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GENERAL PROVISIONS AND ADMINISTRATION

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CHAPTER 1-01

GENERAL PRINCIPLES AND DEFINITIONS

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1-01-01. Code Designation and Citation. The ordinances embraced in this and the following titles, chapters and sections constitute and are designated the "Code of Ordinances of Lincoln, North Dakota", and may be so cited.

1-01-02. Rules of Interpretation. In the construction of this Code the following rules shall apply unless it would be inconsistent with the intent of the City Council or the context of the provisions.

1-01-03. Words and Phrases. All words and phrases shall be construed and understood according to the common and approved usage of language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

1-01-04. Clerical and Typographical Errors. Clerical and typographical errors shall be disregarded when the meaning of the City Council is clear.

1-01-05. Particular Controls General. Whenever a general provision in a chapter is in conflict with a special provision in the same or other chapter, the two shall be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision shall prevail and be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that the general provision shall prevail.

1-01-06. Conflicting Provisions Found in Same Chapter. Except as otherwise provided in section 1-01-05, whenever in a chapter several clauses are irreconcilable, the clause last in order of date or position shall prevail.

1-01-07. Multiple Amendments to the Same Provision, One Without Reference to the Other. If amendments to the same ordinance are enacted at the same or different time, one amendment without reference to the other, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

1-01-08. Code Not Retroactive Unless So Declared. No part of this Code is retroactive unless it is expressly declared to be so.

1-01-09. Severability. In the event that any clause, sentence, paragraph, chapter, section, or other part of any title is adjudged by any court of competent or final jurisdiction to be invalid, the judgment shall not affect, impair, nor invalidate any other clause, sentence, paragraph, chapter, section, or part of the title, but is confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

1-01-10. Limitations - How Reckoned. When a limitation or period of time prescribed in any existing ordinance for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Code goes into effect, and the same or any limitation of time is prescribed in this Code, the time which already has run shall be deemed part of the time prescribed as such limitation by this Code.

1-01-11. Time - How Computed. The time within which an act is to be done as provided in any ordinance or in any order issued pursuant to any ordinance, when expressed in days, is computed by excluding the first day and including the last, except that if the last day be a Sunday or a legal holiday it is excluded; and when any such time is expressed in hours the whole of Sunday, from midnight to midnight, shall be excluded.

1-01-12. Office Held Under Provisions Repealed by This Code to be Retained - Exceptions. Unless a different intention plainly appears, a public officer who is in office when this Code takes effect shall remain in office until the expiration of the term for which he or she was elected or appointed unless removed prior to the expiration of the term as provided by law.

1-01-13. Repeal Does Not Revive Act Previously Repealed. Whenever any act of the City Council which repealed a former act is repealed, the former act shall not be revived by the repeal.

1-01-14. Effect Upon Former Laws - Repeals. No ordinance, law or rule is continued in force because it is consistent with the provisions of this Code on the same subject, but in all cases provided for by this Code all ordinances heretofore in force in the City, whether consistent or not with the provisions of this Code, unless expressly continued in force by it, are all repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued or any action or proceeding already taken, except as in this Code provided.

1-01-15. Repeal - Effect. The repeal of any ordinance by the City Council shall not have the effect of releasing or extinguishing any penalty, fine, liability, or forfeiture incurred under such ordinance, but as to cases tried before, or subsequent to, the repeal of the ordinance it shall have the effect of extinguishing any jail or prison sentence that may be, or that has been, imposed by reason of said law, unless

the repealing act shall provide expressly that the penalties of imprisonment shall remain in force as to crimes committed in violation of such law prior to its repeal. In other respects, such act shall remain in force only for the purpose of the enforcement of such fine, penalty or forfeiture.

1-01-16. Pending Actions or Proceedings Not Affected by Code. No action or proceeding commenced before this Code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this Code as far as applicable.

1-01-17. Catch lines, Titles, Headings and Notes. The catch lines of the several sections of this Code printed in boldface type, titles, headings, chapter heads, section and subsection heads or titles, editor's notes, cross references and State law references, unless set out in the body of the section itself, contained in this Code, do not constitute any part of the law, and are intended merely to indicate, explain, supplement or clarify the contents of a section.

1-01-18. Conflicts Adjusted. If the provisions of any chapter or title conflict with or contravene the provisions of any other chapter or title, the provisions of each chapter or title must prevail as to all matters in question arising thereunder out of the same subject matter.

1-01-19. Delegation of Authority. Whenever a provision appears requiring an officer of the City to do some act or make certain inspections, it is to be construed to authorize the officer to designate, delegate and authorize subordinates to perform the required act or make the required inspection unless the terms of the provision or section designate otherwise.

1-01-20. Definitions. In this Code unless the context otherwise requires:

1. City Council. The words "City Council" and "governing body" all mean the City Council of this City.
2. City. The words "the City" or "this City" mean "the City of Lincoln, North Dakota" and extends to its several officers, officials, agents and employees.
3. Code. The words "the Code" or "this Code" means the "Code of Ordinances of Lincoln, North Dakota".
4. County. The words "the County" or "this County" means the County of Burleigh in the State of North Dakota.
5. Gender. Words importing only the masculine gender may be extended to females.

6. Heretofore and Hereafter. Whenever the word "heretofore" occurs in any section of this Code or City ordinance it shall be construed to mean any time previous to the day when such section of this Code or City ordinance containing such word shall take effect; and whenever the word "hereafter" occurs it shall be construed to mean the time after section of this Code or City ordinance containing such word shall take effect.
7. Land, Real Estate. The word "land" and phrases "real estate" and "real property" include land, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal.
8. May. The word "may" means permissive.
9. Month, Year. The word "month" means a calendar month and the word "year" means a calendar year.
10. N.D.C.C. The citation to or abbreviation "N.D.C.C." means the "North Dakota Century Code".
11. Number. Words importing the singular number may be extended to several persons or things, and words importing the plural number may be applied to one person or thing.
12. Oath, Affirmation. The word "oath" means affirmations in all cases where an affirmation may be substituted for an oath, and in like cases the word "swear" includes "affirm".
13. Officials, Boards, Commissions, Etc. Whenever reference is made to officials, boards and commissions by title only, i.e. "council", "clerk", "the Mayor", etc., they shall be deemed to refer to the officials, boards and commissions of the City.
14. Person. The word "person" shall include and be applied to corporations, associations, clubs, societies, firms, partnerships, municipalities, and bodies politic and corporate as well as individuals.
15. Personal Property. The word "personal property" means money, goods, chattels, evidences of debt, and things in action.
16. Property. The word "property" means real and personal property.
17. Reasonable Time. In all cases where any section of this Code or City ordinance shall require any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall be

deemed to mean such time only as may be necessary for the prompt performance of such duty, or compliance with such notice.

18. Shall. The word "shall" is mandatory.
19. State. The word "State" shall be construed to mean State of North Dakota.
20. Tense. Words used in the present or past tense include the future as well as the present and past.
21. Week. The word "week" shall be construed to mean seven days; but publication in a newspaper of any notice or other matter indicated to be for a stated number of weeks shall be construed to mean one insertion in each week, unless specifically stated to be for each day of the week or for more than one day in each week.
22. Written, in Writing. The words "written" or "in writing" mean any mode of representing words and letters in general use, except that signatures, when required, must be made by the writing or mark of the person.

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1-02-01. Penalty Not Exclusive. The imposition of a penalty under the provisions of this Code shall not prevent the City Council from revoking or suspending any license, franchise or permit wherever by this Code the power of revocation or suspension has been reserved to the City Council; nor shall such penalty in any manner operate to divest any employee of the City who may have been delegated the power to revoke or suspend any license, franchise or permit from so revoking or suspending the same.

1-02-02. Penalty and Fines.

1. Except as provided in subsection 2, the fine or penalty for the violation of any ordinance, resolution, or regulation shall not exceed \$1,500.00, and the imprisonment shall not exceed thirty days for one offense.
2. For every violation of an ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in N.D.C.C. Section 39-06.1-05, a fee may be established, by ordinance, which shall not exceed the limits, for equivalent categories of violations, set forth in N.D.C.C. Section 39-06.1-06.

This section shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by N.D.C.C. Section 12.1-32-02 for the violation of a City ordinance, nor shall this section limit the use of deferred or suspended sentences pursuant to subsections 3 and 4 of N.D.C.C. Section 12.1-32-02.

References: N.D.C.C. Section 40-05-06; N.D.C.C. Section 39-06.1-06

1-02-03. Classification of Offenses. Offenses against the ordinances of this City are divided into these classes:

1. Offense, for which the penalty shall be as set forth in Section 1-02-02.

2. Infraction, for which a maximum fine of \$1000.00 may be imposed, provided that any person convicted of an infraction who has, within one year prior to commission of the infraction for which convicted, been previously convicted of an offense classified as an infraction of State statutes or the ordinances of this or any other North Dakota municipality may be sentenced as though convicted of an offense. If the prosecution contends that the infraction is punishable as an offense, the complaint shall so specify unless the prosecution is unable with reasonable effort to learn of the prior conviction prior to execution of the complaint.
3. All violations of the provisions of the ordinances of this City other than non-criminal traffic offenses are offenses unless specifically labeled infractions or unless a different classification or punishment is specifically authorized.
4. Except as provided in this section or as the context may otherwise indicate the term "offense" refers to all violations of the ordinances of this City including infractions.

1-02-04. Special Sanction for Organizations. When an organization as defined in N.D.C.C. Section 12.1-03-04 is convicted of an offense, the court may, in addition to any other sentence imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise.

Reference: N.D.C.C. 12.1-32-03

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1-03-01. Precincts. The precincts for the City shall be as shown on the official map thereof on file in the office of the City Auditor.

1-03-02. Jurisdiction. The jurisdiction of the City extends to all persons, places and property within its boundaries, and such extra-territorial jurisdiction as is granted to it under the provisions of the N.D.C.C. and amendments thereto.

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1-04-01. [Regular Meetings](#). The City Council shall meet regularly at a location designated by the City Council on the first Thursday of each month following the first Tuesday in accordance with N.D.C.C. Section 40-08-10, at the hour of 7:00 P.M., unless some other time or place shall be specifically fixed by the City Council.

1-04-02. [Special Meetings](#). Special meetings may be called at any time by the Mayor or any two members of the City Council to consider matters mentioned in the call of such meeting. Written notice of any such meeting shall be given to each member of the City Council at least three hours before the time of the meeting.

1-04-03. [Rules and Order of Business](#). The rules and order of business for the parliamentary government of the City Council shall be governed by Robert's Rules of Order.

1-04-04. [When Yea and Nay Vote Taken](#). The yeas and nays shall be taken by the City Council upon the passage of all ordinances and on all propositions to create any liability against the City or for the expenditure or appropriation of money, and, in all other cases, at the request of any member, which shall be entered on the journal of its proceedings, and the concurrence of all the members elected shall be necessary to the passage of any such ordinance or other matter which shall come before it for decision, except as otherwise provided by law or ordinance.

1-04-05. Vote Required. A member of the City Council who passes his vote, or who remains silent when the roll call on the vote is taken, shall be deemed to have voted yea and a record of yea shall be entered in the journal.

1-04-06. Reconsidering, Rescinding Vote. No vote of the City Council shall be reconsidered or rescinded at a special meeting unless, at such special meeting there is present as large a number of members as was present when such vote was taken.

1-04-07. Salaries. Compensation for Mayor shall be \$185 per month beginning January, 2016 and compensation for city council members shall be \$160 per month beginning January, 2016.

1-04-08. Election At Large. The members of the City Council shall be elected at large.

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1-05-01. How Ordinances Pass. All ordinances shall be read twice, and the second reading shall not be had in less than one week after the first reading; and after such reading, before the final passage, such ordinances may be amended, and shall then be put upon their second reading and final passage.

1-05-02. Signing, Attesting Ordinances. If passed by the City Council, ordinances shall be signed by the Mayor and attested by the City Auditor.

1-05-03. When Resolutions Read in Full. All resolutions requiring the signature of the Mayor, or involving the expenditure of any of the funds of the City, shall be read in full to the City Council when in session if requested by a member of the City Council.

1-05-04. When Ordinances and Notices Published. The publication of all ordinances, notices and other matters required by law to be published shall be made in the official newspaper of the City.

1-05-05. When Ordinance to Take Effect. All ordinances passed by the City Council, except when otherwise specifically provided, shall take effect and be in force from and after the publication where publication is required. If publication is not required, the ordinances shall be effective immediately.

1-05-06. Amendments to Code. Any and all additions and amendments to this Code, when passed in such form as to indicate the intention of the City Council to make the same a part hereof, shall be deemed to be incorporated in this Code so that reference to the "Code of Ordinances of Lincoln, North Dakota," shall be understood and intended to include such additions and amendments.

1-05-07. Numbering of Ordinances. All ordinances passed subsequent to the adoption of this Code which amend, repeal or any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion herein, or in the case of repealed titles, chapters, sections and subsections or any part thereof, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby, and the subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as this Code and subsequent ordinances numbered or omitted are readopted as a new code of ordinances by the City Council.

1-05-08. Language. Amendments to any of the provisions to this Code shall be made by amending such provisions by specific reference to the section of this Code in substantially the following language:

"That Section of the Code of Ordinances of Lincoln, North Dakota, is hereby amended to read as follows: . . . (Set out new provision in full) . . ."

1-05-09. New Material.

1. In the event a new section not previously existing in the Code shall be added, the following language may be used:

"That the Code of Ordinances of Lincoln, North Dakota, is hereby amended by adding a Section (or Title, Chapter or other designation as the case may be), to be numbered , which reads as follows: . . ." (Set out new provisions in full). . ."

2. In lieu of subsection 1 hereof, when the City Council desires to enact an ordinance of a general and permanent nature embracing a subject not previously existing in the Code, which the City Council desires to incorporate into the Code, a provision in substantially the following language may be made part of such ordinance:

“It is the intention of the City Council and it is hereby ordained, that the provisions of this ordinance shall become and be made part of the Code of Ordinances of Lincoln, North Dakota, and the sections of this ordinance may be renumbered to accomplish such intention.”

1-05-10. Repeal. All titles, chapters or sections or other provisions of this Code desired to be repealed shall be specifically repealed by title number, chapter number, section number or other number, as the case may be.

1-05-11. Subject to General Penalty. In case of the amendment by the City Council of any section of this Code for which a penalty is not provided, the general penalty as provided in this Code shall apply to the section as amended; or in the case such amendment contains provisions for which a penalty, other than the aforementioned general penalty is provided in another section of the same chapter, the penalty so provided in such other section shall be held to relate to the section so amended, unless such penalty is specifically repealed therein.

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APPOINTIVE OFFICERS AND EMPLOYEES

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1-06-01.	<u>Appointive Officers.</u> The Mayor, with the approval of the City Council, shall appoint the following officers:	
1.	City Attorney;	
2.	City Auditor;	
3.	City Engineer;	
4.	City Assessor;	
5.	Building Inspector; and	
6.	Such other officers as the City Council deems necessary and expedient.	
1-06-02.	<u>Term of Appointive Officers.</u> Except as otherwise provided by law for the City Assessor, the term of all appointive officers shall begin on July 1st and shall continue for the term of two years and until their successors are appointed and qualified. Any person appointed to fill a vacancy shall hold his office for the unexpired term unless appointed as an “acting” officer. An “acting” officer shall serve at the pleasure of the City Council.	
1-06-03.	<u>Removal.</u> Appointive officers may be removed and any vacancy may be filled in the manner provided by law, subject, however, to all laws, ordinances and regulations. “Acting” officers may be removed at any time by the City Council.	
1-06-04.	<u>Oath.</u> Before entering upon the duties of their office, appointive officers shall take the oath of office.	

1-06-05. Bonds. Before entering upon the duties of their offices, the following officers and employees of the City shall be bonded in amounts in accordance with State law:

City Auditor
Mayor
Council
Members City
Assessor
Municipal
Judge

1-06-06. Salaries. The salary of City officials and appointive officers, except as otherwise provided by ordinance or other law, shall be in such sums and amounts as may be fixed from time to time by resolution of the City Council.

1-06-07. Duties Generally. Each officer and employee of the City shall:

1. Perform all duties required of his office by law or ordinance and such other duties not in conflict as may be required by the governing body.
2. Be immediately responsive to the governing body for the effective administration of their department and all activities assigned thereto.
3. Keep informed as to latest practices in their particular field and shall inaugurate with the approval of the governing body such new practices that appear to be of benefit to the public.
4. Submit such reports of activities of his department as the governing body may request.
5. Be responsible for the maintenance of all City property and equipment used in his department.
6. Establish and maintain records in sufficient detail to furnish all information needed for proper control of department activities and to form a basis for reports to the governing body.
7. Cooperate with other officers, departments and employees.
8. Have power to direct and supervise all subordinates under him.
9. Make the deposits in the appropriate accounts of any monies received from the public.
10. Pay out money belonging to the City only in the manner prescribed by

law and ordinance.

11. Turnover and deliver at the expiration of their term of service all books, accounts, records and property in their possession to their successor in office.

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PURCHASING AND DISPOSITION OF PROPERTY

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1-07-01. Definitions. For the purpose of this chapter, unless the context or subject matter otherwise requires:

1. “Emergency” means a situation in which, due to unforeseen circumstances, immediate action or action which cannot or should not be delayed, pending solicitation of bids and purchase of needed supplies by competitive bids, is called for.
2. “Non-competitive type or kind” means supplies which are by their nature unique and not subject to competition, and shall include supplies of a specialized nature which are available from only one supplier or a limited number of suppliers who are not in competition with each other, other supplies for which the local market is not competitive, or supplies for which, in order to obtain the best quality at the lowest price, purchase in the open market is called for.
3. “Supplies” means all supplies, materials, equipment and other personal property.

1-07-02. Competitive Bidding Required. All purchases of, and contracts for, supplies and all sales of property, shall, except as otherwise provided in this chapter, be based whenever possible on competitive bids.

1-07-03. Procedure for Purchases. All supplies except as otherwise provided in this chapter, when the estimated cost thereof shall equal or exceed \$10,000.00, shall be purchased from the lowest and best bidder after notice inviting sealed proposals is published at least one time in the City's official newspaper, excluding vehicles/automobiles. The lowest and best bidder shall be the bidder who in addition to price has the best ability, capacity and skill to perform the contract, promptly or within the specified time without delay or interference. There shall also be considered character, integrity, reputation, judgment, experience and efficiency of the bidder, the quality of performance of previous contracts, sufficiency of financial resources, and previous existing compliance with State law and City ordinances.

1-07-04. Open Market Purchases. All purchases of supplies of an estimated value of less than \$10,000.00 or all supplies of a non-competitive type or kind, or purchases from governmental bodies, or purchases of vehicles/automobiles, or when in the opinion of the City Council an apparent emergency requires immediate purchase of supplies, shall be made or obtained in the open market without competitive bidding.

1-07-05. Prohibition of Interest. Whenever supplies are purchased in the open market or City property sold, leased or disposed of in the open market without competitive bidding, the supplier or purchaser shall execute and file with the City Auditor an affidavit reading as follows:

AFFIDAVIT BY CONTRACTOR

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF _____)

_____, being first duly sworn on oath, says he is
_____ of _____ who has or herewith submits a proposal
to the City of Lincoln, North Dakota to contract, and:

1. That such proposal was not made in the interest of or on the behalf of any undisclosed person, partnership, company, association, organization or corporation.
2. That no City officer, public officer or employee is interested, directly or indirectly, in such proposal or contract resulting from its acceptance by the City, except for lawful compensation and necessary expenses in the performance of official duties.
3. That no City officer, public officer or employee has received or will be offered, given or paid any consideration, commission, or gratuity by the contractor, its agents, servants or employees.
4. That the contractor has not, directly or indirectly, colluded, conspired, connived or agreed with anyone to obtain the proposed contract work without open bidding therefore nor by inducing anyone to refrain from bidding or making a proposal therefore.
5. That affiant has not received from any City officer, public officer or employee any special information or data relative to the proposed contract which is not or has not been available to any other person, nor has he received any special aid or assistance from any City officer, public officer or employee in preparing his proposal to the City.

Contractor
By: _____

Subscribed and sworn to before me this _____ day of _____, 20 .

Notary Public
_____ County, North Dakota
My Commission Expires _____

1-07-06. Procedure for Dispositions. All sales or dispositions of real or personal property of the City for which the City Council estimates the value thereof at less than \$2,500.00, as well as leases of real or personal property of the City, may be made in the open market without competitive bidding upon a resolution adopted by majority vote of the members of the City Council, unless otherwise required by law and subject to compliance with Section 1-07-05. All sales or dispositions of real or personal property for which the City Council estimates the value thereof at or exceeding \$2,500.00 shall be in accordance with Section 1-07-08 or by public sale in the manner provided by Section 1-07-07, except as may be otherwise authorized by specific statutory provisions of the N.D.C.C.

1-07-07. Public Sale of Property. Upon resolution by the City Council authorizing the public sale of real or personal property or when such public sale is required, a notice containing a description of the property to be sold and designating the place where and the day and hour when the sale will be held shall be published in the City's official newspaper once each week for two consecutive weeks with the last publication being at least ten days in advance of the date set for the sale. The notice shall specify whether the bids are to be received at auction or as sealed bids as determined by the City Council. The property advertised shall be sold to the highest bidder if the bid is deemed sufficient by a majority of the members of the City Council. When specific statutory provisions contained in the N.D.C.C. provide for a procedure which is in conflict with this section governing the conveyance, sale or disposal of real or personal property, this section shall not apply insofar as it is in conflict with State law.

1-07-08. Transfer of Real Property by Nonexclusive Listing Agreements. As an alternative to the public sale procedure authorized under Section 1-07-06, the City Council may by resolution describe the real property of the City which is to be sold; provide a maximum rate of fee, compensation or commission; and provide that the City reserves the right to reject any and all offers determined to be insufficient. After adoption of the resolution, the City Council may engage licensed real estate brokers to attempt to sell the described property by way of nonexclusive listing agreements.

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1-08-01. Municipal Judge. There shall be elected a municipal judge who shall serve office for a term of four years. The municipal judge shall be licensed to practice law in the State. The municipal judge shall perform all the duties prescribed by law and the ordinances of the City. He shall receive a monthly salary as full compensation for all services rendered.

1-08-02. Report to City Council. It shall be the duty of the municipal judge to make a full report under oath, of all proceedings and actions or matters before him in which the City is a party, or interested therein, to the governing body of the City, at the close of each month. Until such report has been filed with the City Auditor, no salary shall be paid to the municipal judge for such work.

1-08-03. Contents of Report. The report required by Section 1-08-02 shall contain the names of the parties to such action or proceeding, a statement of all orders made, whether defendants be committed, fined or released from custody, the judgment, the extent thereof, the cost, the amount of cost and fine paid, if any, and the disposition thereof, together with an itemized account of any fees of all officers and witnesses and the names of each, the name of each person making the complaint, the nature and date thereof. The report will be accompanied by duplicate receipts for the total amount of the fees and money so collected on behalf of the City.

1-08-04. Court Hours. The municipal judge shall be in attendance in municipal court for the transaction of business that may come before him and shall devote the time necessary to handle and dispose of the business coming before him.

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1-09-01. Acceptance of Law, Creation. The City has heretofore accepted and taken advantage of the provisions of N.D.C.C. Chapter 40-49, and pursuant to said Chapter 40-49, heretofore created a park district for the City which shall be known as the “Park District of the City of Lincoln”.

1-09-02. Territory. The Park District of the City of Lincoln shall embrace all territory in the City as well as within any park or public ground which may be acquired outside the corporate limits of the City under the provisions of N.D.C.C. Chapter 40-49.

1-09-03. Board of Park Commissioners. The powers of the Park District of the City of Lincoln, as provided for by State law, shall be exercised by a Board of Park Commissioners elected in accordance with and in the manner provided for by State law.

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1-10-01. Continuance of Appointive Boards, Authorities, Committees and Commissions. All appointive boards, authorities, committees and commissions heretofore existing shall continue and shall exercise such powers and duties as were granted them until such boards, authorities, committees and commissions and their powers shall be changed or abolished by the governing body.

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TREE BOARD AND REGULATIONS

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1-11-01. [Definitions](#). As used in this chapter, the following words shall have the meanings as follows:

1. “Board” means the Tree Board established pursuant to Section 1-11-02.
2. “Park trees” means trees, shrubs, bushes and all other woody vegetation in public parks, and in all areas owned by the City or to which the public has free access as a park.

3. "Street trees" means trees, shrubs, bushes, and all other woody vegetation on land lying within the property lines or right-of-way of the public streets, avenues, or ways within the City.

1-11-02. Creation and Establishment of Tree Board. There has been heretofore created and established a Tree Board for the City, which shall be continued and shall consist of five members, who shall be citizens and residents of the city, and appointed by the Mayor with the approval of the City Council. The council member with the tree portfolio shall serve as liaison between the tree board and council. If, however, there are not enough individuals to create a board, the portfolio holder and two council members shall create the board.

1-11-03. Term of Office and Compensation. The term of office of each of the members of the Board shall be three years. In the event that a vacancy occurs during the term of any member, a successor shall be appointed for the unexpired portion of the term by the Mayor with the approval of the City Council. Members of the Board shall be paid \$25 per meeting attended not to exceed 12 meetings a year.

1-11-04. Operation. The Board shall choose its own officers, shall adopt such rules of procedure as it deems necessary and shall keep a journal of its proceedings. A majority of the members of the Board shall be a quorum for the transaction of business.

1-11-05. Duties and Responsibilities of Board.

1. It shall be the responsibility of the Board to study, investigate, and develop and update annually a written plan for the care, preservation, trimming, planting, replanting, and removal of trees and shrubs in public ways, streets, and alleys. Such plan shall be presented annually to the City Council and upon its acceptance and approval by the City Council, such plan shall constitute the official comprehensive annual forestry work plan for the City.
2. The Board, or its agent, shall be responsible for the planting, pruning, and removal of all trees located within the street right-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 Code, prune, spray, plant or remove trees in that part of the street abutting his land not used for public travel. A Street Tree permit from the Board shall be required only when the owner of the property intends to deviate from the rules and regulations contained in this Code.
3. The Board, when requested by the City Council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.

1-11-06. Boulevard Tree Species To Be Planted. The Board shall formulate a list of species able to be planted in the Boulevard. The list of allowable trees shall be broken down into categories of ornamental and shade. No species other than those included in such list may be planted as boulevard trees without written permission from the Board.

1-11-07. Certain Trees Prohibited. The planting on private premises within the City of those selections of the Genus Populus producing the pistillate flowers and bearing the “cotton” filled seed capsules and/or Ulmis Pemila or Siberian Elm shall be considered a public nuisance and is hereby declared unlawful.

1-11-08. Spacing. The spacing of boulevard trees shall be in accordance with the two tree size categories listed in Section 1-11-06. No trees shall be planted closer than ten (10) feet from a utility pole or fire hydrant.

1-11-09. Public Tree Care. The City shall have the right to plant, prune, spray, preserve, and remove trees, plants, and shrubs within the property lines of all streets, alleys, avenues, lanes, squares, and public grounds, as may be necessary to ensure safety when serving City utilities or to preserve the symmetry and beauty of such public grounds. The 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 lines, water lines, or other public improvements, or is affected with any injurious fungus, insect, or other pest.

1-11-10. Tree Removal and Trimming on Private Property.

1. Every owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of 14 feet above the surface of the street or right-of-way. Said 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 prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light, could potentially damage public improvement equipment, or interferes with the visibility of any traffic control device or sign, such pruning to be confined to the area immediately above the right-of-way.
2. 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 diseases which constitute a potential threat to other trees within the City, and such trees are hereby declared to be a nuisance and unlawful.

1-11-11. Interference with Board. It shall be unlawful for any person to prevent, delay, or interfere with the Board, or any of its agents or servants, while engaging in and about the planting, Board. Cultivating, mulching, spraying, or removing of any Street trees, Park trees, or trees on private grounds, as authorized by this chapter.

1-11-12. Review By City Council. The City Council shall have the right to review the conduct, acts, and decisions of the Board. Any person may appeal from any ruling or order of the Board to the City Council, who shall hear the matter and make a final decision.

1-11-13. Violation. The City Auditor shall hereby be authorized and empowered to notify in writing the owner of any such lot, place, or area within the City or the agent of such owner about their violation. Such notice shall be by registered or certified mail addressed to said owner or agent of said owner at his last known address and shall give such owner or his agent thirty (30) days to comply.

1-11-14. Action Upon Non-Compliance. Upon the failure, neglect, or refusal of any owner or agent to comply after receipt of the written notice provided for in Section 1-11-12 in the event the same is returned to the City because of inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner or agent, the City Council is hereby authorized and empowered to pay for the removal or establishment by either the City or by contract.

1-11-15. Cost Assessed to Property. When the City has effected the removal or establishment or has paid for removal or establishment, the actual cost thereof, if not paid by said owner prior thereto, shall be charged and assessed against the property upon which the compliance took place. An assessment list showing the lots or tracts to be assessed with the cost against each lot or tract shall be prepared as are other special assessment lists, and shall be approved by the City Council. Such assessments shall be subject to the same procedure for certification to the County Auditor, payment and collection as are other special assessments under State law.

LINCOLN TREE BOARD

(EST. 9-2009)

Following is the accepted species, cultivar and varieties list and the minimum width between the face of the curb and the tree:

<u>Shade Trees (30'-50')</u>	<u>Distance from Curb Face</u>	<u>Distance apart</u>
Black Locust	5	20
European Mountain Ash	5	20
Honeylocust, Northern Acclaim	5	20
Honeylocust, Imperial	5	20
Honeylocust, Skyline	5	20
Little Leaf Linden	5	20
Little Leaf Linden, Greenspire	5	20
Redmond Linden	5	20
Ohio Buckeye	5	20
Sugar Maple	5	20
Green Mountain Sugar Maple	5	20
Emerald Lustre Norway Maple	5	20
Northfire Maple	5	20
Laurel Leaf Willow	5	20
Swedish Columnar Aspen	5	20
<u>Ornamental Trees (less than 30')</u>		
Amur Maple	5	15
Tatarian Maple	5	15
Amur Chokecherry	5	15
<u>Crabapples:</u>		
Centurion Crabapple	5	15
Hopa Crabapple	5	15
Pink Spire Crabapple	5	15
Thunderchild Crabapple (purpleleaf)	5	15
Radiant Crabapple	5	15
Flame Crabapple	5	15
Snowdrift Crabapple	5	15
Spring Snow Crabapple	5	15
Japanese Tree Lilac	5	15
Showy Mountain Ash	5	15
Snowbird Hawthorn	5	15
Toba Hawthorn	5	15
Thornless Cockspur Hawthorn	5	15
Princess Kay Plum	5	15
Prairie Gem Flowering Pear	5	15