

ORDINANCE NO. 5 - 21

OF

THE CITY OF AUBURN, NEMAHA COUNTY, NEBRASKA

AN ORDINANCE TO REPEAL SECTIONS §31.072 "CITY POLICE CHIEF", §31.073 "POLICE OFFICERS", §34.01 "DUTIES", §34.02 "RESERVE OFFICER BOND", §34.03 ARREST AND ENFORCEMENT JURISDICTION", §34.04 "OFFICERS; DISCIPLINE OR REMOVAL FROM DUTY"; CHAPTER 34: POLICE DEPARTMENT, §112.23 "DUTY OF POLICE TO ENFORCE", AND §132.09 "GAMES, EXERCISES AND THE LIKE UPON STREETS AND SIDEWALKS" OF THE CITY CODE OF ORDINANCES; AMEND SECTION 70.002 POLICE ENFORCEMENT; STREET TRAFFIC MANAGEMENT; ARREST AUTHORIZATION OF THE CITY CODE OF ORDINANCES; AND TO DECLARE AN EFFECTIVE DATE FOR THIS ORDINANCE.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF AUBURN, NEMAHA COUNTY, NEBRASKA:

SECTION 1: Repeal City of Auburn, Nebraska, Code of Ordinances Sections §31.072 "City Police Chief", §31.073 "Police Officers", §34.01 "Duties", §34.02 "Reserve Officer Bond", §34.03 Arrest and Enforcement Jurisdiction", §34.04 "Officers; Discipline or Removal from Duty", CHAPTER 34: Police Department; §112.23 "Duty of Police to Enforce", AND §132.09 "Games, Exercises and the Like upon Streets and Sidewalks" of the City Code of Ordinances; attached hereto for reference herein.

SECTION 2: Amend City of Auburn, Nebraska, Code of Ordinances Section 70.002, consistent with Code §35.10, to read as follows:

"§ 70.002 LAW ENFORCEMENT; STREET TRAFFIC MANAGEMENT; ARREST AUTHORIZATION

(A) Law Enforcement/Nemaha County Sheriff/Deputies are hereby authorized, empowered and ordered to exercise all powers and duties with relation to the management of street traffic and to direct, control, stop, restrict, and regulate, when necessary, temporarily divert or exclude, in the interest of public safety, health and convenience the movement of pedestrian, animal and vehicular traffic of any kind in streets, parks and on bridges.

(B) Law Enforcement/Nemaha County Sheriff/Deputies are hereby authorized, empowered and ordered to undertake the enforcement of the ordinances of this title and are

hereby particularly empowered to arrest persons for the violation of the ordinances of this title.

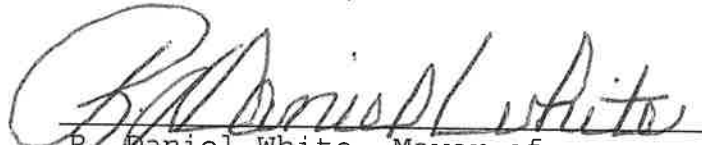
(Prior Code, §5-201)

SECTION 3: That original City Code Section 70.002 of the City of Auburn, Nemaha County, Nebraska, and any other Ordinances, Resolutions, or parts thereof passed and approved prior to the passage, approval and publication or posting of this Ordinance that are in conflict herewith, are hereby repealed.

SECTION 4: If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

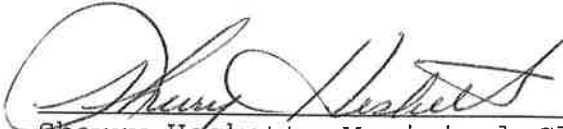
SECTION 5: That this Ordinance shall be in full force and effect from and after passage, approval, and publication according to law (Code §§ 35.07, 35.08, & 35.09).

Passed and Approved this 12th day of April, 2021.



R. Daniel White, Mayor of
the City of Auburn, Nebraska

ATTEST:



Sherry Heskett, Municipal Clerk
of the City of Auburn, Nebraska
(Seal)



§ 31.072 CITY POLICE CHIEF.

A City Police Chief shall be appointed who shall direct the police work of the city and shall be responsible for the maintenance of law and order. The City Police Chief shall perform the duties and have the powers as are provided for that office by ordinance or by the laws of the state, including, but not limited to, Neb. RS 17-118 and 17-121, as amended or superseded. He or she shall file the necessary complaints in cases arising out of violations of city ordinances and shall make all necessary reports required by ordinance and by the laws of the state. In the event that no person is appointed to serve in the capacity of City Health Inspector or of City Building Inspector, the City Police Chief shall act in those capacities and shall perform the duties and have the powers as are provided for those offices by ordinance and by the laws of the state.

(Prior Code, § 1-209)

Statutory reference:

Related provisions, see Neb. RS 17-107, 17-118, 17-121

§ 31.073 POLICE OFFICERS.

The Mayor, by and with the consent of the City Council, shall appoint a number of regular police officers as may be necessary and may also appoint special police officers from time to time as exigencies arise. The City Police, whether regular or special, shall perform the duties and have the powers as are provided for by ordinance or by the laws of the state, including, but not limited to, Neb. RS 17-118, as amended or superseded. The City Police shall, in the discharge of their official duties, provide proper identification of their official capacity which the identification shall be otherwise legally required, have authority pursuant to this chapter to enter into any building, structure or premises under their jurisdiction for the purpose of making the searches and seizures as are legally permissible under the circumstances. The City Police shall have full power and authority to call upon any person, whenever necessary, to assist them in performing public duties and any person who willingly falls, neglects or refuses to render the assistance shall be guilty of a crime and shall, upon conviction thereof, be punished by a fine not exceeding \$100. Every city police officer shall be expected to be conversant and knowledgeable with the city and state laws. City police officers shall have the duty to file the complaints and reports as may be required by ordinance and by the laws of the state. Any city police officer who shall willfully fail, neglect or refuse to make an arrest or who shall willfully fail, neglect or refuse to make a complaint after an arrest is made shall be guilty of a crime and shall, upon conviction thereof, be punished by a fine not exceeding \$100. It shall be the duty of every city police officer making a lawful arrest to search all persons in the presence of some other person, whenever possible and to carefully keep and produce to the proper judicial official, upon trial, everything found upon the person or the prisoners. All personal effects thus taken from the prisoners shall be restored to them upon their release from custody following the disposition of the charges against them. Suitable uniforms and badges shall be furnished to the City Police by the city and any city police officer who shall lose or destroy the same shall be required to pay the replacement cost of the equipment. The City Council may, from time to time, provide the City Police with the uniforms, equipment and transportation as may be essential in the performance of their official duties. It shall be unlawful for the City Council to retain any city police officer in that position after he or she shall have been duly convicted of the willful violation of any law of the United States, the state or any ordinance of the city, except minor traffic violations. All city police officers appointed by the Mayor and the City Council shall be subject to removal as provided by the laws of the state, including, but not limited to, Neb. RS 17-107 and 25-21,147, as amended or superseded. See §§ 31.053 and 31.065 regarding the appointment and removal of police officers. In the event that any officer shall leave the City Police, he or she shall immediately deliver his or her badge to the City Police Chief.

(Prior Code, § 1-210)

Statutory reference:

Related provisions, see Neb. RS 17-107, 17-118, 17-124

CHAPTER 34: POLICE DEPARTMENT

Section

- 34.01 Duties
- 34.02 Reserve officer bond
- 34.03 Arrest and enforcement jurisdiction
- 34.04 Officers; discipline or removal from duty

Cross-reference:

Removal of police officers, see §§ 31.053, 31.065 and 31.073

§ 34.01 DUTIES.

The Police Department shall consist of the City Police Chief and such further number of regular police officers as may be duly ordered by resolution of the City Council. The City Police Chief shall, subject to the direction of the City Council, have control and management of all matters relating to the Police Department, its officers and members and shall have the custody and control of all property and books belonging to the Police Department. The City Police Chief shall devote his or her full time to the city affairs, interests of the city and to the preservation of the peace, order, safety and cleanliness thereof. The Police Department shall execute and enforce all laws and all lawful orders of the City Council. It shall be the duty of the Police Department to protect the rights of persons and property. There shall be a proper police force at all fires. The Police Department shall take notice of all nuisances, impediments obstructions and defects in the streets, alleys, business places and residences of the city. The Police Department shall execute or cause to be executed, the processes issues and shall cause all persons arrested to be brought before the proper court for trial as speedily as possible. The City Police Chief and all regular and special police officers shall be expected to be conversant and knowledgeable with the city and state laws.

(Prior Code, § 3-401)

Statutory reference:

Related provisions, see Neb. RS 17-107, 17-118, 17-124

§ 34.02 RESERVE OFFICER BOND.

No appointment of a law enforcement reserve officer shall be valid until a bond in the amount of \$2,000, payable to the city, has been filed with the City Clerk by the individual appointed or a blanket surety bond arranged and paid for by the City Council and bonding all such officers of the City Council has been filed. The bonds shall be subject to the provisions of Neb. RS Ch. 11, Art. 11.

(Prior Code, § 3-402)

Statutory reference:

Related provisions, see Neb. RS 81-1444

§ 34.03 ARREST AND ENFORCEMENT JURISDICTION.

(A) Every city law enforcement officer has the power and authority to enforce the laws of the state and the city or otherwise perform the functions of that office anywhere within his or her primary jurisdiction. Primary

jurisdiction means the geographic area within territorial limits of the city.

(B) Any city law enforcement officer who is within this state, but beyond his or her primary jurisdiction, has the power and authority to enforce the laws of this state or any legal ordinance of any city or incorporated village or otherwise perform the functions of his or her office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within his or her primary jurisdiction in the following cases:

(1) Any city law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a felony, may follow the person into any other jurisdiction in this state and there arrest and detain the person and return the person to the officer's primary jurisdiction;

(2) Any city law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow the person anywhere in an area within 25 miles of the boundaries of the officer's primary jurisdiction and there arrest and detain the person and return the person to the officer's primary jurisdiction;

(3) Any city law enforcement officer has such enforcement and arrest and detention authority when responding to a call in which a local, state or federal law enforcement officer is in need of assistance. A law enforcement officer in need of assistance shall mean:

(a) A law enforcement officer whose life is in danger; or

(b) A law enforcement officer who needs assistance in making an arrest and the suspect:

1. Will not be apprehended unless immediately arrested;

2. May cause injury to himself or herself or others or damage to property unless

immediately arrested; or

3. May destroy or conceal evidence of the commission of a crime; and

(4) If the city, under the provisions of the Interlocal Cooperation Act or the Joint Public Agency Act, enters into a contract with any other city or county for law enforcement services or joint law enforcement services, law enforcement personnel may have the enforcement authority within the jurisdiction of each of the participating political subdivisions if provided for in the agreement. Unless otherwise provided in the agreement, the city shall provide liability insurance coverage for its own law enforcement personnel as provided in Neb. RS 13-1802.

(C) When probable cause exists to believe that a person is operating or in the actual physical control of any motor vehicle, motorboat or aircraft while under the influence of alcoholic liquor or of any drug or otherwise in violation of Neb. RS 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01 or 60-6,211.02, a city law enforcement officer has the power and authority to do any of the following or any combination thereof:

(1) Transport the person to a facility outside of the law enforcement officer's primary jurisdiction for appropriate chemical testing of the person;

(2) Administer outside of the law enforcement officer's primary jurisdiction any post-arrest test advisement to the person; or

(3) With respect to the person, perform other procedures or functions outside of the law enforcement officer's primary jurisdiction which are directly and solely related to enforcing the laws that concern a person operating or being in the actual physical control of any motor vehicle, motorboat or aircraft while under the influence of alcoholic liquor or of any other drug or otherwise in violation of Neb. RS 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01 or 60-6,211.02.

(D) If city law enforcement personnel are rendering aid in their law enforcement capacity outside the limits of the: city in the event of disaster, emergency or civil defense emergency or in connection with any program of

practice or training for the disaster, emergency or civil defense emergency when such program is conducted or participated in by the State Emergency Management Agency or with any other related training program, the law enforcement personnel have the power and authority to enforce the laws of the state or any legal ordinances or resolutions of the local government where they are rendering aid or otherwise perform the functions of their office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within their primary jurisdiction. The city shall self-insure or contract for insurance against any liability for personal injuries or property damage that may be incurred by it or by its personnel as the result of any movement made pursuant to this section.

(Prior Code, § 3-403) (Ord. 1-04, passed 4-12-2004)

Statutory reference:

Related provisions, see Neb. RS 29-215

§ 34.04 OFFICERS; DISCIPLINE OR REMOVAL FROM DUTY.

(A) (1) The City Council shall by ordinance adopt rules and regulations governing the removal or discipline of any police officer, including the Chief of Police. The ordinance shall include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted.

(2) Both the police officer and the individual imposing the disciplinary action shall have the right at the hearing to be heard and to present evidence to the Council for its consideration.

(3) Not later than 30 days following the adjournment of the meeting at which the hearing was held, the Council shall vote to uphold, reverse, or modify the removal or disciplinary action. The failure of the Council to act within 30 days or the failure of a majority of the elected Council members to vote to reverse or modify the removal or disciplinary action shall be construed as a vote to uphold the removal or disciplinary action. The decision of the Council shall be based upon its determination that, under the facts and evidence presented at the hearing, the challenged removal or disciplinary action was necessary for the proper management and the effective operation of the Police Department in the performance of its duties under the statutes of the state.

(4) Nothing in this section shall be construed to prevent the pre-emptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this division, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(Neb. RS 17-107)

(B) (1) Except as provided otherwise in an ordinance adopted by the Council, the procedures specified in this division (B) shall constitute the rules and regulations required by Neb. RS 17-107.

(2) No police officer, including the Chief of Police, shall be disciplined, suspended, demoted, removed, or discharged except upon written notice stating the reasons for such disciplinary action, suspension, demotion, removal, or discharge. Such notice shall also contain a statement informing the police officer of his or her right to a hearing before the City Council.

(3) Any police officer so disciplined, suspended, demoted, removed, or discharged may, within ten days after being notified of such disciplinary action, suspension, demotion, removal, or discharge, file with the City Clerk a written demand for a hearing before the City Council. The Council shall set the matter for hearing not less than ten nor more than 20 days after the filing of the written demand for a hearing. The Council shall give the police officer written notice of the hearing not less than seven days prior to the hearing.

(4) At the hearing, the police officer shall have the right to:

- (a) Respond in person to the charges and to present witnesses and documentary evidence;
- (b) Confront and cross-examine available adverse witnesses; and

(c) To be represented by counsel.

§ 112.23 DUTY OF POLICE TO ENFORCE.

It shall be the duty of the city police to examine all places of business and persons within the jurisdiction of the city subject to the foregoing provisions of this subchapter and to enforce the provisions against any person, firm, partnership, corporation, association, receiver or trustee found to be violating the same.

(Prior Code, § 10-109)

Statutory reference:

Related provisions, see Neb. RS 17-134

§ 132.09 GAMES, EXERCISES AND THE LIKE UPON STREETS AND SIDEWALKS.

It shall be unlawful for any person or persons to play catch with any items including, but not by enumeration limited to, a baseball, a football, a basketball and a frisbee, or to kick or bat any item or to engage in any game, exercise or sport upon the city streets and sidewalks; provided, however, that, nothing herein shall be construed to prohibit or prevent the City Council from authorizing, from time to time, that certain streets and sidewalks be blocked off for the purpose of providing a café area in which to engage in a game, exercise or sport.

(Prior Code, § 6-338) Penalty, see § 10.99