

Chapter 7
FIRE REGULATIONS

Article 1. Fires

§7-101 FIRES; PRESERVATION OF PROPERTY. The Fire Chief, or any officer in charge of the Fire Department, shall have the authority and power to cause the removal of property whenever it shall become necessary for the preservation of more valuable property, the protection of human life, or to prevent the spreading of fire to adjoining property. The Fire Chief may direct the Municipal Firemen to remove any building, structure, or fence for the purpose of checking the progress of any fire. The Fire Chief shall have the authority to blow up, or cause to be blown up, with explosives any building or structure during the progress of a fire for the purpose of checking the progress of the same.

§7-102 ABATEMENT OF NUISANCE. Whenever a nuisance exists as defined in this Chapter, the Municipality may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law.

Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as part of the judgment in the case. (*Ref. 18-1720, 18-1722 RS Neb.*)

§7-103 FIRES; EQUIPMENT. It shall be unlawful for any person except the Fire Chief and the members of the Municipal Fire Department to molest, destroy, handle or in any other way to interfere with the use and storage of any of the fire trucks and other apparatus belonging to the Municipality.

§7-104 FIRES; INTERFERENCE. It shall be unlawful for any person or persons to hinder or obstruct the Municipal Fire Chief or the members of the Fire Department in the performance of their duty. (*Ref. 28-908 RS Neb.*)

§7-105 FIRES; OBSTRUCTION. (*Ref. 39-672 RS Neb.*)(*Repealed by Ord.02-04, 2/4/02*)

§7-106 FIRES; DRIVING OVER HOSE. It shall be unlawful for any person, without the consent of the Fire Chief or Assistant Fire Chief, to drive any vehicle over unprotected hose of the Fire Department. (*Ref. 39-682 RS Neb.*)

§7-107 FIRES; TRAFFIC. It shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm. (*Ref. 39-681 RS Neb.*)(*Amended by Ord.02-04, 2/4/02*)

§7-108 FIRES; FALSE ALARM. It shall be unlawful for any person to intentionally and without good and reasonable cause, raise any false alarm of fire.

§7-109 FIRES; PEDESTRIANS. (*Repealed by Ord. 02-04, 2/4/02*)

Article 2. Fire Prevention

§7-201 FIRE PREVENTION; FIRE PREVENTION CODE. The rules and regulations promulgated by the office of the State Fire Marshal of the State of Nebraska relating to fire prevention are incorporated by reference into this Code and made a part of this Article as though spread at large herein

together with all subsequent amendments thereto. (Ref. 18-132, 19-902, 19-922, 81-502 RS Neb.)(Amended by Ord. 02-04, 2/4/02)

§7-202 FIRE PREVENTION; FIRE PROHIBITED. It shall be unlawful for any person to set out a fire at any location within the Municipality.

Article 3. Poisonous and Flammable Substances

[Editor's Note: This Article was amended in its entirety by Ordinance No. 83-3, passed April 18, 1983]

§7-301 FLAMMABLE SUBSTANCES; GENERAL REGULATIONS. No poisonous or flammable substances shall be stored or transported within the zoning jurisdiction of the Municipality except in accordance with the provisions of this Article. In every case, such substances shall be handled in accordance with the statutory requirements of the United States and the State of Nebraska. The Municipal Clerk shall at all times, maintain within in his or her office, the most current version of all standard codes adopted by reference within this Article; Provided, however, that failure of the Clerk to do so shall not relieve any person of obligations imposed by this Article.

§7-302 FLAMMABLE SUBSTANCES; DEFINITIONS. Unless the context is shown to clearly intend otherwise, for the purposes of this Article, the definitions set forth in this Section shall prevail. Where technical terminology is utilized, but not defined within this Section, such terminology shall be construed in accordance with the most current version of the applicable publications of the American National Standards Institute (ANSI), and the National Fire Protection Association (NFPA), or their successor bodies.

- A. COMBUSTIBLE LIQUID – The term "combustible liquid" shall mean and include all substances which are defined herein as flammable liquids.
- B. FLAMMABLE LIQUID – The term "flammable liquid" shall mean and include all liquid having a flash point at or below 37.8° C. (100° F.).
- C. FLAMMABLE SUBSTANCE – The term "flammable substance" shall mean and include anhydrous ammonia and all substances which are defined herein as flammable liquids, combustible liquids, and/or liquefied petroleum gases.
- D. LIQUID – the term "liquid" shall be defined in accordance with the National Fire Protection Association Publications Number Thirty (30) (1973), as the same may be amended from time to time or at any time.
- E. LIQUEFIED PETROLEUM GAS – The term "liquefied petroleum gas" shall mean and include any material composed predominantly of the following hydrocarbons, either by themselves or as mixtures:
 - PROPANE
 - PROPYLENE
 - BUTANE (normal butane or isobutane), and
 - BUTYLENE (including isomers).

- F. POISONOUS – The term "poisonous" when applied within this Article to any substance shall mean and include substances which are capable in reasonably anticipated strengths of causing death or permanent injury to human, animal, or plant life.
- G. TRAVELED ROUTE – The term "traveled route" shall mean and include the outer boundaries of any dedicated highway, street, alley, sidewalk, or other public right-of-way.
- H. ABOVE GROUND STORAGE FACILITY – The term "above ground storage facility" shall mean and include any facility, at least 90% of which lies above the earth's surface, which is permanently secured to the surface, and which is intended to be used as a permanently situated facility. (*Amended by Ord. No. 87-16, 1/4/88*)

§7-303 FLAMMABLE SUBSTANCES; FLAMMABLE AND COMBUSTIBLE LIQUIDS. Flammable and combustible liquids located within the Municipality shall be handled in accordance with the National Fire Protection Association Publication Number Thirty (30) (1973), as the same may be amended from time to time and at any time. The Municipality may, at any time, however, adopt supplemental standards which are more restrictive than the above referenced standard, either by ordinance or by resolution.

§7-304 FLAMMABLE SUBSTANCES; LIQUEFIED PETROLEUM GAS. Liquefied petroleum gas located within the Municipality shall be handled in accordance with the National Fire Protection Association Publication Number Fifty-Eight (58) (1974), as the same may be amended from time to time and at any time. The Municipality may, at any time, however, adopt supplemental standards which are more restrictive than the above referenced standard, either by ordinance or by resolution.

§7-305 FLAMMABLE SUBSTANCES; ANHYDROUS AMMONIA. Anhydrous ammonia located within the Municipality shall be handled in accordance with the American National Standards Institute Publication Number K61.1 (1972), as the same may be amended from time to time and at any time. The Municipality may, at any time, however, adopt supplemental standards which are more restrictive than the above referenced standard, by ordinance or by resolution.

§7-306 FLAMMABLE SUBSTANCE; POISONOUS GASES. No person shall construct, enlarge, add to, or replace any facility constructed, used or intended to be used for the storage of poisonous gases within the zoning jurisdiction of the Municipality without first obtaining a permit issued by the Municipality. As a prerequisite to the issuance of such permit, the applicant must show within the application for such permit, the name of the substance to be stored, the place of storage, and the volume of the substance to be stored; the applicant shall further show that all interested State and Federal Departments and Agencies have been contacted and that the storage facility or the plans for such facility have been reviewed by such authorities. Permit requirements for the initial construction or location of storage facilities shall not apply to those facilities in existence on the effective date of this Article; Provided, however, that a present use which is discontinued for sixty (60) days shall not be revived without a permit. The fee for issuance of such permit shall be ten dollars (\$10.00) and shall be paid to the Municipal Clerk at the time of initial application. Any fee assessed to the Municipality, by the Inspecting Department, or Agency shall be paid by the applicant to the Municipality in addition to the initial application fee. Such payment must be made prior to the issuance of the permit contemplated by this Section.

§7-307 FLAMMABLE SUBSTANCES; PERMIT REQUIRED. No person shall construct, enlarge, add to, or replace any facility constructed, used, or intended to be used for the storage of flammable or combustible liquids, liquefied petroleum gas, or anhydrous ammonia within the zoning jurisdiction of the Municipality without first obtaining a permit issued by the Municipality. As a prerequisite to the issuance of such permit, the applicant must show within the application for such permit, the name of the substance to be stored, the place of storage, and the volume of the substance to be stored; the applicant shall further show that the Nebraska State Fire Marshal's Office has been contacted and that the storage facility or the plans for such facility have been approved by the Nebraska Fire Marshal's Office. Permit requirements for the initial construction or location of storage facilities shall not apply to those facilities in existence on the effective date of this Article; Provided, however, that no present use which is discontinued for sixty (60) days shall not be revived without a permit. The fee for issuance of such permit shall be ten dollars (\$10.00) and shall be paid to the Municipal Clerk at the time of initial application. Any fee assessed to the Municipality, by the Inspecting Department, or Agency shall be paid by the applicant to the Municipality in addition to the initial application fee. Such payment must be made prior to the issuance of the permit contemplated by this Section.

§7-308 FLAMMABLE SUBSTANCES; RAILROAD TANK CARS UNLOADING. It shall be unlawful for the operator of any train comprised of railroad tank cars containing any poisonous or flammable substance, including anhydrous ammonia, liquid fertilizer, liquefied petroleum gas, or flammable liquids, to stop or park such tank car or cars within the City of Waverly, Nebraska, and its zoning jurisdiction except to unload such substances, and then only for a time not to exceed a reasonable time necessary to unload. (*Ref. 17-123 RS Neb.*)

§7-309 FLAMMABLE SUBSTANCES; ABOVE GROUND STORAGE OF FLAMMABLE LIQUIDS PROHIBITED. It shall be unlawful to store flammable liquids in above ground storage facilities within the zoning jurisdiction of the Municipality. This prohibition shall not apply to those storage facilities in existence on the effective date of this Article; Provided, however, that the use of such above ground flammable liquid storage facility shall be discontinued within five (5) years of the effective date of this Article. No present use of the above ground flammable liquid storage facility which is discontinued for a period of sixty (60) days subsequent to the effective date of this Article shall be resumed. Above ground flammable liquid storage facilities existing on the effective date of this Article may be repaired in place only, so long as their use is not discontinued for a period longer than the time allowed in this paragraph; but, no above ground flammable liquid storage tank which must be removed from its place of permanent installation in order to be repaired, may be restored to service.

§7-310 FLAMMABLE SUBSTANCES; INSPECTION OF FUEL STORAGE FACILITIES REQUIRED. Within thirty (30) days of the effective date of this Article all persons maintaining storage facilities for flammable liquids within the zoning jurisdiction of the Municipality shall report the same to the Municipal Clerk. Within ninety (90) days of the effective date of this Article, all facilities for the storage of flammable liquids located within the zoning jurisdiction of the Municipality shall be inspected, at the request of the Municipality, by the Nebraska State Fire Marshal's Office and the findings of the State Fire Marshal's Office shall be reported to Municipal Building Inspector. The Municipal Building Inspector shall maintain a list of all such facilities and shall request the Nebraska State Fire Marshal's Office to conduct annual inspections of all such facilities on or before April 1 of each year, and the Building Inspector shall maintain accurate records of each such inspection. The Municipal Building Inspector may at any time request the State Fire Marshal's Office to conduct supplemental in-

spections of any individual storage facility whenever he/she has reason to believe that such storage facility may pose a serious safety hazard to the Municipality. *(Amended by Ord. 02-04, 2/4/02)*

§7-311 FLAMMABLE SUBSTANCES; ABATEMENT ORDERS; TERMINATION OF UNSAFE STORAGE FACILITIES. The Nebraska State Fire Marshal's Office shall recommend to the Building Inspector that the use of any fuel storage facilities deemed to pose a serious safety hazard to the Municipality be immediately discontinued. Once such a recommendation has been made by the State Fire Marshal's Office such facility shall be deemed a public nuisance and it shall be the duty of the Building Inspector to issue an abatement order requiring the owner of such facility to immediately terminate its use and, at the owner's cost, to dismantle or remove the facility under the direction of the State Fire Marshal's Office. However, if in the judgment of the State Fire Marshal's Office, the facility can be restored to a safe condition through in place repairs (without removing the storage tank from its place of permanent installation), then the Building Inspector shall issue an abatement order requiring the owner of said facility, at the owner's cost, to restore the fuel storage facility to a safe condition within a reasonable period of time. Such Abatement Orders may be issued in lieu of prosecution for violation and failure to comply with any such Abatement Order shall be deemed a violation of this Article. *(Amended by Ord. 02-04, 2/4/02, 02-16, 6/3/02)*

§7-312 FLAMMABLE SUBSTANCES; STORAGE OF POISONOUS AND FLAMMABLE SUBSTANCES IN CLOSE PROXIMITY TO STRUCTURES, TRAVELED ROUTES, AND RAILROADS PROHIBITED.

- A. No person shall store poisonous or flammable substances within the zoning jurisdiction of the Municipality within seventy-five feet (75') of any structure, traveled route, or the centerline of any railroad track; Provided, however, that the same may be stored underground, not less than twenty-five feet (25'), from any structure, traveled route, or the centerline of any railroad track, so long as such installation is approved by the Nebraska State Fire Marshal's Office, and provided that such storage is otherwise permissible under the provisions of this Code.
- B. The prohibition imposed by paragraph A of this Section shall not apply to those storage facilities which fail to meet the standards set forth in paragraph A which are in existence on the effective date of this Article; Provided, however, that the use of such facilities shall be discontinued within five (5) years of the effective date of this Article. No present use of facilities prohibited by paragraph A of this Section which is discontinued for a period of sixty (60) days subsequent to the effective date of this Article shall be resumed. Above ground flammable substance storage facilities not in compliance with the provisions of paragraph A of this Section, and existing on the effective date of this Article, may be repaired in place only, so long as their use is not discontinued for a period longer than the time allowed in this paragraph; but, no such above ground flammable substance storage tank which must be removed from its place of permanent installation in order to be repaired, may be restored to service.

§7-313 FLAMMABLE SUBSTANCES; AUTHORITY TO ENTER PRIVATE PROPERTY FOR INSPECTION OF STORAGE FACILITIES. The Municipal Building Inspector and his or her designated representatives, including personnel of the Nebraska State Fire Marshal's Office, may enter private property at any reasonable time for the purpose of conducting inspections mandated by this Article. *(Amended by Ord. 02-04, 2/4/02)*

§7-314 FLAMMABLE SUBSTANCES; INJUNCTION AS ADDITIONAL REMEDY. The Mayor or local law enforcement officer shall take such action as is necessary and legal to enforce the provisions of this Article. As an additional remedy, the operation or maintenance of any facility in violation of any provision hereof which endangers the comfort, repose, health, safety, or peace of persons within the zoning jurisdiction of the Municipality shall be deemed, and is declared to be, a public nuisance, and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. No provisions of this Article shall be construed to impair any common law or statutory cause of action or legal remedy arising therefrom, nor shall the same preclude any person from maintaining any action for injury or damage arising from any violation of this Article or from any other law.

§7-315 FLAMMABLE SUBSTANCES; VIOLATIONS AND PENALTIES.

A. NOTIFICATION OF VIOLATION. The Municipal Building Inspector shall notify the owner or authorized agent of the owner, of the storage facility which is found to be in violation of this Article, of such violation. The Building Inspector shall set a reasonable time for the owner to have the violation removed or corrected.

B. FINES. The owner or agent authorized by the owner to obtain facilities regulated by this article who knowingly permits a violation to remain uncorrected after the expiration of time set by the Building Inspector shall, upon conviction thereof by the court, be required to pay a fine of one hundred dollars (\$100.00) for each violation and shall stand committed to jail until such fine and costs of prosecution are paid. Each day of failure to comply with the requirements of this Section, after the specified time provided herein, shall constitute a separate violation.

Any person upon whom a duty is placed by the provisions of this Article who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined the sum of one hundred dollars (\$100.00) and shall stand committed to jail until such fine and costs of prosecution are paid. Each day of failure to comply with the requirements of this Section, after the specified time provided herein, shall constitute a separate violation.

Article 4. Explosives

§7-401 EXPLOSIVES; STORAGE REGISTRATION. Any person, firm, or corporation storing or keeping for any period of time dynamite, gunpowder, nitroglycerine, or other high explosives within the Municipality shall register such information with the Municipal Clerk within ten (10) days after such explosives are brought into the Municipality. The Clerk shall provide such information to the Municipal Fire Chief and to the Governing Body. Transfer of explosives to another individual within the Municipality shall require the individual receiving the explosives to register the transfer and the new location of the explosives with the Municipal Clerk. Also, moving explosives to a new location by the owner shall require registration of that fact to the Municipal Clerk.

All high explosives, including dynamite, gunpowder and nitroglycerine shall be stored in a proper receptacle which shall be closed at all times, except when actually in use. Such cement, metal, or stone receptacle shall not be located in any room where there is a flame or flammable materials. The area surrounding storage facilities shall be kept clear of rubbish, brush, dry grass, or trees for not less than twenty-five feet (25') in all directions. Any other combustible materials shall be kept a distance of not less than fifty feet (50') from outdoor storage facilities.

§7-402 EXPLOSIVES; TRANSPORTATION. Any person wishing to transport high explosives in the Municipality shall first acquire a permit from the Chief Law Enforcement Officer and shall take such precautions and use such route as the Governing Body may prescribe. Nothing herein shall be construed to apply to Law Enforcement Officers, or any of the Armed Services of the United States. No vehicle transporting explosives shall make an unscheduled stop for longer than five (5) minutes within the Municipality and in the event of mechanical failure, immediate notice of such breakdown shall be given to the Chief Law Enforcement Officer who shall then proscribe such precautions as may be necessary to protect the residents of the Municipality and a reasonable time for removal of the vehicle from the Municipality.

Article 5. Fireworks

§7-501 FIREWORKS; DEFINITIONS. For the purpose of this Article, certain words, phrases, and terms shall be construed as specified below, unless the context otherwise requires:

- A. Fireworks shall mean any combustible or explosive composition, or any substance or combination of substances, or articles prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation.
- B. Permissible Fireworks Shall mean only sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, lady fingers not to exceed seven-eighths inch (7/8") in length or one-eighth inch (1/8") in diameter with total pyrotechnic composition not to exceed one half gram (1/2g) each in weight, color wheels, and any other fireworks approved under the provisions of Section 7-504.
- C. Sale shall include barter, exchange, or gifts, or offer thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.
- D. Retailer shall mean any person engaged in the business of making sales of fireworks at retail.

§7-502 FIREWORKS; UNLAWFUL ACTS. Except as provided in Section 7-507, it shall be unlawful for any person to possess, sell, offer for sale, bring into the City or discharge, explode, or use any pyrotechnics, commonly known as fireworks, other than permissible fireworks.

§7-503 FIREWORKS; PERMISSIBLE; RETAIL SALE, LICENSE REQUIRED, FEE. It shall be unlawful for any person to sell, hold for sale, or offer for sale at retail, any permissible fireworks in the City unless such person has first obtained a license from the City as a retailer.

Any person desiring to sell, or offer for sale, any permissible fireworks as a retailer shall make application to the City for a license authorizing the same. Applications shall be for proposed sales for the current calendar year only and shall be submitted to the City on or between March 1 and March 30 of the year in which the license is sought. Such application shall include the following information and such additional information as the City shall deem necessary:

1. The name, residence, and address of the applicant.
2. The location of the premises for which the license is sought.

3. When the license is sought in a permanent building, the applicant shall provide an accurate drawing or plan showing the location of the sales display within the building, together with aisles, exits, etc.
4. When the license is sought in a temporary structure or facility, the applicant shall provide a legal description of the premises.
5. A copy of the applicant's valid License for Sale of Fireworks issued by the Nebraska State Fire Marshall.

After consideration of the information contained in the application for license, the Administrator/Clerk/Treasurer may issue a permit after March 30th upon payment by the applicant of a fee of three hundred dollars (\$300.00). Any license issued under the provisions of this Section shall be valid only for the period of June twenty-eighth (28th) through and including July fourth (4th) of the year in which issued.

Factors that may be considered by the City in deciding whether to issue a license include, but are not limited to:

- A. Presence or absence of any past violations of applicant;
- B. Experience and expertise of applicant;
- C. Safety record of applicant; and
- D. Whether applicant is a civic organization committed to the betterment of the City.

The funds received under the provisions of this Section shall be deposited in the General Fund of the City. (*Amended by Ord. No. 98-19, 19/7/98, 02-08, 3/4/02; 09-14, 12/7/09*)

§7-504 FIREWORKS; PERMISSIBLE; SUBMISSION TO STATE FIRE MARSHAL TO DETERMINE SAFETY. Before any permissible fireworks may be sold, held for sale or offered for sale at retail in the City, they shall first be submitted to the State Fire Marshal for examination as provided in Section 28-1247 R.R.S., 1943, as amended, to determine their compliance with State Law and their safety for general use. Except as provided in Section 7-505, fireworks not specifically listed as permissible fireworks in subparagraph (b) of Section 7-501 may be added to the list of permissible fireworks by the State Fire Marshal, by regulation as provided in Section 28-1247 R.R.S. 1943, as amended, after having been submitted to him and tested to determine their safety for general use.

§7-505 FIREWORKS; SALE AND USE OF BOTTLE ROCKETS, SKYROCKETS AND LIKE DEVICES PROHIBITED; UNLAWFUL ACTS. Fireworks commonly known as skyrockets, bottle rockets, or any other form of fireworks consisting of a case containing a combustible composition fastened to a guiding stick which is designed and manufactured to be projected through the air by the reaction resulting from the rearward discharge of gases liberated by combustion shall not be permissible fireworks within the City of Waverly, notwithstanding any action by the State Fire Marshal to the contrary, and it shall be unlawful for any person to sell at retail, offer for sale at retail, discharge, explode, or use any of said fireworks within the City.

§7-506 FIREWORKS; PERMISSIBLE; SALE, USE, HOURS RESTRICTED. Permissible fireworks may be sold at retail, offered for sale at retail, discharged, exploded, or used within the City of Waverly, only from June twenty-eight (28) through and including July fourth (4) of each year; Provided it shall be unlawful to discharge, explode or use permissible fireworks on said dates before eight (8:00) a.m., and after eleven (11:00) p.m., except on July fourth (4) when permissible fireworks may be

lawfully discharged, exploded or used between the hours of eight (8:00) a.m. and twelve (12:00) midnight.

§7-507 FIREWORKS; PROHIBITION NOT APPLICABLE. The provisions of Section 7-502 shall not apply to:

- A. Any fireworks for purposes of public exhibitions or displays purchased from a distributor licensed under State law or the holder of a display license issued by the State Fire Marshal as provided by State law;
- B. Any public exhibition or display under the auspices of any governmental subdivision of the State; and
- C. Toy cap pistols or toy caps, each of which does not contain more than twenty-five hundredths of a gram of explosive material.

§7-508 FIREWORKS; UNLAWFUL DISCHARGING, FIRING, LAUNCHING, OR THROWING PROHIBITED. It shall be unlawful for any person to discharge, fire, launch, or throw any fireworks or any object which explodes upon contact with another object:

- A. From or into any motor vehicle;
- B. Onto any street, highway, or sidewalk;
- C. At or near any person;
- D. Into or upon any building;
- E. Into or at any group of persons; or
- F. Into or upon the premises of another person.

For the purposes of this section, person shall mean any natural person or any private or public firm, corporation, or partnership.

§7-509 FIREWORKS; VIOLATION, PENALTY. Any retailer violating any of the provisions of Sections 7-501 through 7-508 shall be guilty of a Class I Misdemeanor as defined by §6-501 of this Code.

Any other person who shall violate any of the provisions of Sections 7-501 through 7-508 shall be guilty of a Class II Misdemeanor as defined by §6-501 of this Code. (*Amended by Ord. 07-05, 5/7/07*)