site utility vehicles shall be operated only between the hours of sunrise and sunset.
10. All traffic rules and regulations contained in the Kansas Uniform Traffic Code or in the standard traffic ordinances of the City of Oberlin shall be complied with.
11. Such work site utility vehicles shall be subject to and shall not be operated on the city streets or alleys until such time as an inspection by the Oberlin Police Department has been obtained confirming the existence of the required equipment and a sticker shall be affixed to the vehicle to be displayed at all times. A reinspection shall occur on an annual basis. The fee for inspection shall be established by the city council. Such registration shall not be transferrable to any other owner. Registration stickers shall not be issued until proof of insurance has been provided.
12. A violation of any provisions of this ordinance shall be deemed to be an ordinance traffic infraction and upon an entry of a plea of guilty or no contest and upon being convicted of such violation, the penalty imposed shall be not greater than $500.00.

(d) MICRO UTILITY VEHICLES

1. Micro Utility Vehicles may be operated upon the public highway, street, roads and alleys within the corporation limits of the City. Micro utility vehicles are defined by K.S.A. 8-1494 and any amendments thereto.
2. Nothing herein shall permit micro utility vehicles to drive on a state or federal highway other than for purposes of crossing it from one side to the other.
3. Operators of the micro utility vehicle shall possess at least a valid Class C drivers license. Drivers must be age 17 or older.
4. All micro utility vehicles shall be insured for the same amount of insurance as is required for automobiles in the State of Kansas, pursuant to K.S.A. 40-3101 et seq. and any amendments thereto.
5. Micro utility vehicles shall have adequate braking capabilities and brake lights; shall have adequate steering; shall have a rear view mirror; shall have a reflectorization on the front and back and shall contain a “slow moving vehicle” emblem. The micro utility vehicle shall have turn signals and shall have cross tread on the tires.
6. The micro utility vehicle shall be required to have seat belts and any operators or passengers in the vehicle shall wear seat belts at all times when the vehicle is in operation.
7. Micro utility vehicles shall be operated only if persons riding in the micro utility vehicles are seated in a place originally designed for seating.
8. Micro utility vehicles shall be operated only between the hours of sunrise and sunset.
9. All traffic rules and regulations contained in the Kansas Uniform Traffic Code or in the standard traffic ordinances of the City of Oberlin shall be complied with.
10. Micro utility vehicles shall be subject to and shall not be operated on the city streets or alleys until such time as an inspection by the Oberlin Police Department has been obtained confirming the existence of the required equipment and a sticker shall be affixed to the vehicle to be displayed at all times. A reinspection shall occur on an annual basis. The fee for inspection shall be established by the city council. Such registration shall not be transferrable to any other owner. Registration stickers shall not be issued until proof of insurance has been provided.
11. A violation of any provisions of this ordinance shall be deemed to be an ordinance traffic infraction and upon an entry of a plea of guilty or no contest and upon being convicted of such violation, the penalty imposed shall be not greater than $500.00.

# CHAPTER XIII. PUBLIC PROPERTY

Article 1. Oberlin Cemetery
Article 2. Public Parks

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## ARTICLE 1. OBERLIN CEMETERY

13-101. NAME. The cemetery grounds shall hereafter be known as the Oberlin Cemetery, and when the word "cemetery" is hereafter used in this article, it shall mean the Oberlin Cemetery.

13-102. SEXTON. The City Administrator shall hire a sexton for the cemetery. The sexton, under the supervision and direction of the mayor and city council, shall have charge of the care, upkeep and maintenance of the cemetery and all work in connection therewith. The cemetery sexton shall have general and immediate control and supervision of all digging and excavating for graves or removal of bodies made in the cemetery, shall locate all lots and graves when requested by any person.

13-103 CEMETERY SECRETARY. The City Clerk shall, by virtue of the office, be the custodian of the cemetery records and transactions respecting the sale of any lots. All money received from the sale of cemetery lots and burials permits shall be paid into the City treasury and deposited in the Cemetery Fund.

13-104 GRAVES; DIGGING, EXCAVATING (a) No person shall do any digging or excavating for graves unless the same shall be with knowledge and consent and under the supervision of the Sexton.

(b) Any burials which shall occur in the Oberlin City Cemetery from January 10, 1996, shall be interred in at minimum a two-piece concrete box or steel grave container. The only exceptions to this article shall be (i) funeral which have been prepaid prior to passage of Ordinance No. 703, (ii) burials of indigent persons, or (iii) burials of cremains.

(c) Only human bodies shall be interred in said cemetery. All burial vaults must be at least three feet (3') below the surface of the ground, except in the use of an individual surface mausoleum which shall be so constructed as to have a sealed joint which is no less than six inches (6") below the natural surface of the ground and shall be covered with a four inch (4") thick single piece of stone which shall be flush with the natural level of the ground. No grave shall hereafter be covered with anything except marble or granite or soil and sod.

13-105 PURCHASE OF LOTS. The purchase price of lots for residents and nonresidents of the City of Oberlin shall be determined and properly set by policy of the City Council. Payment shall be settled or made at time of purchase. The City Clerk shall issue a certificate of purchase to the purchaser. If in the event a burial space or spaces is purchased by a resident and thereafter a nonresident other than the original purchaser is in fact buried in said space then in that event an additional $50.00 cost will be charged to the estate of the nonresident and/or his proper legal representative.

13-106 GRAVE OPENING AND CLOSING CHARGE. Fees for the opening and closing of any grave shall be set by policy of the City Council and shall be paid in the office of the city clerk.

(a) If the service is held on Saturday, Sunday or a holiday an additional fee may be charged.

(b) If the City Clerk's office does not receive notice of a Monday morning funeral by 10:00 a.m. of the previous Friday, an additional fee may be charged.

13-107 LOT REGULATIONS. Each lot shall contain two (2) full burial spaces. There shall not be more than two (2) full burials per lot. Each lot shall also be used for cremation burials. Up to four (4) cremations can be placed on one half (1/2) of a lot, if there is no headstone and footstone present. If a headstone or footstone are present, only three (3) cremations are allowed per one half (1/2) of a lot. A cremation may also be placed at the foot of any one (1) full burial, if no footstone is present. Cremations shall not be placed on top of a full burial. Lots will not be broken into two (2) burial spaces.

13-108 PLANTING AND ADORNMENT. It shall be unlawful to erect or construct any fences, coping or curbing of wood, stone, brick, cement or other material on or around any lot or part of lot or any grave. Flowers and shrubs shall only be permitted when planted on the north and south sides of the headstone only. The sexton of the cemetery shall at all times have the right to remove all natural or artificial flowers, plants, wreaths, baskets, receptacles, decoration, trees, shrubs and plantings whenever in his/her judgment shall become wilted, dead or unsightly or are of such type, kind or nature as to obstruct or hinder the proper maintenance of the cemetery or are not approved by the City Council. Any glass objects are not permitted for decoration. The cemetery will not be held responsible for any article left on cemetery property or for any stones or anything on any lot damaged or destroyed by fires, vandalism, acts of God, or other damages accruing to private property.

13-109 TREES. All trees must have the approval of the sexton before any planting may occur. Trees may be planted on individual lots if the following criterions are met:

(a) Owner shall receive written permission from all lot owners within a 20 foot radius of proposed tree location. If said lot owners are deceased, permission must be received from all family members within two degrees of consanguinity.

(b) All lots within said 20 foot radius must either have all burials completed and/or have no intention of any burials.

(c) City owned trees are exempt from aforementioned rule.

13-110 MONUMENT PERMITS, CONSTRUCTION AND REGULATIONS. It shall be unlawful for any person, firm or corporation to place, construct or set any grave marker or monument, or the foundation therefore, in said cemetery without first having obtained a foundation permit from the City Clerk and having such foundation approved by the caretaker before any monument or marker or other structure is placed thereon. All materials and monuments must be unloaded from

the nearest street and the lots properly planked and protected from injury. All dirt and refuse of the job shall be immediately removed from the lot and the cemetery by the parties erecting any structure or memorial. All monuments and markers must be set inside the lot line and true to the line, also level and plumb, and if not so placed, the governing body shall have the power to have such stones and work changed so as to conform to this regulation, and the costs and expense thereof shall be charged to and collected from the dealer erecting the work; and any person, firm or corporation who fails, neglects or refuses to comply with this or any other provision of this article may be refused permission by the City Council to place any more work in said cemetery. Any person, firm or corporation failing or refusing to correct any defective work done by any such person, firm or corporation in said cemetery, or who shall refuse to pay the expense incurred by the City of Oberlin in correcting defective work, shall be debarred from doing any work or placing any stones in said cemetery until all of the regulations of this article shall have been complied with and all expenses paid.

Specifications for monument construction and installation of same shall be as follows:

A. All foundations for monuments and markers must be a minimum of five inches (5”) longer and five inches (5”) wider than the base of the monument or marker and shall be constructed of concrete.
B. All foundations shall be built no higher than the level of ground on the high side. All memorials shall be set in the center of such foundations.
C. All foundation work shall be done when the ground is free from frost and not during freezing weather.
D. Temporary markers placed on graves shall not be the responsibility of the cemetery to maintain.
E. All monument locations will be staked by the cemetery caretaker. A fee of $15.00 per monument location will be paid to the City of Oberlin before a permit to set a stone or monument shall be issued.

13-111 PUBLIC OFFENSES. It shall be unlawful for any person willfully to make any unnecessary noise or disturbance, or to cut down, deface, mutilate or injure any lot, tomb, monument, marker, railing, tree, shrub, flower, decoration or grave in said cemetery, No person shall drive any vehicle faster than 10 miles per hour or obstruct any drive or path therein. No person shall enter or leave the cemetery except at the gates thereof. The police power of the City is hereby extended to, and over, said cemetery.

13-112 SEXTON; POWERS. The sexton shall have police power to enforce the provisions of this article.

13-113 PENALTY. Any person violating any of the provisions of this article shall, upon conviction thereof, be fined no less than $100 nor more than $500, and may be confined and imprisoned for up to 1 year.

13-114 RULES, REGULATIONS. The city council shall have power to prescribe suitable and necessary rules and regulations for the sexton and cemetery in accordance with the terms of this article.

## ARTICLE 2. PUBLIC PARKS

13-201. CITY LAWS EXTENDED TO PARK. The laws of the city shall extend to and cover all city parks. (Code 1989)

13-202. POLICE JURISDICTION OVER PARKS. The city shall have police regulations governing any public parks belonging to the city and the chief of police and law enforcement officers of the city shall have full power to enforce city laws governing city parks and shall maintain order therein. (Code 1989)

13-203. DAMAGING PARK PROPERTY. It shall be unlawful for any person, except duly authorized city employees, to willfully or wantonly remove, injure, tarnish, deface or destroy any building, walk, bench, tree or improvement or property of any kind belonging to any park owned by the city. (Code 1989)

13-204. VEHICLE REGULATIONS. (a) Motor vehicles, including any vehicle licensed to operate on public streets, roads and highways and motorbikes, go-carts, snowmobiles and other motorized off-the-road vehicles shall be operated in a safe and prudent manner at all times in park areas.

(b) Except as provided in subsection (d), it shall be unlawful for any person to park any motor vehicle in any area not designated for such purpose.

(c) Except as provided in subsection (d), it shall be unlawful for any person to operate any motor vehicle within any city park except upon roads, drives and parking areas established by the city.

(d) Subsections (b) and (c) above shall not apply to authorized city employees while engaged in the maintenance and care of the park.

(e) It shall be unlawful to operate any such vehicle in any park area at a speed in excess of 30 m.p.h.

(Code 1989)

13-205. FIRES. It shall be unlawful for any person to build or kindle any fire in any city park except in the ovens, stoves, or grills provided for that purpose by the city, and such fire must be extinguished by the person, persons or parties starting such fire, immediately after use thereof. (Code 1989)

13-206. CAMPING PROHIBITED. Overnight camping is hereby prohibited in city parks except where posted. (Code 1989)

13-207. SANITATION. All waste material, paper, trash, rubbish, tin cans, bottles, containers, garbage and refuse of any kind whatsoever shall be deposited in disposal containers provided for such purposes. No such waste or contaminating material shall be discarded otherwise. No sticks, stones, trash or other objects shall be thrown or discarded in or on any park lands, fountains, pools, drinking fountains, sanitary facilities, or other improvements. (Code 1989)

13-208. PRESERVATION OF NATURAL STATE. It shall be unlawful for any person, except duly authorized city employees, to take, injure, or disturb any live or dead tree, plant, shrub, or flower, or otherwise interfere with the natural state of city parks. (Code 1989)

13-209. GENERAL REGULATIONS. The city may post such rules and regulations, as are approved by the governing body, pertaining to the use of the city parks in a conspicuous place in each city park. Violations of these posted rules shall constitute a violation of this code. (Code 1989)

# CHAPTER XIV. SEWER REGULATIONS

Article 1. Sewer Connections
Article 2. Sewage Disposal System
Article 3. Sewage Disposal Charges

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## ARTICLE 1. SEWER CONNECTIONS

14-101. SEWER CONNECTIONS. All persons owning dwelling houses or buildings within the City of Oberlin, which building or buildings are or shall be located near a sewer, or in a block within any such sewer district in the city through which a sewer extends, shall make such connections with the sewer system of the city, as may be necessary in the judgment of the city board of health for the protection of the health of the public, for the purpose of disposing of all substances from any such houses or buildings affecting the public health which may be lawfully and properly disposed of by means of such sewer. (Ord. 455, Sec. 3)

14-102. REFUSAL TO CONNECT. If any person shall fail, neglect or refuse to so connect any building with the sewer system of such city as herein provided for more than ten (10) days after being notified in writing by the city board of health to do so the mayor and governing body may cause such premises and buildings to be connected to the sewer system and are hereby authorized to advertise for bids for the construction and making of such sewer connections. The governing body may contract therefor with the lowest responsible bidder and cause such premises to be connected with the sewer system. The costs and expenses thereof shall be assessed against the property and premises so connected; the assessment to be made in the same manner as other special assessments are made. (Ord. 455, Sec. 4)

Ref.: See Chapter IV, Article 4 of this code for the plumbing code regulations of the city.

## ARTICLE 2. SEWAGE DISPOSAL SYSTEM

14-201. DEFINITION. For the purpose of this article "Sewage Disposal System" shall consist of all means by which sewage is transported, treated and disposed of and shall not include drainage or storm sewers or drains. (Ord. 476, Sec. 1)

14-202. SAME. Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

(a) "BOD" (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20oC, expressed milligrams per liter.

(b) "Building Drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage

pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

(c) "Building Sewer" shall mean the extension from the building drain to the public sewer or other place of disposal.

(d) "Combined Sewer" shall mean a sewer receiving both surface runoff and sewage.

(e) "Garbage" shall mean solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

14-202.1 SAME;

(a) Industrial Wastes shall mean the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.

(b) Natural Outlet shall mean any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

(c) Person shall mean any individual, firm, company, association, society, corporation, or group.

(d) pH shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

(e) Properly Shredded Garbage shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (?) inch (1.27 centimeters) in any dimension.

14-202.2 SAME.

(a) Public Sewer shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

(b) Sanitary Sewer shall mean a sewer which carries sewage and to which storm, surface, and groundwaters are not intentionally admitted.

(c) Sewage shall mean a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and stormwaters as may be present.

(d) Sewage Treatment Plant shall mean any arrangement of devices and structures used for treating sewage.

(e) Sewage Works shall mean all facilities for collecting, pumping, treating and disposing of sewage.

(f) Sewer shall mean a pipe or conduit for carrying sewage.

(g) Shall is mandatory; "May" is permissive.

14-202.3 SAME.

(a) Slug shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation.

(b) Storm Sewer shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

(c) Foreman shall mean the Foreman of Oberlin, or his authorized deputy, agent, or representative.

(d) Suspended Solids" shall mean solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

(e) Watercourse shall mean a channel in which a flow of water occurs, either continuously or intermittently.
(Ord. 571)

14-203. PROHIBITED WASTE. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the city of Oberlin, or in any area under the jurisdiction of said city, any human or animal excrement, garbage, or other objectionable waste. (Ord. 571)

14-204. UNLAWFUL TO POLLUTE WATERWAYS. It shall be unlawful to discharge to any natural outlet within the city of Oberlin, or in any area under the jurisdiction of said city, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article. (Ord. 571)

14-205. SEPTIC TANK. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage. (Ord. 571)

14-206. SEWER CONNECTION REQUIRED. The owner of all houses, buildings, or properties used for human employment, recreation, or other purposes, situated within the city and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the city, is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this article, within one hundred eighty (180) days after date of official notice to do so provided that said public sewer is within one hundred (100) feet of the property line. (Ord. 571)

14-207. SAME; EXCEPTION. Where a public sanitary or combined sewer is not available under the provisions of Section 14-206, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this article. (Ord. 571)

14-208. PRIVATE SYSTEM; PERMIT. Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the Foreman. A permit and inspection fee of ten dollars ($10) shall be paid to the city at the time the application is filed. (Ord. 571)

14-209. SAME; APPROVAL. A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Foreman. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Foreman when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 48 hours of the receipt of notice by the Foreman. (Ord. 571)

14-210. SAME; AREA RESTRICTION. The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the Department of Public Health of the State of Kansas. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than 20,000 square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet. (Ord. 571)

14-211. SAME; ADDITIONAL REQUIREMENTS. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the Health Officer. (Ord. 571)

14-212. SAME; TERMINATION. At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in Section 14-206, a direct connection shall be made to the public sewer within 180 days and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned, cleaned of sludge and filled with clean bank run gravel and dirt. (Ord. 571)

14-213. SAME; NO COST TO CITY. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the city. (Ord. 571)

14-214. USE PERMIT. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Foreman. (Ord. 571)

14-215. SAME; CLASSES. There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for service to establishments producing industrial wastes.

In either case, the owner or his agent shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Foreman. A permit and inspection fee of twenty-five dollars ($25) for a residential or commercial building sewer permit and twenty-five dollars ($25) for an industrial building sewer permit shall be paid to the city at the time the application is filed. The sewer connection from the sewer main to the home or business shall be the responsibility of the owner. (Ord. 571, 744)

14-216. OWNER'S EXPENSE. All costs and expense incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. (Ord. 571)

14-217. SEPARATE SEWER; EXCEPTION. A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. (Ord. 571)

14-218. EXISTING SEWERS. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Foreman, to meet all requirements of this article. (Ord. 571)

14-219. SEWER SPECIFICATIONS. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply. (Ord. 571)

14-220. SAME; ELEVATION. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer. (Ord. 571)

14-221. SAME; CONNECTION. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city, or the procedures set forth in appropriate specifications of the A.S.T.M. and the S.P.C.F. Manual of Practice No. 9. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Foreman before installation. (Ord. 571)

14-222. SAME; INSPECTION. The applicant for the building sewer permit shall notify the Foreman when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Foreman or his representative. (Ord. 571)

14-223. EXCAVATION GUARDED. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in

the course of the work shall be restored in a manner satisfactory to the city. (Ord. 571)

14-224. STORM SURFACE DRAINAGE. No person shall discharge or cause to be discharged, directly or indirectly, any stormwater, surface water, groundwater, roof runoff, subsurface drainage, including interior and exterior foundation drains, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer. (Ord. 571)

14-225. SAME; DESIGNATED SEWERS. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or industrial cooling water or unpolluted process waters may be discharged on approval of the Foreman, to a storm sewer, combined sewer, or natural outlet. (Ord. 571)

14-226. PROHIBITED DISCHARGES. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

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

(b) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two (2) mg/1 as CN in the wastes as discharged to the public sewer.

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

(d) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, mild containers, etc., either whole or ground by garbage grinders.

14-227. SAME. No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Foreman that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the Foreman will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are:

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

(b) Any water wastes containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/1 or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150)°F (0 and 65°C).

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

14-227.1 SAME.

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

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

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

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

(e) Any waters or wastes having a pH in excess of 9.5.

14-227.2 SAME.

(a) Materials which exert or cause:

(1) Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride or sodium sulfate).

(2) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions.

(3) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant loan on the sewage treatment works.

(4) Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

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

(c) Any waters or wastes having:

(1) A 5-day BOD greater than 300 parts per million by weight, or

(2) Containing more than 350 parts per million by weight of suspended solids, or

(3) An average daily flow greater than two percent (2%) of the average sewage flow of the city, shall be subject to the review of the Foreman. If such flow occurs, the owner shall provide, at his expense, such preliminary treatment as may be necessary to reduce the biochemical oxygen demand to 300 parts per million by weight, reduce the suspended solids to 350 parts per million by weight, or control the quantities and rates of discharge of such waters or wastes. Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Foreman and no construction of such facilities shall be submitted for the approval of the Foreman and no construction of such facilities shall be commenced until said approvals are obtained in writing.

(Ord. 571)

14-228. SAME; PRETREATMENT.

(a) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Sections 14-227 through 14-227.2, inclusive, and which in the judgment of the Foreman, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life to constitute a public nuisance, the Foreman may:

(1) Reject the wastes,

(2) Require pretreatment to an acceptable condition for discharge to the public sewers,

(3) Require control over the quantities and rates of discharge, and/or,

(4) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Section 14-233 of the Article.

(b) If the Foreman permits the pretreatment of equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Foreman, and subject to the requirements of all applicable codes, ordinances and laws.

(Ord. 571)

14-229. TRAPS, INTERCEPTORS. Grease, oil, and sand interceptors shall be provided when, in the opinion of the Foreman, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Foreman, and shall be located as to be readily and easily accessible for cleaning and inspection. (Ord. 571)

14-230. SAME; MAINTENANCE. Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense. (Ord. 571)

14-231. MANHOLE REQUIRED. When required by the Foreman, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Foreman. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times. (Ord. 571)

14-232. TESTING SEWERAGE. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this article shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a twenty-four (24) hours composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24-hour composites of all outfalls whereas pH's are determined from periodic grab samples.) (Ord. 571)

14-233. SAME; SPECIAL PROVISIONS. No statement contained in this article shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefore, by the industrial concern. (Ord. 571)

14-234. UNLAWFUL ACTS. No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the sewage works. Any person violating this provision shall be subject to immediate arrest under a charge of disorderly conduct. (Ord. 571)

14-235. RIGHT OF ENTRY. The Foreman and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this article. The Foreman or his representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment. (Ord. 571)

14-237. SAME; HOLD HARMLESS. While performing the necessary work on private properties referred to in Section 14-235, the Foreman or duly authorized

employees of the city shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the city employees and the city shall indemnify the company against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in Section 14-231. (Ord. 571)

14-237. EASEMENTS: RIGHT TO ENTER. The Foreman and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved. (Ord. 571)

14-238. VIOLATION; NOTICE. Any person found to be violating any provision of this article except Section 14-234 shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations. (Ord. 571)

14-239. SAME; PENALTY. Any person who shall continue any violation beyond the time limit provided for in Section 14-238, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding one hundred dollars ($100) for each violation. Each 24-hour period in which any such violation shall continue shall be deemed a separate offense. (Ord. 571)

14-240. SAME; LIABILITY. Any person violating any of the provisions of this article shall become liable to the city for any expense, loss, or damage occasioned the city by reason of such violation. (Ord. 571)

14-241. SEVERABILITY. The invalidity of any section, clause, sentence, or provision of this article shall not affect the validity of any other part of this article which can be given effect without such invalid part or parts. (Ord. 571)

## ARTICLE 3. SEWAGE DISPOSAL CHARGES

14-301. ESTABLISHMENT OF CHARGES. It is determined and declared to be necessary and conductive to the protection of the public health, safety, welfare, and convenience of the city to collect charges from all users who contribute wastewater to the city treatment works. The proceeds of such charges so derived will be used for the purpose of operating, maintaining, and retiring the debt of such public wastewater treatment works.

14-302. DEFINITIONS. Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

(a) BOD (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20oC., expressed in milligrams per liter (mg/1).

(b) Normal Domestic Wastewater shall mean wastewater that has a BOD concentration of not more than 300 mg/1 and a suspended solids concentration of not more than 350 mg/1.

(c) Operation and Maintenance shall mean all expenditures during the useful life of the treatment works for materials, labor, utilities, and other items which are necessary for managing and maintaining the sewage works to achieve the capacity and performance for which such works were designed and constructed.

(d) Replacement shall mean expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

(e) Residential Contributor shall mean any contributor to the city's treatment works whose lot, parcel or real estate, or building is used for domestic dwelling purposes only.

14-302.1 SAME.

(a) Shall is mandatory; May is permissive.

(b) SS (denoting Suspended Solids) shall mean solids that either float on the surface or are in suspension in water, sewage, or other liquids and which are removable by laboratory filtering.

(c) Treatment Works shall mean any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes. These include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as stand-by treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

(d) Useful Life shall mean the estimated period during which a treatment works will be operated.

(e) User Charge shall mean that portion of the total wastewater service charge which is levied in a proportional and adequate manner for the cost of operation, maintenance, and replacement of the wastewater treatment works.

(f) Water Meter shall mean a water volume measuring and recording device, furnished and/or installed by the City of Oberlin, Kansas.

14-303. CHARGES TO FINANCE SYSTEM. The user charge system shall generate adequate annual revenues to pay costs of annual operation and maintenance, including replacement, and costs associated with debt retirement of bonded capital associated with financing the treatment works which the city may, by ordinance, designate to be paid by the user charge system. That portion of the total user charge which is designated for operation and maintenance including replacement, of the treatment works shall be established by this article.

14-304. OPERATION, REPLACEMENT ACCOUNTS. That portion of the total user charge collected which is designated for operation and maintenance, including replacement, as established in Sections 14-306 through 14-310 shall be deposited in a separate non-lapsing fund known as the Operating, Maintenance, and Replacement Fund and will be kept in two primary accounts as follows: (a) An account designated for the specific purpose of defraying operation and maintenance costs of the treatment works "Operation and Maintenance Account."

(b) An account designated for the specific purpose of ensuring replacement needs over the useful life of the treatment works "Replacement Account." Deposits in the Replacement Account shall be made annually, or more often as the Council may elect, from the operation, maintenance, and replacement revenue. (Ord. 778)

14-305. SAME; BALANCE. Fiscal year end balances in the Operation and Maintenance Account and the Replacement Account shall be carried over to the same accounts in the subsequent year, and shall be used for no other purpose than those designated for these accounts. Monies which have been transferred from other sources to meet temporary shortages in the Operation, Maintenance, and Replacement Fund shall be returned to their respective accounts upon appropriate adjustment of the user charge rates of operation, maintenance, and replacement. The user charge rate shall be adjusted such that the transferred monies will be returned to their respective accounts within the fiscal year following the fiscal year in which the monies were borrowed.

14-306. USER FEES. Each user shall pay for the services provided by the city based on his use of the treatment works as determined by water meters acceptable to the city. The user rates established in this article shall apply to all users of the city's treatment works regardless of where such user may be located.

14-307. SAME; RESIDENTIAL. For residential contributors, monthly user charges will be based on average monthly water usage during the months of December, January and February. If a residential contributor has not established a December, January and February average, his or her monthly user charge shall be a median charge of all other residential contributors. (Code 1989)

14-308. SAME; PUBLIC SCHOOL CONTRIBUTORS. For public school contributors, monthly user charges will be based on average monthly water usage during the months of December, January and February. If a public school contributor has not established a December, January and February average, the monthly user charge shall be an average charge of all public school contributors. (Code 1989)

14-309. SAME; INDUSTRIAL. For industrial and commercial contributors, user charges shall be based on water used during the current month. If a commercial or industrial contributor has a consumptive use of water, or in some other manner uses water which is not returned to the Wastewater Treatment System, the user charge for that contributor may be based on a wastewater meter or separate water meter installed and maintained at the contributor's expense and in a manner acceptable to the city. The proof of use is up to the contributor, at his expense.

14-310. SAME; MINIMUM. The minimum charge per month shall be $14.50 for 300 cubic feet of water. For usage beyond the minimum charge, each contributor shall pay a user charge rate for operation and maintenance including replacement of $2.95 per 100 cubic feet of water. (Ord. 797, Section 1)

14-311. POLLUTANT CHARGE. Any user which discharges any toxic pollutants which cause an increase of the cost of managing the effluent or the sludge from the city's wastewater treatment works, or any user which discharges any substance which singly or by interaction with other substances causes identifiable increases in the cost of operation, maintenance, or replacement of the treatment works, shall pay for such increase costs, directly proportional to the cost of the plant operation, maintenance, and replacement as the additional substance increases the cost. This shall be as determined by the responsible Plant Operating Personnel and approved by the City Council.

14-312. ANNUAL REVIEW. The city will review the user charge system every year and revise user charge rates as necessary to ensure that the system generates adequate revenues to pay the costs of operation and maintenance including replacement and that the system continues to provide for the proportional distribution of operation and maintenance including replacement costs among users and user classes.

14-313. SAME; NOTICE TO CUSTOMER. The city will notify each user at least annually, in conjunction with a regular bill, of the rate being charged for operation and maintenance including replacement of the treatment works.

14-314. BILLED MONTHLY. All users shall be billed monthly. Billing for any particular month shall be made within 30 days after the end of that month or sooner. Payments are due when the billings are made. Any payment not received within 10 days after the billing made shall be delinquent. (Code 1989)

14-315. LATE CHARGE. A late penalty of 10 percent of the user charge bill will be added to each delinquent bill. When any bill is 30 days in default, rendition of water and/or sewer service to such premises shall be discontinued until such bill is paid following due notice and opportunity for hearing. Due notice shall be given within five days following the delinquent time requesting the delinquent contributor to appear at the next regular council meeting where he will be heard.

14-316. SAME; FINDINGS. Following the hearing provided for in Section 14-315, the governing body shall either affirm or adjust the monthly service charge. If the charge is affirmed, water service may be discontinued until all charges have been

paid in full. Findings of the governing body shall be final and binding upon all parties concerned.

14-317. REFUSAL TO PAY. In the event any person, firm, corporation, political unit (except the United States and the State of Kansas) or organization living or operating on premises connected to a sanitary sewer, shall neglect, fail or refuse to pay the service charges fixed by the governing body of the city for the operation of the sewage disposal system, such charges shall constitute a lien upon the real estate served by the connection to the sewer, and shall be certified by the clerk of the city to the county clerk of Decatur County to be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other taxes are by law collectible, and such governing body is hereby authorized and shall have the right to refuse the delivery of water through the pipes and mains of the Oberlin City waterworks until such time as such charges are fully paid.

14-318. VACANCY. Upon proof of vacancy for any period in excess of thirty (30) days, no service charge shall be made. The user shall have the duty of informing the city clerk of such vacancy, and in the absence of the notice, the user shall be charged according to the appropriate schedule of rates.

# CHAPTER XV. STREETS AND SIDEWALKS

Article 1. Construction of Sidewalks
Article 2. Cutting of Pavements, Curbs
Article 3. General Regulations
Article 4. Encroachments
Article 5. Snow and Ice Removal, Sidewalks
Article 6. Snow and Ice Removal, Streets
Article 7. City Tree Board

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## ARTICLE 1. CONSTRUCTION OF SIDEWALKS

15-101. CITY TO BRING SIDEWALKS TO GRADE. It shall be the duty of the city superintendent to bring to grade all sidewalks ordered in by the governing body at the expense of the city.

15-102. SIDEWALKS TO BE BUILT ON GRADE ESTABLISHED BY THE CITY. All sidewalks constructed or reconstructed in this city shall be constructed on the established grade on file in the city clerk's office.

15-103. SIDEWALK SPECIFICATIONS. All sidewalks constructed in this city shall be constructed according to the following specifications.

One-Course Sidewalks:

(a) Cement -- Shall meet the requirement of the Standard Specifications of the American Society for Testing Materials;

(b) Fine Aggregate -- Shall consist of natural sand or screenings from hard, tough, crushed rock, gravel or slag. Must be clean and well graded. All fine aggregate or sand shall pass a one-fourth inch screen and 95 percent shall be retained on a 100 mesh screen.

(c) Course Aggregate -- May be pebbles, broken stone or blast furnace slag. Must be clean, hard, durable and uncoated. All coarse aggregate shall pass a one-inch screen and 95 percent be retained on 1/4 inch screen;

(d) Water -- Shall be clean enough to drink;

(e) Joint Filler -- Shall be premoulded strips of bitumen filled fiber or mineral aggregate, ½ inch thick, as wide as the thickness of the sidewalk and at least two feet long;

(f) Forms -- Shall be of lumber two inches thick or of steel of equal strength. Flexible strips may be used on curves. They shall be rigidly held to line and grade by stakes or braces;

(g) Division Plates -- Shall be of 1/8 inch steel as wide as the depth of the slab and as long as the width of the walk;

(h) Subgrade -- Shall be well drained and compacted to a firm surface with a uniform bearing power;

(i) Drains -- Where necessary, four-inch concrete tile drains shall be laid to protect the walk from damage by frost action;

(j) Subbase -- On poorly drained soil, where drains are impractical, a five-inch subbase of cinders, gravel or other porous material shall be constructed. It shall be thoroughly tamped and drained into the street gutter;

(k) Thickness and proportions -- The walk shall never be less than four inches thick. In business districts it shall be five inches thick. Concrete shall be mixed in the proportions of one part cement, four parts sand, for walks in residential districts. For walks in business districts, use one part cement, four parts sand;

(l) Mixing -- Concrete shall be mixed until each particle of fine aggregate sand is coated with cement and each particle of coarse aggregate is coated with mortar;

(m) Placing and Finishing -- Concrete shall be placed immediately after mixing. It shall be tapped and struck off with a template and shall be floated with a wood float until the surface has a true contour. Care shall be taken not to bring to the surface an excess of water and fine sand by overfinishing;

(n) Jointing -- The walk shall be cut into separate rectangular slabs not greater than six feet on any one side. The surface edges of each slab shall be rounded to a ½ inch radius. Markings shall be exactly at cuts between slabs;

(o) Expansion joints -- Shall extend from the surface to the subgrade and shall be at right angles to the sidewalk surface. A 1/4 inch expansion joint shall be made across the walk at approximately 50 foot intervals. At all places where the walk intersects a curbline or another walk, a one inch expansion joint shall be made;

(p) Curing -- Finished concrete shall be kept wet for seven days;

Two-Course Sidewalks: (Same as specifications for one-course sidewalks, except the following paragraphs which should be substituted for those of corresponding letters in one-course sidewalk specifications.)

(k) Thickness and Proportions -- Two-course walks shall never be less than five inches thick. They shall consist of a base 4 1/4 inches 1/4") thick composed of concrete in the proportions one part cement, four parts sand and a top coat 3/4 inch thick composed of mortar in the proportions one part cement and three parts fine sand. In business districts the thickness of the base shall be 5 1/4 inches);

(m) Placing and Finishing -- The base shall be thoroughly compacted by tamping and shall be struck off with a template which shall leave it 3/4 of an inch below the finished surface. The top coat shall be placed within 25 minutes after the base course is laid. It shall be struck off and finished with a wood float until the surface has a true contour.

15-104. SIDEWALKS CONSTRUCTED. All sidewalks ordered constructed, reconstructed or repaired by the mayor and governing body of this city shall be constructed under the supervision of the city superintendent except as provided in section 15-106 of this article.

15-105. PROCEDURE: SIDEWALKS CONSTRUCTED, RECONSTRUCTED, OR REPAIRED. The mayor and governing body may by resolution order any crosswalk in and order any sidewalk reconstructed or repaired when in their judgment the same is necessary; provided, that the mayor and governing body may order in a new sidewalk when in their judgment the same is necessary or they may order the same in upon receipt of a petition signed by 10 citizens of this city, and it shall be the duty of the city clerk to serve written or printed notice or cause such a notice to

be served on the owner or authorized agent for the owner of the property in front of which or adjacent to which the new sidewalks have been ordered constructed or sidewalks have been ordered reconstructed or repaired. If the sidewalk is not constructed within the time provided in the notice the same shall be done by the city and the cost thereof levied against the property and certified to the county clerk to be collected on the tax rolls; provided further, that notice shall be served on a nonresident property owner by publication in the city's official newspaper, or by posting in 10 conspicuous places within the city limits when the address of the owner or agent is unknown to the city clerk.

15-106. SIDEWALK CONTRACTORS TO GIVE SURETY BOND. Whenever the city superintendent of the city is unable to build any or all sidewalks which it becomes his duty to build, the same may be contracted for by the city to the lowest responsible bidder; provided, that any person or firm who shall contract to build sidewalks for the city shall give a good and sufficient surety bond that he will construct the sidewalk according to specifications and in a manner acceptable to the mayor and governing body or their authorized agent and maintain the same in good condition under the ordinary conditions for a period of one year from the completion of the work.

## ARTICLE 2. CUTTING OF PAVEMENTS, CURBS

15-201. CUTTING PAVEMENT; PERMIT. It shall be unlawful for any person or persons, company or corporation, to cut pavements or make excavation in the streets, alleys, or other public grounds in this city for any purpose, unless such person, persons, company or corporation first obtain a permit authorizing such excavation, which shall be issued by the city clerk only upon the approval of the city superintendent and for which permit the person, company or corporation asking for the same shall be required to pay a reasonable sum per square yard as determined by the city governing body as liquidated damages to be used for the replacement of the pavement by the city.

15-202. PERMIT: HOW SECURED. Any person, company or corporation desiring to obtain a permit, shall pay the amount required by section 15-201, to the city clerk, and from him obtain a receipt therefor. All fees collected by the city clerk shall be credited to the street and alley fund of the city, and all expenses of replacing the pavement cut under the provisions of this article shall be charged to the street and alley fund.

15-203. CUTTING CURBS. It shall hereafter be unlawful for any person, firm or corporation, to make any opening through the curbing on any street or avenue within the city limits, without the written permission of the city superintendent; and it shall be unlawful to cause any damage to such curbing.

15-204. PENALTY. Every person violating any of the provisions of this article shall, upon conviction thereof, be punished by a fine of not less than $1 nor more than $500 or by imprisonment in the jail provided for the use of the city for not more than 30 days, or by both such fine and imprisonment, and for each such violation.

## ARTICLE 3. GENERAL REGULATIONS

15-301. STREETS, SIDEWALKS; SWEEPING INTO OR UPON. It shall be unlawful for any person to sweep, throw or deposit, in any manner, or cause the same to be done upon any sidewalk, street, alley, avenue, public park, or into or upon any lot, or piece of ground, within the city whether such lot shall belong to himself or another, any shavings, paper, paper cuttings, envelopes, wrappers, wrapping paper, bills, dodgers, advertisements, or any scraps or anything whatsoever, which can be, or is likely to be blown by the wind along the streets or walks, or from place to place.

15-302. PLACING EARTH ON STREETS, ALLEYS, PUBLIC GROUNDS. It shall be unlawful for any person to place any earth, or cause the same to be done upon any street, alley, sidewalk, or public grounds in this city, without first obtaining the consent of the governing body so to do.

15-303. BURNING UPON STREETS. It shall be unlawful for any person or persons to make or cause to be made any fire upon any of the paved streets, alleys or street intersections within the city. (Ord. 163, Sec. 2)

15-304. NUISANCES AFFECTING PUBLIC SAFETY; NOTICE TO ABATE. The following are hereby declared to be public nuisances affecting the safety of the inhabitants of this city.

(a) Hanging signs, ropes, networks or advertising devices, posts, oil or gasoline pumps, radio aerials, placed in or projecting over or across any street, avenue, alley or sidewalk, unless the same be under the conditions imposed by ordinance;

(b) Water spouts or drains from buildings which discharge water onto, over or across sidewalks;

(c) Trees and hedges on any private property or in the parking abutting on any sidewalk, street or alley of this city, the branches of which are lower than seven feet above the surface of such a sidewalk or lower than eight feet above the traveled portion of such street or alley;

(d) Dead trees or limbs of trees on any private property or in the parking close enough to fall upon any portion of any street, alley or sidewalk.

When the owner or occupant of any property in this city shall neglect or refuse to abate any of the nuisances enumerated in this section, within the time specified in the notice given him by the city clerk, the city marshal-chief of police shall forthwith proceed to abate such nuisance and the cost thereof shall be collected as provided in section 7-304 of this code. Any person, who, after having been notified to remove and abate any nuisance, neglects, refuses or fails to do so, shall, upon conviction, be punished by a fine of not less than $5, nor more than $50.

15-305. HAULING. It shall be unlawful for any person to haul over the streets or alleys of this city any loose material of any kind except in a vehicle having a tight box so constructed as to prevent the splashing or spilling of any of the substances therein contained upon the streets or alleys.

15-306. GLASS, TACKS, NAILS IN STREETS. It shall be unlawful for any person to place, throw, or cause to be placed or thrown on any street, alley, sidewalk or other public property in this city, any glass, tacks, nails, bottles, or any other substance or things that might wound any person or animals or cut or puncture any pneumatic tire when passing over the same.

15-307. BARRIERS, GUARDS. It shall be the duty of every person who shall have charge of the construction of any excavation or obstruction adjacent to or under any sidewalk or street of this city, during the progress of such work to cause such excavation to be securely guarded by a fence with at least three strings of good six-inch boards nailed not less than 18 inches apart to posts firmly set in the ground or otherwise securely fixed in place; such posts to be set not more than six feet apart and the top of the highest post shall be not less than four and one-half feet from the surface of the sidewalk or street, and from one-half hour after sunset to one-half hour before sunrise to illuminate such excavation or obstruction with red lights, sufficient in number and so placed as to show the full extent thereof.

15-308. REMOVING BARRICADES. It shall be unlawful for any person or persons to remove, throw down, run over or interfere with any barricade or barricades erected by the city or any contractor executing a municipal contract, placed to guard and protect any grading, paving, sidewalk construction or other public work.

15-309. MOLESTING UNFINISHED PAVING. It shall be unlawful to walk upon, drive or ride over or across any pavement, in course of construction before the same has been opened for public travel, any uncompleted grading, or sidewalk construction which has not been opened for travel.

15-310. THROWING IN STREET. It shall be unlawful to throw or bat any ball, stone, or other hard substance into, on, or across any street or alley or at or against any building or vehicle.

15-311. BARBED WIRE: IRON POINTS. It shall be unlawful for any person to place any barbed wire or other sharp iron points on any railing or posts in or adjacent to any alley or sidewalks of this city; provided, that any person who may have heretofore erected such fence or points shall upon notice from the city marshal-chief of police immediately remove the same.

15-312. SIDEWALKS: EARTH WASHING THEREON. Whenever any lot or piece of land abutting on any sidewalk in this city shall become or remain in such a condition that earth or other substance therefrom shall accumulate on such sidewalk and the owner of such lot or piece of land shall refuse or neglect to place the same in such condition as to prevent such washing or accumulating on such sidewalk, such owner shall upon conviction thereof be fined not less than $2 nor more than $50 and

each day that such owner shall refuse or neglect to abate the condition after notice from the city clerk shall constitute a separate offense.

15-313. SIDEWALKS, CURBS: REMOVING. It shall be unlawful to loosen or remove any plank, brick, block or support from any sidewalk or crosswalk or any curbing or gutter; provided, that this section shall not apply to a person making repairs on any such sidewalk, gutter, curb, or crosswalk, or any person temporarily removing the same on account of building operations.

15-314. SIDEWALK SIGNS. It shall be unlawful for any person to erect any sign or other structure for advertising or other purposes across or upon any street or sidewalk unless the same is eight feet or more above the sidewalk or street; provided, that no sign larger than three feet by three feet in size shall be constructed without the permission of the governing body first having been secured; provided further, that all persons or firms desiring to construct signs or other structures weighing more than 50 pounds over any sidewalk or upon any building in this city, shall execute to the city a good and sufficient surety bond to hold the city free and harmless from any damage done to person or property, should such sign or structure fall, be blown down, or otherwise be dislocated.

15-315. OBSTRUCTING SIDEWALKS. It shall be unlawful for any person, firm or corporation to leave or allow to be left without special permit any implements, tools, boxes, merchandise, goods, trash cans, crates, advertising, show cases or any obstructing item on any of the sidewalks or other public ways of this city longer than is necessary for loading or unloading of the same.

15-316. SIDEWALK, OBSTRUCTIONS ON SURFACE. It shall be unlawful for the owner of any property having a sidewalk adjacent hereto to permit any plank, brick, stone or segment of the sidewalk to be raised above the established level of the sidewalk more than one-half inch, in any manner which might catch the foot of a pedestrian; or to permit any holes or depressions to occur in the sidewalk in which a pedestrian might drop or catch his or her foot in a manner liable to cause injury.

15-317. PENALTY. Any person, firm or corporation violating any of the provisions of this article for which a penalty is not otherwise provided, shall, upon conviction thereof, be fined in any sum not exceeding $50.

## ARTICLE 4. ENCROACHMENTS

15-401. OBSTRUCTIONS PROHIBITED. No person shall erect or maintain any building, sidewalk, curb, gutter, drain, awning, canopy, sign or obstruction, upon or adjacent to any premises within the limits of the city or extending past the boundary of any lot or tract of ground in the city, in such a manner as to encroach upon, or obstruct, any street, avenue, alley or sidewalk in the city, or in such a manner as to be unsafe, or as to threaten injury to any person or to property; provided, that awnings, canopies, and signs may be erected and maintained as provided in section 15-402. (Ord. 319, Sec. 1)

15-402. CANOPIES; SIGNS. No person shall erect or maintain, within the city, any awning, canopy or sign which extends past the boundary of any lot or tract of ground into, above, or across any street, avenue, alley or sidewalk, unless the same be erected and maintained as follows, to wit:

(a) All parts of canvass awnings must be maintained not less than eight feet above the sidewalk, except there may be attached thereto an ornamental vertical section of canvass maintained not less than seven feet above the sidewalk;

(b) All canopies must have frames of metal or wood or of equally substantial materials, and must be attached to, or suspended from a building or other secure support with metal rods or chains, and all parts and the supports thereof must be maintained not less than eight feet above the sidewalk or ground;

(c) All signs must have frames of metal or wood or of equally substantial materials, must be attached to, or suspended from a building or other secure support in a safe manner and so as not to threaten injury to any person or to property, and must be maintained not less than eight feet above the sidewalk or ground.

(Ord. 319, Sec. 2)

15-403. OBSTRUCTING SEWERS, DRAINS. No person shall in any manner encroach upon or obstruct, or cause to be encroached upon or obstructed, any gutter, storm sewer, drain or drainage structure which has been constructed, or is being lawfully maintained or is lawfully controlled, by the city. (Ord. 320, Sec. 1)

15-404. ALTERING SEWERS, DRAINS UNLAWFUL. No person shall change or alter any gutter, storm sewer, drain or drainage structure which has been constructed, or is being lawfully maintained or is lawfully controlled by the city, unless such change or alteration has been legally authorized or directed by the governing body of the city. (Ord. 320, Sec. 2)

15-405. OBSTRUCTION ON STREET RIGHT-OF-WAY. The construction and/or maintenance of any structure, building, sign, poster, billboard, roadside stand or other private installation upon or within, or which encroaches upon the limits of the right-of-way of any street or avenue within the limits of the city, which street or avenue is a city connecting link of the State Highway System of the State of Kansas, hereby is prohibited; provided, that by the consent of the governing body of the city, grass, flowers, shrubs, trees and private driveways, when and if same do not interfere with the use thereof for traffic purposes, may be constructed, maintained or had upon the untraveled portions of such streets or avenues. (Ord. 335, Sec. 1)

15-406. GASOLINE AND FUEL PUMPS. The construction and/or maintenance of any gas and fuel dispensing pump within twelve feet (12') of the limits of the right-of-way of any such city connecting link hereby is prohibited. (Ord. 335, Sec. 2)

15-407. CURB CUTS PROHIBITED. The construction and/or maintenance of any entrance to, or curb opening from, any such city connecting link in the city through the curved portion of the curb of any such street or avenue at any intersecting street or avenue, hereby is prohibited. (Ord. 335, Sec. 4)

15-408. PENALTIES. Every person violating any of the provisions of this article shall, upon conviction, be punished by a fine of not more than one hundred dollars ($100) or by imprisonment in the city jail for not more than thirty (30) days, or by both such fine and imprisonment for each and every such violation. In case of default in payment of any fine assessed hereunder such person shall be imprisoned in the city jail until such fine is paid in full. (Ord. 335, Sec. 5)

## ARTICLE 5. SNOW AND ICE REMOVAL, SIDEWALKS

15-501. SNOW, ICE TO BE REMOVED. The owners and occupants of all lots within the limits of the city are hereby required to remove or cause to be removed, all snow and ice from the sidewalk in front of the respective property so owned or occupied by them, within twenty-four (24) hours after same shall have fallen upon such walks. (Ord. 96, Sec. 1)

15-502. REMOVAL, BY CITY. Wherever the snow and ice is not removed as required in section 15-501 it is hereby made the duty of the city superintendent to cause the same to be removed, keeping an account of the expense of so removing the same, and report it to the city clerk, who shall cause the amount of such expense to be levied upon the lots abutting upon the sidewalk from which the city superintendent has so removed such snow and ice, and shall certify the same to the county clerk to be extended upon the tax rolls of the county, and collected the same as other taxes upon the real estate. (Ord. 96, Sec. 2)

## ARTICLE 6. SNOW AND ICE REMOVAL, STREETS

15-601. ANNOUNCEMENT. The city superintendent or city administrator shall publicly announce, through all news media available at the time when an emergency snow condition exists, that the "Snow Removal Plan" is in effect, on street areas marked by "Emergency Snow Route" signs. (Ord. 693, Sec. 1)

15-602. PHASES. Snow removal will be accomplished in phases with priority as shown:

(a) Emergency Snow Routes: Routes necessary to provide emergency vehicles access to major portions of the city, the business district and emergency facilities such as the hospital. The number of routes shall be the minimum necessary. The city superintendent or his or her designated appointee shall be authorized to have violation notices posted on the parked vehicles.

(b) Primary Snow Routes: Routes which when cleared will aid in the orderly movement of vehicles to the emergency snow routes. Posting of violation notices or removal of parked vehicles shall not be authorized.

(c) Secondary Snow Routes; Streets which provide access to the primary snow routes. These routes shall be opened only when the emergency snow routes and primary snow routes remain open.

(Ord. 693, Sec. 2)

15-603. NOTICE. Any person who parks a car or other vehicle or trailer on any street of the city is bound by an emergency traffic or parking measure which may be ordered by the city superintendent or city administrator and is expected to learn when such emergency traffic and parking restrictions are in effect. The city shall make reasonable effort to inform the public of the snow emergency measures; however, it is the responsibility of anyone leaving a car on the streets to keep aware of the application of emergency conditions. (Ord. 693, Sec. 3)

15-604. PENALTY. Any vehicle owner or operator who permits the vehicle or trailer, to remain in a restricted parking area, or who in any other manner interferes with snow removal from the streets shall be in violation of this article, the penalty upon conviction thereof to be not less than $25 nor more than $100. The penalty provided for interference with snow removal by a vehicle rests with the registered owner thereof. The fact that the vehicle was not last parked or driven by the owner thereof, or that the driver or owner was not aware of the emergency traffic provisions in effect, shall not be a defense to a charge of violating this article. (Ord. 693, Sec. 4)

15-605. DUMPING SNOW. Following the snow clearance, it shall be a violation of this article for any person, corporation or firm to pile or dump snow on any cleared street from a private driveway or sidewalk so as to constitute an impediment or hazard to normal traffic on the street. The penalty for violation of this section shall be the same as provided in section 15-604 of this article. (Ord. 693, Sec. 5)

15-606. OWNERS RESPONSIBILITY. Following the snow clearance, it shall be the responsibility of property owners or occupants to remove any blockages of snow from driveways, sidewalks and vehicles in conformity with section 15-605. (Ord. 693, Sec. 6)

15-607. EMERGENCY SNOW ROUTES. Upon announcement by the city superintendent or the city administrator that the "Snow Removal Plan" is in effect, the streets listed in this section shall be designated and signed "Emergency Snow Route" and there shall be no parking thereon, and violating vehicles or trailers shall have violation notices placed thereon. Emergency snow route signs shall be posted on the right hand side of the driving lane at intervals not to exceed four blocks. The emergency snow routes are as follows:

(1) Pennsylvania Avenue from U.S. 36 Highway to railroad tracks;
(2) Commercial Street from the east city limit (Martin Avenue) to the west city limit;
(3) Columbia Street from U.S. Highway 83 to Frasier Avenue;
(4) Cedar Street from U.S. 83 Highway to Chandler Avenue;
(5) Hall Street from U.S. 83 to Marks Avenue;
(6) Rodehaver Avenue from Power Plant to Commercial Street;
(7) Wilson Avenue from U.S. 36 Highway to Commercial Street.

(Ord. 693, Sec. 7)

15-608. PRIMARY SNOW ROUTES. Upon announcement that the "Snow Removal Plan" is in effect, the following streets shall be designated Primary Snow Routes and vehicles are, on request, to be removed from such streets.

(1) Martin Avenue from U.S. Highway 36 to Commercial Street;
(2) Marks Avenue from Hall Street to Commercial Street;
(3) Cass Avenue from U.S. 36 Highway to Hall Street;
(4) Ash Street from Cass Avenue to Griffith Avenue;
(5) Griffith Avenue from Ash Street to North Street;
(6) North Street from Griffith Avenue to Pennsylvania Avenue;
(Ord. 693, Sec. 8)

## ARTICLE 7. CITY TREE BOARD

15-701. DEFINITIONS. Terms as used in this article shall be defined as follows:

(a) Street Trees are 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 within the city;

(b) Park Trees are defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all acres owned by the city, or to which the public has free access as a park.
(Ord. 514. Sec. 1)

15-702. CREATION, ESTABLISHMENT. There is hereby created and established a city tree board which shall consist of five members, citizens and residents of this city, who shall be appointed by the mayor with the approval of the council. The mayor may appoint himself or one of the council members to the tree board (Ord. 514, Sec. 2) (Ord. 768)

15-703. TERM OF OFFICE. The term of the five persons so appointed shall be three years except that the term of two of the members appointed to the first board shall be for only one year and the term of two members of the first board shall be for two years. In the event that a vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion of the term. (Ord. 514. Sec. 3)

15-704. COMPENSATION. Members of the board shall serve without compensation. (Ord. 514, Sec. 4)

15-705. DUTIES, RESPONSIBILITIES. It shall be the responsibility of the board to study, investigate, counsel and develop and/or update annually a written plan for the care, preservation, trimming, planting, replanting, removal or disposition of trees and shrubs in public ways, streets and alleys. 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 city tree board, or its agent, shall be responsible for the planting, pruning and removal of all trees located within the street rights-of-way, easements, alleys and parks of the city. The owner of land abutting on any street may, when acting within the provisions of this article, prune, spray, plant or remove trees in that part of the street abutting his land not used for public travel. A street tree permit shall be required only when the owner of property intends to deviate from the rules and regulations contained in this article.

The board, when requested by the city council, shall consider, investigate, make finding, report and recommend upon any special matter or question coming within the scope of its work. (Ord. 514, Sec. 5)

15-706. OPERATION. The board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business. (Ord. 514, Sec. 6)

15-707. STREET TREE SPECIES TO BE PLANTED. The following list constitutes the official Street Tree Species for the City of Oberlin. No species other than those included in this list may be planted as Street Trees without written permission of the city tree board:

| Small Trees | Medium Trees | Large Trees |
|---|---|---|
| Flowering Crabapple | Honeylocust | Bur Oak |
| Paper Mulberry | Pin Oak | Hackberry |
| Redbud | Chinaberry | London Planetree |
| Mimosa | Kentucky Coffeetree | American Sycamore |
| Hawthorn | Red Mulberry (male) | Pecan |
| Flowering Dogwood | Goldenraintree | Red Oak |
| | Osage/Orange (male, thornless) | Black Walnut |
| | | Green Ash |
| | Baldcypress | Silver Maple |
| | Japanese Pagodatree | Redmond Linden |
| | Hard (sugar) Maple | Cottonwood (cottonless) |
| | Ohio Buckeye | |
| | Sweetgum | Basswood |
| | Tulip Poplar | |
| | Black Cherry | |

(Ord. 514, Sec. 7)

15-708. SPACING. The spacing of street trees will be in accordance with the three species size classes listed in section 15-707 of this article, and no trees may be planted closer together than the following:

(a) Small Trees, 30 feet;
(b) Medium Trees, 40 feet;
(c) Large trees, 50 feet.

(Ord. 514, Sec. 8)

15-709. DISTANCE FROM CURB AND SIDEWALK. The distance trees may be planted from curbs or curblines and sidewalks will be in accordance with the three species size classes listed in section 15-707 of this article, and no trees may be planted closer to any curb or sidewalk than the following:

(a) Small Trees, two feet;
(b) Medium Trees, three feet);
(c) Large Trees, four feet.

(Ord. 514, Sec. 9)

15-710. DISTANCE; STREET CORNERS AND FIREPLUGS. No street tree shall be planted closer than 20 feet of any street corner, measured from the point of nearest intersecting curbs or curblines. No street tree shall be planted closer than 10 feet to any fireplug. (Ord. 514, Sec. 10)

15-711. UTILITIES. No street trees other than those species listed as small trees in section 15-707 of this article may be planted under or within 10 lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility. (Ord. 514, Sec. 11)

15-712. PUBLIC TREE CARE. The city shall have the right to plant, trim, spray, preserve and remove trees, plants and shrubs within the right-of-way lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure safety when servicing city utilities or to preserve the symmetry and beauty of such public grounds. The city tree board may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas line, water lines or other public improvements, or is affected with any injurious fungus, insect or other pest. (Ord. 514, Sec. 12)

15-713. TRIMMING; CORNER CLEARANCE. Every owner of any tree overhanging any street or right-of-way within the city shall trim 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 right-of-way. The owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The city shall have the right to trim any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign, such trimming to be confined to the area immediately above the right-of-way. (Ord. 514, Sec. 13)

15-714. DEAD, DISEASED TREE REMOVAL; PRIVATE PROPERTY. The city shall have the right to cause the removal of any dead or diseased trees on private property within the city, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the city. The city tree board will notify in writing the owners of such trees. Removal shall be done by the owners at their own expense within 60 days after the date of service of notice. In the event of failure of owners to comply with such provisions, the city shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice. (Ord. 514, Sec. 14)

15-715. INTERFERENCE WITH CITY TREE BOARD. It shall be unlawful for any person to prevent, delay or interfere with the city tree board, or any of his agents, or servants, 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. (Ord. 514, Sec. 15)

15-716. ARBORIST; LICENSE, BOND. It shall be unlawful for any person or firm to engage in the business or occupation of trimming, pruning, treating, or removing street or park trees within the city without first applying for and procuring a license. The license fee shall be $10 annually in advance; provided, That no license shall be required of any public service company or city employee doing such work in the pursuit of their public service endeavors. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of $25,000 for bodily injury and $5,000 property damage indemnifying the city or any person injured or damaged resulting from the pursuit of such endeavors as herein described. (Ord. 514, Sec. 16)

15-717. REVIEW BY CITY COUNCIL. The city council shall have the right to review the conduct, acts and decisions of the city tree board. Any person may appeal from any ruling or order of the city tree board to the city council who may hear the matter and make final decision. (Ord. 514, Sec. 17)

# CHAPTER XVI. TRAFFIC

Article 1. Standard Traffic Ordinance
Article 2. Local Traffic Regulations

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## ARTICLE 1. STANDARD TRAFFIC ORDINANCE

16-101. INCORPORATING STANDARD TRAFFIC ORDINANCE. There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Oberlin, Kansas, and any property owned by the City outside the corporate limits, that certain standard traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities," Edition of 2011, prepared and published in book form by the League of Kansas Municipalities, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed, such incorporation being authorized by K.S.A. 12-3009 through 12-3012, inclusive, as amended. No fewer than three copies of said standard ordinance shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Oberlin, Kansas," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this section, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. (Ord. 820, 830, 873, 842, 852, 864)

16-102. TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES. (a) An ordinance traffic infraction is a violation of any section of this ordinance that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. Supp. 8-2118.

(b) All traffic violations which are included within this ordinance, and which are not ordinance traffic infractions as defined in subsection (a) of this section, shall be considered traffic offenses.
(Ord. 820, 830, 873)

16-103. PENALTY FOR SCHEDULED FINES. The fine for violation of an ordinance traffic infraction or any other traffic offense for which the municipal judge establishes a fine in a fine schedule shall not be less than $10 nor more than $500, except for speeding which shall be not less than $10 nor more than $500. A person tried and convicted for violation of an ordinance traffic infraction or other traffic offense for which a fine has been established in a schedule of fines shall pay a fine fixed by the court not to exceed $500. (Ord. 820, 830,873)

## ARTICLE 2. LOCAL TRAFFIC REGULATIONS

16-201. THROUGH STREETS. When signs are erected giving notice thereof drivers of vehicles shall stop or yield as the sign directs at every intersection before entering any of the following streets or parts of streets, which are hereby designated through streets:

(a) All state and federal highways within the limits of the city, except U.S. Highway 83 at its intersection with U.S. Highway 36;

(b) All of Penn Avenue in the city;

(c) Commercial Street from and including its intersection with Beaver Avenue; thence east its entire distance within the limits of the city;

(d) Hall Street at its intersection with Beaver, Cass, Rodehaver, Griffith, York and East Avenues;

(e) Maple Street with its intersections with Rodehaver and Beaver Avenues;

(f) Cass Avenue at its intersection with Maple Street;

(g) York Avenue at its intersections with Adams, Washington, North, Ash, Oak and Maple Streets;

(h) All other streets on which the governing body shall, by motion, direct stop or yield signs to be placed.

(Ord. 472, Sec. 2)

16-202. STREETS ON WHICH ANGLE PARKING PERMITTED. Angle parking at the angle indicated on the curb, sidewalk or pavement or by signs is hereby permitted on the following streets:

(a) On Penn Avenue from its intersection with Oak Street; thence south to its intersection with the Chicago, Burlington & Quincy Railroad right-of-way;

(b) On the east side of Rodehaver Avenue from its intersection with Hall Street; thence north two blocks to its intersection with Maple Street;

(c) On Hall Street from its intersection with Rodehaver Avenue; thence east to its intersection with Griffith Avenue;

(d) On Commercial Street from its intersection with Rodehaver Avenue; thence east to its intersection with Griffith Avenue;

(e) On any other street or avenue only when the street or avenue is wide enough to accommodate angle parking and still allow two lanes of traffic freely to travel the balance of the street or avenue.

It shall be unlawful for any person to park any vehicle to which is attached a trailer, or semitrailer, on any street or avenue in the city where angle parking is permitted as provided in this section. (Ord. 472, Sec. 3)

16-203. SEVENTY-TWO HOUR PARKING. It is hereby declared and made unlawful for any person to leave standing or parked a motor vehicle of any kind or type on the platted street area of the city for a period exceeding 72 consecutive hours. The city police are hereby authorized and empowered to remove same, take such vehicle into their custody and possession and remove it from the streets with all costs incurred thereby chargeable to the owner.

Every person convicted of a violation of this section shall, for the first conviction thereof, be punished by a fine of not more than $50 for the second such conviction

within one year thereof, such person shall be punished by a fine of not more than $100 or by imprisonment by not more than 10 days or by both such fine and imprisonment. (Ord. 510)

16-204. BICYCLE, SIMILAR DEVICE PROHIBITED IN CERTAIN LOCATIONS. No person shall operate or ride any bicycle, scooter, skateboard, coaster, roller skates or similar devices upon the sidewalks of the City in the following locations:

On Penn Avenue from Oak Street to Victoria Street;

On the East side of Rodehaver Avenue from Maple Street to Hall Street;

On Commercial Street from Rodehaver Avenue to Griffith Avenue;

On Hall Street from Rodehaver Avenue to Griffith Avenue.

(a) A law enforcement officer detaining a person for violating this ordinance may impound the device. In the case of the violation of this ordinance by a person who is 18 years or older, the device shall be released by the City Police Department if the violator appears at the City Police Department and provides self-identification. Persons under the age of 18 years must appear at the City Police Department with a parent or guardian to obtain the release of the device; however, if no such parent or guardian resides in the City, the device can be released if its owner provides a letter from a parent or guardian requesting that it be released.

(b) Violation of this ordinance is a municipal offense punishable by a fine of up to One Hundred Dollars ($100). (Ord. 758)

16-205. CARELESS DRIVING. (a) No person shall operate, accelerate or halt any vehicle upon the highways, streets, alleys or public parking lots within the city, in such a manner as to indicate a careless or heedless disregard for the rights or the safety of other persons, vehicles or property or in such a manner as to endanger, or be likely to endanger, any person or property.

(b) Any driver shall be deemed guilty of careless driving and in violation of this ordinance who operates a motor vehicle on any street in the city with unnecessary and excessively fast starts or with unnecessary and excessive spinning of wheels. (Ord. 574, Sec. 3; Ord. 684)

16-206. PENALTY. Any one violating any of the provisions of this article for which a penalty is not otherwise provided shall, upon conviction thereof, be subject to imprisonment not to exceed 30 days, or a fine not exceeding $100.

16-207. DRIVING ON WATER FILLED STREETS. (a) No person shall drive a motor vehicle down a street which is in flooding condition with water running curb to curb, except as follows, to wit: Nothing in this section shall be construed as prohibiting the following:

(1) A residential owner's vehicle being entitled to the right to ingress and egress from the owner's property;

(2) to prohibit an emergency vehicle the right to ingress and egress down such a street;

(3) the free access as is necessary to perform their duties of the regular authorities of the city, state or federal government.

(b) The penalty for violation of this section shall be the same as the penalty set forth of the 1997 edition of the Standard Traffic Ordinance.

(c) The driver of the motor vehicle shall be charged with the violation if the driver is known and if the driver is not known, the registered owner of the vehicle shall be charged with the violation. Proof by the registered owner that the vehicle was stolen and not being used with the registered owner's consent shall be a defense to the violation. (Ord. 691)

16-208. MECHANICAL EXHAUST DEVICE. It shall be unlawful for the driver of any vehicle to use or operate or cause to be used or operated with the city, any mechanical exhaust device designed to aid in the stopping or braking of the vehicle, in a manner so as to create excessive, loud, or unusual or explosive noise from the vehicle. (Ord. 706, Sec. 1)

16-209. NO PARKING ZONES.

(a) The north and south sides of Hall Street from South Cass Avenue to U.S. Highway 83 shall be a No Parking zone.

(b) The south side of Hall Street from South Rodehaver Avenue to South Cass Avenue shall be a No Parking zone.

(c) The north side of Ash Street from Rodehaver Avenue to Cass Avenue during the hours of 8:00 a.m. to 4:00 p.m.

(Ord. 711; Ord. 717, Sec. 1, Ord. 785)

16-210. NO SEMI TRUCK PARKING. It shall be unlawful for any person to park, or leave parked or stopped, any semi-truck, truck-tractor, semi-trailer or truck-tractor combination vehicle unit, on any street, avenue, or alleyway located in the city, except for the purposes of loading or unloading commodities, but then only for a reasonable time necessary to accomplish the loading or unloading in a timely fashion.

# CHAPTER XVII. UTILITIES

Article 1. Utility Deposits & Utility Tampering
Article 2. Water and Electric Rates
Article 3. Petty Cash Fund
Article 4. Water Conservation
Article 5. Solid Waste

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## ARTICLE 1. UTILITY DEPOSITS & UTILITY TAMPERING

17-101. UTILITY DEPOSIT.

(a) Each new customer making application for utility service shall make a cash deposit to the city in the amount as specified in subsection (b), the deposits serve as a guaranty for the payment of service thereafter furnished to the customer's premises.

(b) Cash deposit for utility service shall be $200.

(c) In the event that utility service shall be disconnected or discontinued for failure to pay any bill due the city for such utility, such cash deposit shall be applied as a credit against all amounts due from the customer to the city, and if there shall remain any surplus of such deposit, the same shall be returned to the customer.

(d) Deposits collected pursuant to this section shall be governed by the provisions of K.S.A. 12-822 as amended. (Ord 838)

17-102 UTILITY TAMPERING.

(a) It shall be unlawful for any person, firm or corporation, other than a duly authorized city official or employee, to turn utilities on or off at any location in any manner, without first obtaining written permission from the city.

(b) It shall be unlawful for any person except authorized employees of the city to break the seal of any utility meter, to alter the register or mechanism of any meter, or to make any outlet or connection in any manner so that utilities supplied by the city may be used without being metered and/or paid for.

(c) In addition to any criminal penalties which have been heretofore provided for, a fee of $500 shall be charged to the occupant and/or owner of the property where any of the actions outlined in section 1 or 2 have occurred, regardless of who has tampered with the utility connection. No city utilities shall be restored to the location until the fee is paid and no utilities shall be provided to the person, firm or corporation that either occupies the location where the tempering occurred or at any other location until the fee is paid. (Ordinance 862)

## ARTICLE 2. WATER AND ELECTRIC RATES

17-201. WATER RATES. Residents of the city shall pay for their use and consumption of water furnished or supplied by the city at the monthly rate of $22.80 for the first 750 cubic feet or any part thereof; from 751 cubic feet to 2,000 cubic feet, the rate will be $31.42 per thousand cubic feet; from 2,001 cubic feet and above, the rate will be $34.23 per thousand cubic feet. Water provided outside the city limits of Oberlin shall be charged at a rate of 125% of the above rates. Additionally, the following charges for water furnished or supplied by the city and obtained through each meter, or obtained for each separate property:

| | | |
|---|---|---|
| (a) | Through 5/8ths inch to 3/4 inch water meters | $10.20; |
| (b) | Through 1 inch water meters | 17.00; |
| (c) | Through 1 1/4 inch water meters | 23.80; |
| (d) | Through 1 ½ inch water meters | 30.60; |
| (e) | Through 2 inch water meters | 44.20; |
| (f) | Through 3 inch water meters | 57.80; |
| (g) | Through 4 inch water meters | 71.40. |

(Ord. 757, 810, 816, 836, 847, 859)

17-202. ELECTRICAL CONSUMPTION BY WATER DEPARTMENT. All electrical consumption by the water department of the city shall be metered by the city, shall be paid for from water utility funds at the city's rate of cost as determined by the total electrical department expenses divided by the total kilowatts produced in the immediately preceding fiscal year and shall be shown on the city accounts as an expense of water production and distribution. (Ord. 692, Sec. 2)

17-203. COMBINATION ELECTRICAL. The rate for electric current supplied by the city shall be at the rate of $0.128 per kilowatt hour with all customers paying an additional demand charge of $7 per month per residential meter and $12 per month per business meter..
(Ord. 692, Sec. 3, Ord. 767, 799, 803, 811, 851)

17-204. DEDICATION OF PROCEEDS. One-half cent per KWH for all electric current sold by the city shall be dedicated to an electrical system reserve fund from which electrical system improvements shall be paid. (Ord. 767, 811, 851, 861)

17-205. BILL; PAYABLE. That all bills for furnishing utilities by the city shall become due and payable on the first day of each month. If payment is not received by the 15th of the month, five (5) percent of the amount owed shall be added to the amount originally payable; and unless such bills are paid on or before the 15th day of each month service shall be discontinued as provided herein. All bills are payable to the city clerk's office. No monies are to be collected by the electric department or other city staff. (Ord. 825, 837)

17-206. NOTICE; HEARING. (a) A delinquency and termination notice shall be issued by the city clerk on or after the 16th day of the month when the account has not been paid. It shall be mailed to the customer at his or her last known address.

(b) The notice shall state:

(1) The amount due, plus late payment charge;

(2) Notice that service will be terminated if the amount due is not paid within seven days from the date of the notice;

(3) Notice that the customer has the right to a hearing before the governing body prior to services being terminated;

(4) Notice that the request for a hearing must be in writing and filed with the city clerk not later than the date proposed for termination of service.

(c) Upon receipt of a request for hearing, the city clerk shall advise the customer of the date, time and place of the hearing which shall be held at the next regularly scheduled city council meeting. At the hearing the city council may extend the date for payment and extend the time of termination of service for good cause shown. The city administrator shall have the power, in extenuating circumstances to make extended payment agreements for delinquent accounts. (Ord. 825, 828, 837)

17-207. SAME; FINDING. If the governing body finds that service should be terminated, it shall order termination of service no less than 5 days after the hearing date. For good cause shown, the governing body may extend the date of termination for a period of up to 10 days. (Ord. 825)

17-208. RECONNECTION FEE. A fee established by the governing body shall be charged for reconnections after service has been discontinued. As of September 1, 2009, reconnections shall not be made until all sums past due for services have been paid. For existing delinquent accounts, the city administrator may establish written payment agreements for delinquent accounts to be made current not later than July 1, 2010. Any customer who does not establish a payment agreement by September 1, 2009 shall be subject to the provisions of this ordinance. All payment agreements in place at the time of the adoption of this ordinance shall be suspended and the utility customer shall be required to negotiate new payment agreements with the city. (Ord. 825)

17-209. SERVICE CONNECTION FEES.

(a) The applicant for a new electrical service installation shall pay to the city for a standard electrical service drop, the following listed tap fees:

| | | |
|---|---|---|
| (1) | Temporary electrical tap fee | $ 15.00 |
| (2) | Single phase up to 200 ampere requirement | $ 185.00 |
| (3) | 3 phase up to 200 ampere requirement | Tap fee shall be negotiated with city, based upon actual cost of operation |
| (4) | 3 phase over 200 ampere requirement | Tap fee shall be negotiated with city, based upon actual cost of operation |

(b) The above fees shall include cost of labor and materials for installing service at the service connection point. The city shall supply the meter and meter socket and the property owner shall be responsible for installation of meter and underground wiring from the service connection point to the owner's place of business or home through the property owner's contractor, at his expense. The service materials installed up to the service connection point shall be owned by the city from the source to the service connection point and shall be maintained by the city at all times. The meter and meter box shall be provided upon presentation of the electrical contractor's permit to install electric service at the specific job site. The city shall not install underground electric wiring for service on private property, but will install new overhead where existing wire is replaced.

(Ord. 825, 860, 867)

17-210. DEFINITIONS. For the purposes of sections 17-210:212 the following rules of construction and definitions shall apply.

(a) The word "city" refers to the City of Oberlin, Kansas;

(b) The words "shall" and "will" are mandatory;

(c) "ASHRAE" refers to the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., of New York, New York;

(d) "BTUs" means British Thermal Units;

(e) "EER" means Energy Efficiency Ratio, the ratio of net cooling capacity in BTUs/hr. to total electric input in watts;

(f) The words "heated space" shall mean that space within a building which is provided with a positive heat supply having a connected output capacity in excess of 10 BTUs/hr. per square foot;

(g) The words "new commercial building" shall mean any building used to provide, at wholesale or retail, storage, services, supplies, goods or products to the public, other than a building used for the purpose of manufacturing raw material into a finished product, but shall not be construed to apply to any such building whose foundation has been completed by July 20, 1978;

(h) The words "new residential dwelling" shall mean all new hotels, motels, apartment houses, lodging houses, private homes and other residential dwellings, construction of which commences on or after the effective date of this ordinance, but shall not be construed to apply to mobile homes, or any such new residential dwelling where the foundation has been completed by July 20, 1978. This definition shall apply to buildings of mixed occupancy;

(i) The word "owner" shall mean a person, as defined herein, holding legal title to the residential dwelling or commercial building;

(j) The word "person" shall mean any individual individuals, corporation, partnership, unincorporated association or other business organization, committee, board, trustee, receiver or agent;

(k) The words "city utility" shall mean the electric system operated by the city. (Code 1979)

17-211. COMPLIANCE REQUIRED. No connections or attachments of service to new residential dwellings or new commercial buildings shall be made by a city utility until such utility has received a certificate of compliance from the owner that the residential dwelling or commercial building meets the standards set forth in section 17-212. Such certificate of compliance shall include supporting statements from the architect and/or contractor, if either or both such persons were employed in the design and construction of the new residential dwelling or new commercial building. Receipt by the city utility of such certificate of compliance shall be required for permanent utility service. (Code 1979)

17-212. CROSS-CONNECTIONS PROHIBITED. No person, company, corporation, or institution shall establish or permit to be established or maintain or permit to be maintained, any cross-connection whereby a private, auxiliary, or emergency water supply other than the regular public water supply of the city may enter the supply and distributing system of the city unless specifically approved by the Kansas Department of Health and Environment and the governing body. (Code 1989)

17-213. PROTECTIVE BACKFLOW DEVICES REQUIRED. Approved devices to protect against backflow or backsiphonage shall be installed at all fixtures and equipment where backflow and/or backsiphonage may occur and where there is a hazard to the public water supply in that polluted water or other contaminating materials may enter into the public water supply. Any situation in which a heavy withdrawal of water, such as a sudden break in the main or water being used from a fire hydrant, may cause a pressure reduction to develop which could lead to backsiphonage of polluted water into the system shall be improper and must be protected by approved backflow preventer valves and systems as determined by the superintendent. (Ord. 816)

17-214. SAME; INSPECTION. The city utility superintendent or other designee of the governing body shall have the right of entry into any building or premises in the city as frequently as necessary in his or her judgment in order to ensure that plumbing has been installed in accordance with the laws of the city so as to prevent the possibility of contamination of the water supply of the city. (Code 1989)

17-215. SAME; PROTECTION FROM CONTAMINANTS. Pursuant to the city's constitutional home rule authority and K.S.A. 65-163a, the city by its utility superintendent, may refuse to deliver water through pipes and mains to any premises where a condition exists which might lead to the contamination of the public water supply system and it may continue to refuse the delivery of water to the premises until that condition is remedied. In addition, the city utility superintendent may terminate water service to any property where the cross-connection, backsiphonage, or back pressure condition creates, in the judgment of the superintendent, an emergency danger of contamination to the public water supply. (Code 1989)

17-216 SAME. TAP FEE FOR WATER SERVICE

(a) An applicant for a new water service installation shall pay the City for a water service drop a tap fee as follows, based upon the size of the meter:

| Size of Meter | Tap Fee |
|---|---|
| 3/4" | $ 600 |
| 1" | 700 |
| 1 1/2" | 1,800 |
| 2" | 2,700 |

In addition, the applicant shall pay 110% of the actual cost of pipe and tubing plus sales tax on the installation.

(b) The water tap fee shall include the cost of labor and materials for installing service at the service connection point. The City shall supply a water meter and water meter housing, and the property owner shall be responsible for the installation of any piping necessary from the service connection point to the owner's place of business or residence at their own expense. The water service materials installed up to the service connection point shall be owned by the City from the source to the service connection point, and shall be maintained by the City at all times. (Ordinance 860, 867)

## ARTICLE 3. PETTY CASH FUND

17-301. FUND ESTABLISHED. A petty cash fund in the amount of $2,500 is established for the city. (Ord. 288, Sec. 1; Code 1989)

17-302. FUND: USED, REPLENISHED. The petty cash fund is to be used, and replenished, in accordance with the regulations set forth in K.S.A. 12-825a through 12-825d, inclusive. (Ord. 288, Sec. 2)

## ARTICLE 4. WATER CONSERVATION

17-401. PURPOSE. The purpose of this article is to provide for the declaration of a water supply emergency and the implementation of voluntary and mandatory water conservation measures throughout the city in the event such an emergency is declared. (Code 1989)

17-402. DEFINITIONS. (a) Water shall mean water available to the city for treatment by virtue of its water rights or any treated water introduced by the city into its water distribution system, including water offered for sale at any coin-operated site.

(b) Customer shall mean the customer of record using water for any purpose from the city's water distribution system and for which either a regular charge is made or, in the case of coin sales, a cash charge is made at the site of delivery.

(c) Waste of Water includes, but is not limited to (1) permitting water to escape down a gutter, ditch, or other surface drain, or (2) failure to repair a controllable leak of water due to defective plumbing.

(d) The following class of uses of water are established:

Class 1. Water used for outdoor watering, either public or private, for gardens, lawns, trees, shrubs, plants, parks, golf courses, playing fields, swimming pools or other recreational area; or the washing of motor vehicles, boats, trailers, or the exterior of any building or structure.

Class 2. Water used for any commercial or industrial, including agricultural, purposes; except water actually necessary to maintain the health and personal hygiene of bona fide employees while such employees are engaged in the performance of their duties at their place of employment.

Class 3. Domestic usage, other than that which would be included in either Classes 1 or 2.

Class 4. Water necessary only to sustain human life and the lives of domestic pets and maintain standards of hygiene and sanitation.
(Code 1989)

17-403. DECLARATION OF A WATER EMERGENCY. Whenever the governing body of the city finds that an emergency exists by reason of a shortage of water supply needed for essential uses, it shall be empowered to declare by resolution that a water supply emergency exists and that it will encourage voluntary water conservation or impose mandatory restrictions on water use during the period of the emergency. Such an emergency shall be deemed to continue until it is declared by resolution of the governing body to have ended. The resolutions declaring the existence and end of a water supply emergency shall be effective upon their publication in the official city newspaper. (Code 1989)

17-404. VOLUNTARY CONSERVATION MEASURES. Upon the declaration of a water supply emergency as provided in section 17-403, the mayor is authorized to call on all water consumers to employ voluntary water conservation measures to limit or eliminate non-essential water uses including, but not limited to, limitations on the following uses:

(a) Sprinkling of water on lawns, shrubs or trees (including golf courses).

(b) Washing of automobiles.

(c) Use of water in swimming pools, fountains and evaporative air conditioning systems.

(d) Waste of water.
(Code 1989)

17-405. MANDATORY CONSERVATION MEASURES. Upon the declaration of a water supply emergency as provided in section 17-403, the mayor is also authorized to implement certain mandatory water conservation measures, including, but not limited to, the following:

(a) Suspension of new connections to the city's water distribution system, except connections of fire hydrants and those made pursuant to agreements

entered into by the city prior to the effective date of the declaration of the emergency;

(b) Restrictions on the uses of water in one or more classes of water use, wholly or in part;

(c) Restrictions on the sales of water at coin-operated facilities or sites;

(d) The imposition of water rationing bases on any reasonable formula including, but not limited to, the percentage of normal use and per capita or per consumer restrictions;

(e) Complete or partial bans on the waste of water; and

(f) Any combination of the foregoing measures.

(Code 1989)

17-406. EMERGENCY WATER RATES. Upon the declaration of a water supply emergency as provided in section 17-403, the governing body of the city shall have the power to adopt emergency water rates by ordinance designed to conserve water supplies. Such emergency rates may provide for, but are not limited to:

(a) Higher charges for increasing usage per unit of use (increasing block rates);

(b) Uniform charges for water usage per unit of use (uniform unit rate); or

(c) Extra charges in excess of a specified level of water use (excess demand surcharge).

(Code 1989)

17-407. REGULATIONS. During the effective period of any water supply emergency as provided for in section 17-403, the mayor is empowered to promulgate such regulations as may be necessary to carry out the provisions of this article, any water supply emergency resolution, or emergency water rate ordinance. Such regulations shall be subject to the approval of the governing body at its next regular or special meeting. (Code 1989)

17-408. VIOLATIONS, DISCONNECTIONS AND PENALTIES. (a) If the mayor, water superintendent, or other city official or officials charged with implementation and enforcement of this article or a water supply emergency resolution or ordinance learn of any violation of any water use restrictions imposed pursuant to sections 17-405 or 17-407, a written notice of the violation shall be affixed to the property where the violation occurred and the customer of record and any other person known to the city who is responsible for the violation or its correction shall be provided with either actual or mailed notice. The notice shall describe the violation and order that it be corrected, cured or abated immediately or within such specified time as the city determines is reasonable under the circumstances. If the order is not complied with, the city may terminate water service to the customer subject to the following procedures:

(1) The city shall give the customer notice by mail or actual notice that water service will be discontinued within a specified time due to the violation and that the customer will have the opportunity to appeal the termination by requesting a hearing scheduled before the city governing body or a city official designated as a hearing officer by the governing body;

(2) If such a hearing is requested by the customer charged with the violation, he or she shall be given a full opportunity to be heard before termination is ordered; and

(3) The governing body or hearing officer shall make findings of fact and order whether service should continue or be terminated.

(b) A fee of $50 shall be paid for the reconnection of any water service terminated pursuant to subsection (a). In the event of subsequent violations, the reconnection fee shall be $200 for the second violation and $300 for any additional violations.

(c) Violation of this article shall be a municipal offense and may be prosecuted in municipal court. Any person so charged and found guilty in municipal court of violating the provisions of this article shall be guilty of a municipal offense. Each day's violation shall constitute a separate offense. The penalty for an initial violation shall be a mandatory fine of $100. In addition, such customer may be required by the court to serve a definite term of confinement in the city or county jail which shall be fixed by the court and which shall not exceed 30 days. The penalty for a second or subsequent conviction shall be a mandatory fine of $200. In addition, such customer shall serve a definite term of confinement in the city or county jail which shall be fixed by the court and which shall not exceed 30 days. (Code 1989)

17-409. EMERGENCY TERMINATION. Nothing in this article shall limit the ability of any properly authorized city official from terminating the supply of water to any or all service as required to protect the health and safety of the public. (Code 1989)

## ARTICLE 5. SOLID WASTE

17-501. DEFINITIONS. For the purpose of this article the following definitions shall apply:

(a) Contractor shall mean a person with whom the city has a contract to collect and dispose of refuse;

(b) Person shall mean any individual, firm, association, syndicate, copartnership, corporation, trust, other legal entity having proprietary interest in a premise, or other legal entity having responsibility for an act;

(c) Garbage shall mean the solid or semi-solid animal and vegetable waste resulting from the handling, preparation, cooling and serving of foods, including can, bottles and cartons in which it was received and wrapping in which it may be placed for disposal;

(d) Refuse shall mean all solid waste from residential, commercial or industrial premises. It shall include semi-liquid or wet wastes with insufficient moisture and other liquid contents to be free flowing. It shall not include, except for minor amounts incidental to other wastes, any refuse resulting from building excavation, demolition, or remodeling work, or any construction work, nor shall it include stumps, tree trunks, tree trimmings, or limbs resulting from the cutting down, or the topping of any tree, regardless of who performs the work, nor shall it include refuse resulting from tornado, cyclone, extreme wind storms, ice storms, flood or other act of God, or the burning of any building;

(e) Sanitation Officer shall mean the current sanitation officer as appointed by the mayor and approved by the council, who shall have responsibility for administering and enforcing this article.
(Ord. 536, Sec. 1)

17-502 COLLECTION; REFUSE, GARBAGE. All refuse and garbage accumulated within the city shall be collected, conveyed and disposed of by the city or by contractors specifically authorized to collect and dispose of refuse and garbage. (Ord. 536, Sec. 2)

17-503 CONTRACTS. The governing body of the city shall have the right to enter into a contract with any responsible person for collection and disposal of refuse and garbage; provided, that the contracts shall provide for the collection and disposition of all refuse within the city. The contract may be awarded to a responsible person following proper negotiation or after receiving bids, whichever, in the judgment of the governing body, shall seem proper; provided further, that the contract for the collection and disposal of refuse as herein defined shall in no way conflict with the terms and conditions of this article. (Ord. 536, Sec 3)

17-504. STORAGE. It shall be the duty of every person, firm or corporation owning, managing, operating, leasing or renting any premises or any place in good order and repair, on each of the premises, a portable container or containers for refuse storage of sufficient capacity and of sufficient numbers to accommodate and securely hold all of the garbage and refuse that may accumulate between regular schedule collections. All solid waste containers shall be stored upon private property unless the owner shall have been granted written permission from the city to use public property for such purpose. (Ord. 536, Sec. 4)

17-505. CONTAINERS. Refuse containers and garbage containers shall not be more than 35 gallons nor less than 10 gallons in nominal capacity; except where only one container is used, in which case this container may be less than 10 gallons in capacity. Containers shall be waterproof, ratproof, and fitted with a tight lid. The containers shall have handles, bails or other suitable lifting devices or features. The containers shall be of a type originally manufactured for refuse or garbage, with tapered sides for easy emptying. They shall be of light weight and sturdy construction. The weight of any individual container and contents shall not exceed 80 pounds. Galvanized iron and similar metal containers shall be used. Disposal bags manufactured for garbage and refusal disposal, in suitable frames or containers shall be acceptable. Oil or grease drums, paint cans, and similar salvaged containers shall not be acceptable. (Ord. 536, Sec. 4)

17-506. BULK CONTAINERS. On premises where excessive amounts of refuse accumulates or where individual storage methods such as cans or bags are impractical the occupant or the contractor may provide and maintain suitable bulk containers for the on-premise storage of refuse. The container shall have a capacity and shall be equipped with appurtenances for attaching mechanical lifting devices which are compatible with the collection equipment. Containers shall be contracted of durable rust and corrosion-resistant material which is easy to clean. All containers shall be equipped with tight fitting lids or doors to prevent entrance

of insects or rodents. The doors and lids shall be constructed and maintained so that they can be easily opened and closed. The containers shall be of watertight, leakproof and weather proof construction and design. (Ord. 536, Sec. 4)

17-507. COVERS, LIDS, DOORS. Covers, lids and doors on containers used for the storage of refuse and garbage shall be kept closed at all times except when depositing material in the container or removing the contents therefrom:

(a) All refuse and garbage shall be placed in suitable containers; except, it shall not be necessary to place books, boxes, magazines, or newspapers in containers, provided, that they are securely tied in bundles or completely contained in disposable boxes not larger than 24 x 24 36 inches. Also, tree limbs and brush may be securely tied in bundles not larger than 48 inches long and 18 inches in diameter;

(b) Baskets, boxes and noncomplying refuse or garbage cans or containers shall be considered disposable refuse and may be removed by the contractor if they are the proper size and otherwise acceptable for collection; or shall be left uncollected if they are larger than the allowable size or unacceptable for collection;

(c) Large bulky items such as furniture, large tree limbs and appliances that cannot be reduced to fit approved containers, will be collected only by prior special arrangement with the city or the contractor.
(Ord. 536, Sec. 4)

17-508. WRAPPING GARBAGE. All garbage or refuse, consisting of waste, animal and vegetable matter, which may attract flies, dogs or rodents, shall be drained of all excess liquids, wrapped in paper or disposal containers, and placed or stored, until collected, in covered suitable containers as described in section 7-205 of this article. (Ord. 536, Sec. 5)

17-509. ACCUMULATION; REFUSE, GARBAGE. No person shall store, collect, maintain or display on private property, refuse or garbage that is offensive or hazardous to the health and safety of the public or which creates offensive odors or a condition of unsightliness. Storage, collection, maintenance or display of wastes or solid wastes in violation of this section shall be considered to be a public nuisance.

No person shall permit to accumulate quantities of refuse, papers, trash, ashes, or other waste materials, within or close to any building unless the same is stored in containers in such a manner as not to create a health or fire hazard. (Ord. 536, Sec. 6)

17-510. BURYING REFUSE, GARBAGE. No person shall bury refuse at any place within the city or keep, place, or deposit refuse on any public or private grounds or premises, whatsoever, except in containers or receptacles for

17-511. BURNING; REFUSE, GARBAGE. No person shall burn any garbage, refuse, leather, rubber, plastic, green or wet vegetation or organic material, or burn any other substance producing dense smoke or unpleasant odor within the city unless the operations are carried out in an approved type incinerator. (Ord. 536, Sec. 8)

17-512. OWNERSHIP OF REFUSE MATERIALS. Ownership of refuse materials when placed in the containers by the occupants or owners of premises upon which refuse accumulates, shall be vested in the city and shall thereafter be subject to the exclusive control of the city, its employees or contractors and no person shall meddle with refuse containers or in anyway pilfer or scatter contents thereof in any alley or street within the city. (Ord. 536, Sec. 9)

17-513. UNAUTHORIZED DISPOSAL. No person shall haul or cause to be hauled any garbage, refuse or other waste material of any kind to any dumping place, site or area within or without the limits of the city unless such place or site is operated by the contractor, the city, or is a sanitary landfill site, transfer point or disposal facility approved by the Kansas State Department of Health; in addition to the site or facility must comply with all applicable health and zoning ordinances of the city. (Ord. 536, Sec. 10)

17-514. HAZARDOUS MATERIALS. No person shall deposit in a garbage or refuse container or otherwise offer for collection any hazardous garbage, refuse, or waste. Hazardous materials shall be transported by the owner or his or her agent, to a place of safe deposit or disposal as prescribed by the sanitation officer or his or her authorized representative. Hazardous material shall include:

(a) Explosive materials;
(b) Rags or other waste soaked in volatile and flammable materials;
(c) Drugs;
(d) Poisons;
(e) Radio-active materials, high combustible materials;
(f) Soiled dressings, clothing, bedding and/or other wastes, contaminated by infection or contagious disease;
(g) Any other materials which may present a special hazard to collection or disposal personnel, equipment, or to the public.

(Ord. 536, Sec. 11)

17-515. USE OF PUBLIC PROPERTY PROHIBITED. No person shall throw, rake, deposit, dump, drop or spill litter, waste material or foreign material upon the street, sidewalks, or other public right-of-way within the city; provided, that the mayor may at his or her discretion proclaim a period when leaves may be placed in street right-of-ways for collection; provided further, that nothing in this article shall prevent any person under a permit from the city from encumbering the streets or alleys with building materials or earth as may be necessary for the purpose of construction, erection, adding to, remodeling, repairing any building or structure, or resulting from demolition operations; provided further, that in the event of such encumbering of the streets or alleys, the contractor, owner, or occupation shall remove any and all materials remaining within 10 days from the completion of the work, and shall leave the street or alley in the same condition that they were in prior to such use thereof. (Ord. 536, Sec. 12)

17-516. ENTER PRIVATE PREMISE. Solid waste collectors, employed by the city or operating under contract with the city, are hereby authorized to enter in and upon private property for the purpose of collecting solid waste therefrom as required by this article. (Ord. 536, Sec. 13)

17-517. COLLECTION OF GARBAGE, RUBBISH. Provisions relating to the collection of garbage and rubbish shall be as follows:

(a) The city, or its authorized contractor, shall collect at least weekly from residential areas, designated business routes and food establishments of the city, as provided in schedules established by the city or contractor, all garbage and refuse; provided, that it shall be the duty of any person in possession or control of any premises to place the storage containers required in section 7-205 of this article in a convenient location for collection, as designated by the city and the contractor; whereby collectors can obtain same without going into buildings, garages, locked gates or fenced yards with dogs. Residential collection containers shall be placed at the front curb of each residence at the time designated by the contractor or city for collection from that residence. Following collection, the empty containers shall be removed from the front curb by each householder. In no case shall containers be kept at the front curb or in any location clearly visible from the street other than at the designated times of collection. All containers and grounds immediately around same shall be kept in a safe and sanitary condition at all times.

(b) The places having rubble and excessive accumulations of garbage and refuse shall be included for minimum or nominal service, but may be excluded from additional service provided by the city or contractor, the option resting with the city or contractor, and such accumulations shall then be removed and disposed of at the expense of the owner or person having same in charge; provided, that the owner, person having such accumulations in charge, or collecting agent shall secure from the city clerk a written permit for the scheduled removal and disposal of same; unless the removals are performed by arrangement with the contractor.

(c) Heavy accumulations such as brush, broken concrete, ashes, sand or gravel, automobile frames, dead trees, and other bulky, heavy materials shall be disposed of at the expense of the owner or person controlling same under the direction of the sanitation officer.

(d) Manure from cow lots, horse stables, poultry yards, pigeon lofts, and other animal or fowl pens, and waste oils from garages or filling stations or materials considered hazardous and/or dangerous shall be removed and disposed of at the expense of the person controlling the same in the manner and by the method directed by the sanitation officer.

(Ord. 536, Sec. 14)

17-518. PERMITS. No person shall collect or haul over the city streets in the city, any garbage or refuse unless such person shall have a contract with the city; provided, that this section shall not apply to departments of city government of the city; provided further, that nothing in this section shall be construed to prevent a person from hauling or disposing of his own refuse accumulated at his residence or business establishment, in such manner as not to endanger the public health or safety, not to create a nuisance to the inhabitants of the city and not to litter the streets and alleys of the city; provided further, that such person shall have hauling equipment meeting Kansas State Department of Health requirements and that the place and method of disposal used is in accordance with Kansas State Department of Health requirements. In no case, however, shall a person hauling or disposing of his or her own refuse be thereby or for any other reason exempt from any service charges or fees required by this article. (Ord. 536, Sec. 15)

17-519. AUTHORIZED PERSONS; NO FURTHER PERMIT. Any person authorized by the contractor to remove or haul garbage or refuse, shall be considered to have met the provisions of section 7-218 of this article, and no further permit or license shall be required by the city. Nothing elsewhere contained in this article shall be construed as prohibiting construction contractors, tree surgeons, roofers and other private contractors, whose operations result in the accumulation of refuse, from hauling and disposing of accumulations of trash and rubbish resulting from their own operations; provided, that they shall at all times comply with the regulations and provisions of this article. (Ord. 536, Sec. 16)

17-520. CHARGES; COLLECTION, DISPOSAL. The city, in providing the service of collection and disposing of all refuse accumulated within the city for the purpose of preventing unsanitary, unsightly hazardous, unhealthful and dangerous conditions caused by the accumulation of garbage and refuse, shall establish and collect a service charge or fee to defray the cost and maintenance of service and to pay any person contracting with the city for the collection and disposal of garbage and refuse, the fees and charges provided by the contract for the collection and disposal thereof. Such service charges and fees shall be computed, based and charged to the owners or occupants of dwelling units or commercial establishments as nearly as practicable upon the basis of volume or time expended in the collection and disposal thereof. (Ord. 536, Sec. 17)

17-521. CHARGES; FEE SCHEDULE. The following schedule of charges is hereby established as reasonable and in accordance with the volume of garbage and refuse handled from the following classifications of residences, dwellings, and commercial establishments;

(a) There shall be charged, assessed and collected from each residential unit within the city limits, the monthly amount of:

(1) Multiple occupant dwellings — $9.50;

(2) Single occupant dwellings — $4.75;

(3) Charges for additional volume and/or frequency shall be paid directly to the city or contractor by the person requesting additional service.

(b) In case of mobile home parks, multiple or group dwellings, there shall be at least one standard container for each dwelling unit or in the equivalent volume an approved container or containers designed for mechanical emptying. Each mobile home and each apartment or dwelling unit shall be considered a Residential Unit for the charging, assessment and collection of fees hereunder;

(c) There shall be charged, assessed and collected from each commercial establishment, the monthly amount of:

(1) Up to two 35 gallon containers per week, or the equivalent thereof — $3.

(d) Such additional charges as may be agreed upon by the owner or operator of the establishment and the contractor may be made for service in excess of minimum provided above. Payment for such additional collection of refuse from commercial establishment shall be made directly to the contractor. Occupants may appeal to the solid waste committee if the rate is considered excessive:

(1) Special haul service collection as specially requested by occupants or owners of amounts of refuse in excess of those normally

collected and at pickup time other than normally scheduled. Cost shall be agreed upon by the city or contractor and the person requesting special hauling service, and shall be collected directly by the contractor. (Ord. 614, Sec, 1; Code 1989)

17-522. DUTY TO REQUEST GARBAGE SERVICE. To assist in maintaining the general sanitation of the city, it shall be the duty of every person occupying or having control of the occupancy of any premises located on a regularly established garbage and refuse route to notify the city clerk of the city at the beginning of such occupancy or on the effective date of this code and request, accept and use the garbage and refuse pickup and collection service; provided, that the failure of any owner, rental agent or occupant of such premises to make such request shall not prevent nor in any way impair or impede the city from adding the address of such premises to the proper garbage and refuse collection route records and providing such service and otherwise enforcing by appropriate action the regulatory measures herein prescribed and causing the fees or charges thereof to be paid. (Ord. 536, Sec. 18)

17-523. CHARGES TO BE ON WATER, UTILITY BILL. All bills for refuse service charges shall be included on water or utility bills and delinquent refuse bills shall carry the same due dates, grace periods and penalties as water bills. (Ord. 536, Sec. 1; Code 1989)

17-524. PROHIBITED PRACTICES. It shall be unlawful for any person to:

(a) Deposit solid waste in any container other than that owned or leased by him or her or under his or her control without written consent of the owner and/or with the intent of avoiding payment of the refuse service charge;

(b) Interfere in any manner with employees of the city or its contractors in the collection of solid waste;

(c) Burn solid waste unless a variance has been granted and a written permit obtained from the city or the appropriate air pollution control agency.

(Ord. 536, Sec. 20)

17-525. SANITATION OFFICER. There is hereby created the office of sanitation officer, who shall be appointed by the mayor with the consent of the city council and who shall have the responsibility of administering and enforcing this article. He or she is hereby authorized, subject to approval by the governing body, to formulate reasonable rules and regulations including point of collection necessary to carry out the provisions of this article. (Ord. 536, Sec. 21)

17-526. PENALTY. Any person who shall violate any provision of this article, shall, upon conviction, be punished by a fine of not less than $100 or by imprisonment for not less than 30 days, and each day's failure to comply with any such provision shall constitute a separate violation. (Ord. 536, Sec. 23)

# CHAPTER XVIII. ZONING AND PLANNING

Article 1. City Planning Commission
Article 2. Decatur County Regional Planning Commission
Article 3. Reserved
Article 4. Zoning Regulations
Article 5. Flood Damage Prevention

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## ARTICLE 1. CITY PLANNING COMMISSION

18-101. CREATION. There is hereby created a commission to be known as the City Planning Commission of the City of Oberlin. (Ord. 326, Sec. 1)

18-102. MEMBERS; APPOINTMENT. The city planning commission shall consist of seven members, all of whom shall be taxpayers of which number two members shall reside outside of but within three miles of the corporate limits of the city, and the remaining members shall be residents of the city and shall be appointed by the mayor by and with the consent of the city council. The members first appointed shall serve for terms of one, two and three years from the first day of May of the year in which they are first appointed, divided as equally as possible in numbers appointed for each of the terms. Thereafter as the first terms expire, the members shall be appointed for terms of three years each; provided, that vacancies caused by death, resignation or other disability of any member shall be filled for the unexpired term only. The members of such commission shall serve without compensation and shall perform the duties and have the powers hereinafter provided. (Ord. 326, Sec. 2)

18-103. ORGANIZATION OF COMMISSION. The members of the city planning commission shall meet at least once a month at such time and place as they may fix by resolution. They shall select one of their number as chairman and one as vice chairman and a secretary who may or may not be a member of the commission, each of whom shall serve one year, or until their successors have been selected by the commission. Special meetings may be called at any time by the chairman or in his absence by the vice chairman. A majority of the commission shall constitute a quorum for the transaction of business. The commission shall cause a proper record to be kept of its proceedings, and adopt suitable rules governing the conduct thereof. (Ord. 326, Sec. 3)

18-104. POWERS, DUTIES. The powers and duties of the commission shall be to make plans and maps of the whole or any portion of the city and of any land outside of the city, which in the opinion of the commission, bears relation to the planning of the city and to make changes in such plans or maps when it deems the same advisable. Such maps or plans shall show, if and when the same are deemed desirable by the commission, the commission's recommendations for new streets, alleys, ways, viaducts, bridges, parkways, parks, playgrounds, or any other public ground or public improvement and the removal, relocation, widening or extension of such public works then existing with a view of the systematic planning of the municipality, and the commission shall make recommendations to the governing

body of the city concerning the location of streets, transportation and communication facilities, public buildings and grounds. The governing body may require the city planning commission to divide the city into districts or zones; recommend the boundaries of the same, and the appropriate regulations and restrictions for the location of trades and industries and the location, erection, alteration and repair of buildings designed for specific uses and the uses of land within each district or zone. Whenever the commission shall have made and agreed upon a plan for the development of the municipality or any portion thereof, such plan or plans shall be submitted to the governing body for its consideration and action. (Ord. 326, Sec. 4)

18-105. PLANS, PLATS; REGULATIONS. All plans, plats or replats of lands laid out in building lots and the streets, alleys or other portions of the same intended to be dedicated for public use, or for the use of purchasers or owners of the lots fronting thereon or adjacent thereto, and plans and descriptions of all streets, alleys or public ways intended to be deeded or dedicated for public use, or for the use of purchasers or owners of the land fronting thereon or adjacent thereto which is not intended to be platted into lots or other dedicated tracts, and located within the city limits of the city or any addition or plan of streets or public ways located outside the city limits; provided, that such territory is within Decatur County and entirely or in part within three miles of the nearest point on the city limits of the city, shall be submitted to the city planning commission of this city, for its consideration and their recommendations shall then be submitted to the city governing body for its official consideration and action. No such plat or replat or dedication or deed of street or publicway shall be filed with the register of deeds as provided by law until such plat or replat or dedication or deed shall have endorsed on it the fact that it has first been submitted to the city planning commission and by the commission to the governing body of the city and by the governing body duly approved. Before exercising the powers referred to above, the city planning commission shall adopt regulations governing the subdivision of land within its jurisdiction. Such regulations may provide for the proper area of streets in relation to other existing or planned streets and to the mapped plan for adequate and convenient open spaces for traffic, utilities, access of fire fighting apparatus, recreation, light, and air, and for the avoidance of congestion of population, including minimum width and area of lots. (Ord. 326, Sec. 5)

18-106. BUDGET OF EXPENDITURES. On or before July 1st of each year the city planning commission shall submit to the governing body of the city its budget of expenditures for the ensuing fiscal year, itemizing the expense and amounts and the purpose. The governing body shall thereupon consider the budget and make such allowance to the city planning commission as it shall deem proper and shall add the same to the general budget of the city. (Ord. 326, Sec. 6)

## ARTICLE 2. RESERVED

## ARTICLE 3. RESERVED

## ARTICLE 4. ZONING REGULATIONS

18-401. INCORPORATION BY REFERENCE. The book entitled "Standard Zoning Code with Subdivision Regulations, 1984 Edition" as amended by Ordinance No. 667 is hereby incorporated by reference for the purposes of providing for the promotion of the public health, safety, order and general welfare of the residents of the city; the preservation and protection of property values throughout the city; the regulation and restriction of the size and dimensions of buildings located within the city; the division of the city into zoning districts; the regulation and restriction of the location and use of buildings and the use of land within each zoning district; and the providing of penalties for the violation thereof, all pursuant to K.S.A. 12-707 et seq. No fewer than three copies of the above-described book with copies of all ordinances amending the same shall be marked "Official Copy" and filed with the city clerk. Such copies shall be available for inspection by the public at all reasonable hours. (Ord. 625, Secs. 2:3; Ord. 667, Sec. 1)

18-402. ZONING DISTRICT MAP. The boundaries of districts are as shown on a map entitled "Zoning Map of Oberlin, Kansas," which is certified by and filed in the office of the city clerk and which with all explanatory information thereon is hereby made a part of this article. The zoning map shall be kept and maintained by the city clerk and shall be available for inspection by the public at all reasonable hours. (Ord. 625, Sec. 4)

18-403. BOARD OF ZONING APPEALS. See Ordinance No. 326.

## ARTICLE 5. FLOOD DAMAGE PREVENTION

18-501. STATEMENT OF PURPOSE. It is the purpose of this article to promote the public health, safety and general welfare and to minimize flood losses by applying the provisions of this article to:

(a) Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increase in flood heights or velocities.

(b) Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.

(c) Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.

(d) Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.
(Ord. 694, Sec. 1)

18-502. DEFINITIONS. Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

Actuarial or Risk Premium Rates means those rates established by the administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the Act and the accepted actuarial principles. Risk premium rates include provisions for operating costs and allowances.

Appeal means a request for a review of the city administrator's interpretation of any provision of this ordinance or a request for a variance.

Area of Shallow Flooding means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel in unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard is the land in the flood plain within a community subject to one percent or greater chance of flooding in any given year.

Base flood means the flood having one percent chance of being equaled or exceeded in any given year.

Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Existing construction means (for purposes of determining rates) structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRM's effective before that date. Existing construction may also be referred to as existing structures.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by a community.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Flood Insurance Study has delineated the Flood Hazard Boundaries and the zones establishing insurance rates applicable to the community.

Flood Insurance Study is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as

the Flood Boundary/Floodway Map and the water surface elevation of the base flood.

Floodway or Regulatory Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Floodway Fringe is that area of the flood plain, outside of the floodway, that on the average is likely to be flooded once every 100 years (i.e., that has a one percent chance of flood occurrence in any one year).

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

Highest Adjacent Grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure means any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) by an approved state program as determined by the Secretary of the Interior; or (2) directly by the Secretary of the Interior in states without approved programs.

Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of this article.

Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New Construction means for the purpose of determining insurance rates, structures for which the start of construction or substantial improvement commenced on or after the initial FIRM or after December 31, 1974, whichever is

later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

Overlay District is a district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.

Start of Construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure means a walled and roofed building that is principally above ground, as well as a mobile home, and a gas or liquid storage tank that is principally above ground.

Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing, state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Variance is a grant of relief to a person from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship. (Ord. 694, Sec. 12)

18-503. GENERAL PROVISIONS. (a) Lands to Which this Article Applies. This article shall apply to all lands within the jurisdiction of the city limits identified on

the Flood Insurance Rate Map (FIRM) as numbered and unnumbered A Zones (including AE, AO and AH Zones) and within the Zoning Districts FW and FF established in Section 16-505 of this article. In all areas covered by this article no development shall be permitted except upon a permit to develop granted by the city council or its duly designated representative under such safeguards and restriction and the city council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in sections 16-506:507 and 18-509.

(b) The Enforcement Officer. The city administrator of the community is hereby designated enforcement officer under this article.

(c) Rules for Interpretation of District Boundaries. The boundaries of the floodway and floodway fringe overlay districts shall be determined by scaling distances and the official zoning map or on the Flood Insurance Rate Map or Floodway Map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the enforcement officer shall make the necessary interpretation. In such cases where the interpretation is contested, the board of zoning appeals will resolve the dispute. The regulatory flood elevation for the point in question shall be on the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his or her case to the board and to submit his or her own technical evidence, if he or she desires.

(d) Compliance. No development located within known flood hazard areas of this community shall be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations.

(e) Penalties for Noncompliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this article and other applicable regulations.

(f) Abrogation and Greater Restrictions. It is not intended by this article to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this article imposes the greater restrictions, the provision of this article shall prevail. All other articles inconsistent with this article are hereby repealed to the extent of the inconsistency only.

(g) Interpretation. In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted under state statutes.

(h) Warning and Disclaimer of Liability. The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This article does not imply that areas outside floodway and floodway fringe district boundaries or land uses permitted within such will be free from flooding or flood damages. This article shall not create liability on the part of the city or any officer

or employee thereof for any flood damages that may result from reliance on this article or any administrative decision lawfully made thereunder.

(i) Appeal. Where a request for a permit to develop or a variance is denied by the city administrator the applicant may apply for such permit or variance directly to the board of zoning appeals.

Violation of the provisions of this article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a violation of this code. Any person who violates this article or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $500, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

Nothing herein contained shall prevent the city or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 694, Secs. 2:10)

18-504. ADMINISTRATION. (a) Establishment of a Development Permit. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in 18-503. No person, firm, or corporation or unit of government shall initiate any development or substantial improvement or cause the same to be done without first obtaining a separate permit for each development as defined by 18-502. To obtain a floodplain development permit, the applicant shall first file an application therefore in writing on a form furnished for that purpose. Every such application shall:

(1) Identify and describe the work to be covered by the floodplain development permit.

(2) Describe the land on which the proposed work is to be done by lot, block, tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or work.

(3) Indicate the use or occupancy for which the proposed work is intended.

(4) Be accompanied by plans and specifications for proposed construction.

(5) Be signed by the permittee or his or her authorized agent who may be required to submit evidence to indicate such authority.

(6) Give such other information as reasonably may be required by the city administrator (i.e., require a statement from the applicant that they are aware that elevating or floodproofing structures above the minimum levels will result in premium reduction, especially in the case of nonresidential floodproofing when a minus one foot penalty is assessed at the time of rating the structure for the policy premium.)

(b) Designation of the Local Administrator. The city administrator is hereby appointed to administer and implement the provisions of this article, by granting or denying development permit applications in accordance with its provisions.

(c) Duties and Responsibilities of City Administrator. Duties of the city administrator shall include, but not be limited to:

(1) Review all development permits to assure that sites are reasonably safe from flooding and that the permit requirements of this article have been satisfied.

(2) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

(3) When base flood elevation data has not been provided in accordance with 18-503, section (b), then the city administrator shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer the provisions of 18-505:510.

(4) Verify, record and maintain record of the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures.

(5) Verify, record and maintain record of the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed.

(6) When floodproofing is utilized for a particular structure the city administrator shall obtain certificate from a registered professional engineer or architect.

(7) Notify adjacent communities and the Kansas Water Resources Board prior to any alteration or relocation of a watercourse, and shall submit evidence of such notification to the Federal Emergency Management Agency.

(8) Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood carrying capacity is not diminished.

(9) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the city administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

(d) Variance Procedures.

(1) The board of zoning appeals as established by the city shall hear and decide appeals and requests for variances from the requirements of this article.

(2) The board of zoning appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the city administrator in the enforcement or administration of this article.

(3) Any person aggrieved by the decision of the board of zoning appeals or any taxpayer may appeal such decision to the district court as provided in K.S.A. 12-759 and 12-760.

(4) In passing upon such applications, the board of zoning appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this article, and:

(a) the danger that materials may be swept onto other lands to the injury of others;
(b) the danger to life and property due to flooding or erosion damage;
(c) the susceptibility of proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
(d) the importance of the services provided by the proposed facility to the community;
(e) the necessity to the facility of a waterfront location, where applicable;
(f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
(g) the compatibility of the proposed use with existing and anticipated development;
(h) the relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
(i) the safety of access to the property in times of flood for ordinary and emergency vehicles;
(j) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
(k) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(5) Conditions for Variances

(a) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (b-f below) have been fully considered. As the lot size increases beyond the one-half acre, the technical jurisdiction required for issuing the variance increases.
(b) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
(c) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
(d) Variances shall only be issued upon determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
(e) Variances shall only be issued upon (i) a showing of good and sufficient case, (ii) a determination that failure to grant the variance would result in exceptional hardship to the

applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws, codes or ordinances.

(f) Any applicant to whom a variance is granted shall be given a written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(Ord. 694, Secs. 3,8)

18-505. ESTABLISHMENT OF ZONING DISTRICTS. The mapped flood plain areas within the jurisdiction of this article are hereby divided into the two following districts: a floodway overlay district (FW) and a floodway fringe overlay district (FF) identified in the Flood Insurance Study and accompanying map. Within these districts all uses not meeting the standards of this article and those standards of the underlying zoning district shall be prohibited. These zones shall be consistent with the numbered and unnumbered A Zones (including AE, AO and AH Zones) as identified on the official FIRM and identified in the Flood Insurance Study provided by the Federal Emergency Management Agency. (Ord. 694, Sec. 4)

18-506. STANDARDS FOR THE FLOODWAY OVERLAY DISTRICT AND THE FLOODWAY FRINGE OVERLAY DISTRICT. (a) No permit for development shall be granted for new construction, substantial improvements and other improvements including the placement of manufactured homes within all numbered and unnumbered A Zones (including AE, AO and AH Zones) unless the conditions of this section are satisfied.

(b) All areas identified as unnumbered A Zones on the FIRM are subject to inundation of the 100-year flood; however, the water surface elevation was not provided. The unnumbered A Zones shall be subject to all development provisions of this article. If Flood Insurance Study data is not available the community shall utilize any base flood elevation or floodway data currently available from federal, state or other sources.

(c) New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:

(1) Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(2) New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination.

(3) Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located

so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) All utility and sanitary facilities be elevated or floodproofed up to the regulatory flood protection elevation.

(5) That until a floodway has been designated, no development including landfill, may be permitted within Zones A1-30 and AE on the city's FIRM unless the application for the land use has demonstrated that the proposed use, when combined with all other existing and reasonably anticipated uses, will not increase the water surface elevation of the 100 year flood more than one foot on the average cross section of the reach in which the development or landfill is located as shown on the Flood Insurance Rate Study incorporated by reference.

(6) Storage and Material and Equipment:

(A) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.

(B) Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

(7) Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, be required to assure that (i) all such proposals are consistent with the need to minimize flood damage, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated and constructed to minimize or eliminate flood damage, (iii) adequate drainage is provided so as to reduce exposure to flood hazards, and (iv) proposals for development (including proposals for manufactured home parks and subdivisions) of five acres or 50 lots, whichever is lesser, include within such proposals the regulatory flood elevation.

(Ord. 694, Sec. 5)

18-507. FLOODWAY FRINGE OVERLAY DISTRICT (Including AO and AH Zones).

(a) Permitted Uses.

(1) Any use permitted in section 18-509 shall be permitted in the Floodway Fringe Overlay District. No use shall be permitted in the district unless the standards of section 18-506 are met.

(b) Standards for the Floodway Fringe Overlay District.

(1) Require new construction or substantial improvements of residential structures to have the lowest floor, including basement, elevated to or above one foot above the base flood elevation.

(2) Require new construction or substantial improvements of nonresidential structures to have the lowest floor, including basement, elevated to or above one foot above the base flood elevation or, together with attendant utility and sanitary facilities, to be floodproofed so that below such a level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and

hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in section 18-504.

(3) Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) Within AH Zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

(c) Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of section 18-510(b) be elevated so that either:

(1) The lowest floor of the manufactured home is at or above one foot the base flood elevation; or

(2) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system in accordance with the provisions of section 18-510(a).

(Ord. 694, Sec. 6)

18-508. SPECIAL FLOOD HAZARD AREAS. Located within the areas of special flood hazard are areas designated as AO Zones. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply within AO Zones:

(a) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as one foot the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).

(b) All new construction and substantial improvements of nonresidential structures shall:

(1) Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as one foot the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or

(2) Together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantial impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Such certification shall be provided to the officials set forth in section 18-504.

(c) Adequate drainage paths structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.
(Ord. 694, Sec. 6)

18-509. FLOODWAY OVERLAY DISTRICT. (a) Permitted Uses: Only uses having a low flood damage potential and not obstructing flood flows shall be permitted within the floodway district to the extent that they are not prohibited by any other ordinance. All encroachments, including fill, new construction, substantial improvements and other developments must be prohibited unless certification by a professional registered engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge. No use shall increase the flood levels of the regulatory flood elevation. These uses are subject to the standards of sections 18-506:507. The following are recommended uses for the floodway district.

(1) Agricultural uses such as general farming, pasture, nurseries, forestry.

(2) Residential uses such as lawns, gardens, parking and play areas.

(3) Non-residential areas such as loading areas, parking, airport landing strips.

(4) Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

(5) In Zone A unnumbered, obtain, review and reasonably utilize any floodway data available through federal, state or other sources or section 18-566(c)(7) of this article, in meeting the standards of this section.

(Ord. 694, Sec. 7)

18-510. MANUFACTURED HOMES.

(a) All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with state and local building codes and FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:

(1) Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side;

(2) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side;

(3) All components of the anchoring system be capable of carrying a force of 4,800 pounds; and

(4) Any additions to the manufactured home be similarly anchored.

(b) Require that all manufactured homes to be placed within Zones A1-30, AH, and AE on the community's FIRM.

(1) Outside of a manufactured home park or subdivision;

(2) In a new manufactured home park or subdivision;

(3) In an expansion to an existing manufactured home park or subdivision; or

(4) In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above one foot the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of section 18-510(a).

Be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevations; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of section 18-505(c)(4)(a).
(Ord. 668, Art. 5; Ord. 694, Sec. 6)

18-511. NON-CONFORMING USE. (a) A structure or the use of a structure or premises which was lawful before the passage or amendment of Ordinance 694 but which is not in conformity with the provisions of this code may be continued subject to the following conditions:

(1) No such use or substantial improvement of that use shall be expanded, changed, enlarged, or altered in a way which increases its non-conformity.

(2) If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this article. The utility department shall notify the city administrator in writing of instances of non-conforming uses where utility services have been discontinued for a period of 12 months.

(3) Uses or adjunct thereof which are or become nuisances shall not be entitled to continue as non-conforming uses.

(b) If any non-conforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
(Ord. 668, Art. 6; Ord. 694, Sec. 9)

18-512. AMENDMENTS. The regulations, restrictions, boundaries set forth in this article may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of

1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 20 days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the city.

A copy of such amendments will be provided to the Federal Emergency Management Agency. The regulations of this article are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulations. (Ord. 694, Sec. 11)