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## **CHAPTER 5 – PUBLIC WAYS AND PROPERTY**

### **Article 1 – Municipal Property**

#### **SECTION 5-101: DEFINITIONS**

The following definition shall be applied throughout this chapter. When no definition is specified, the normal dictionary usage of the word shall apply.

The term "sidewalk space" as used herein shall mean that portion of a street between curb lines and adjacent property lines.

#### **SECTION 5-102: MAINTENANCE AND CONTROL**

The City Council shall have the care, supervision and control of all public highways, bridges, streets, alleys, public squares and commons within the City and shall cause the same to be kept open, in repair and free from nuisances. (Neb. Rev. Stat. §17-567)

#### **SECTION 5-103: OBSTRUCTIONS**

A. It shall be unlawful for any person, persons, firm or corporation to obstruct or encumber by fences, gates, buildings, structures or otherwise, any of the streets, alleys or sidewalks. It shall be the duty of an owner or occupant engaged in construction of any building or improvement upon or near the public ways and property to have all excavations or exposures of any kind protected and guarded by suitable guards or barricades by day and by warning lights at night. In the event of failure, neglect or refusal to comply with the provisions of this section, it shall be the duty of the City to stop all work upon said buildings and improvements until suitable guards are erected and kept in the manner aforesaid.

B. Trees and shrubs interfering with the public use or construction of any public improvements shall be deemed an obstruction under this article. Said trees and shrubs and their roots may be removed by the City at the expense of the owner of the property upon which the tree or shrub is located should the owner fail or neglect, after notice, to do so. The public ways and property shall be considered to be obstructed when the owner or occupant of the adjacent property shall permit or suffer to remain on any premises owned or controlled by him or her any hedge, shrubbery, bush or similar growth within two feet of the front lot line, or side lot line when the side lot abuts a public street, whether there is a sidewalk abutting or adjoining such premises or not. It shall be the duty of owners and occupants at all times to keep trimmed and pruned all such similar growth. Whenever any such growth is allowed to grow within two feet of the front lot line, or side lot line when abutting a public street, contrary to the provisions of this article, the City Council may pass a resolution ordering the owner or occupant to remove such obstructions within three days after having been served with a copy of said resolution by the City, stating that the City will do so and will charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided or shall collect the same by civil suit brought in the name of the City against the said owner or occupant.

C. Trees and shrubs growing upon the lot line partially on public ground and partially upon the abutting property or wholly upon the abutting property but so close to the

lot line as to interfere with the making of any public improvement or so that the roots thereof interfere with any utility wires or pipe shall be deemed an obstruction and such trees, shrubs and roots may be removed by the City pursuant to the procedure prescribed above. In the event the property owner is a non-resident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the non-resident property owner, which shall be that address listed on the current tax rolls at the time such required notice was first published.

(Neb. Rev. Stat. §7-557.01)

## **SECTION 5-104: REAL AND PERSONAL PROPERTY; SALE AND CONVEYANCE**

A. Except as provided in subsection (I) of this section, the power of the City to convey any real and personal property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution, directing the sale at public auction or by sealed bid of such real and personal property and the manner and terms thereof, except that such real and personal property shall not be sold at public auction or by sealed bid when:

1. Such property is being sold in compliance with the requirements of federal or state grants or programs;
2. Such property is being conveyed to another public agency; or
3. Such property consists of streets and alleys.

B. The City Council may establish a minimum price for such real and personal property at which bidding shall begin or shall serve as a minimum for a sealed bid.

C. After the passage of the resolution directing the sale, notice of all proposed sales of real and personal property described in subsection (A) of this section and the terms thereof shall be published once each week for three consecutive weeks in a legal newspaper published in or of general circulation in the City.

D. If within 30 days after the third publication of the notice, a remonstrance against such sale, signed by registered voters of the City equal in number to 30% of the registered voters of the City voting at the last regular city election held therein, is filed with the City Council, such property shall not then nor within one year thereafter be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday or legal holiday, the signatures shall be collected within the 30-day period but the filing shall be considered timely if filed or postmarked on or before the next business day.

E. Upon receipt of the remonstrance, the City Council, with the aid and assistance of the county clerk, shall determine the validity and sufficiency of signatures on the remonstrance. The Council shall deliver the remonstrance to the county clerk by hand carrier, by use of law enforcement officials or by certified mail, return receipt requested. Upon the receipt of the remonstrance, the county clerk shall issue to the City Council a written receipt that the remonstrance is in his or her custody. He or she shall follow the procedures as provided in Neb. Rev. Stat. §17-503 and shall then certify to the Council the number of valid signatures necessary to constitute a valid remonstrance. The clerk shall deliver the remonstrance and the certifications to the City Council within 40 days after the receipt of the remonstrance from the Council. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return

receipt requested.

F. The City Council shall, within 30 days after receipt of the remonstrance and certifications from the county clerk, hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. The Council shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

G. Real estate now owned or hereafter owned by the City may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, such property shall be conveyed strictly in accordance with the conditions of Neb. Rev. Stat. §18-1001 to 18-1006.

H. Following (1) passage of the resolution directing a sale, (2) publishing of the notice of the proposed sale, and (3) passing of the 30-day right of remonstrance period, the property shall then be sold. Such sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. Upon passage of such ordinance, the city clerk shall certify the name of the purchaser to the county register of deeds.

(I) Subsections (A) through (H) of this section shall not apply to the sale of real and personal property if the authorizing resolution directs the sale of an item or items of real and personal property having a total fair market value of less than \$5,000.00. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the City for a period of not less than seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required.

(Neb. Rev. Stat. §17-503, 17-503.01) (Am by Ord. Nos. 632, 3/15/83; 1021, 2/6/96; 1097, 7/6/98)

## **SECTION 5-105: PERMITTED OBSTRUCTIONS**

Persons engaged in the erection, construction, reconstruction, wrecking or repairing of any building, or the construction or repair of a sidewalk along any street, may occupy the public street space with such building material and equipment as long as is necessary if such persons shall make application to and receive a permit in writing from the street commissioner to do so; provided, no permit for the occupancy of the sidewalk space and more than one-third of the roadway of the public space adjacent to the real estate on which said building is to be constructed, erected, reconstructed, wrecked or repaired shall be granted; and provided further, a suitable passageway for pedestrians shall be maintained within the public space included in the permit which shall be protected and lighted in the manner required by the street commissioner.

## **SECTION 5-106: WEEDS**

A. It is hereby the duty of the street commissioner or his duly authorized agent to view and inspect the sidewalk space within the corporate limits for growing weeds during the growing season, and if weeds or worthless vegetation that are noxious, rank and obstruct travel on public ways, create a fire or health hazard or in his determination are a nuisance to the community are found growing thereon, he shall notify the abutting property owner or occupant thereof to cut down such weeds or worthless vegetation in such manner and at such height as the commissioner shall in his discretion deem ap-

propriate considering the real estate involved and surrounding real estate, together with determining if the loose vegetation thereon shall be allowed to remain or be removed. The real estate shall thereafter be cut and maintained as the street commissioner shall deem appropriate. Upon the failure of the owner, lessee or occupant having control of any such real estate to cut and clear the said weeds or worthless vegetation as set forth herein, the commissioner shall serve notice on the said owner, lessee or occupant to do so by publication or by personal service.

B. In the event that the weeds or vegetation have not been removed after a period of five days (ten days if located on railroad right-of-way), the City Council may order the same to be done under the direction of the street commissioner and the cost thereof shall be chargeable to the property owner. If the owner fails to reimburse the City after being properly billed, the cost may be assessed against the real estate and the Council shall have the assessment certified to the county treasurer and the same shall be collected in the manner provided by law.

C. The City may institute a civil proceeding against said owner, lessee or occupant. In the event the property owner is a non-resident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the non-resident property owner, which shall be that address listed on the current tax rolls at the time such required notice was first published. The rate of the city mowing said grounds shall be established by the City by resolution.

(Neb. Rev. Stat. §17-563, 18-1719) (Am by Ord. Nos. 635, 6/7/83; 704, 9/2/86)

#### **SECTION 5-107: SNOW REMOVAL; CITY RIGHT-OF-WAY**

Snow removed from sidewalks may be placed on city right-of-way. No snow removed from private property shall be pushed into any street or alley or placed upon any city right-of-way. (Ord. No. 784, 11/7/89)

#### **SECTION 5-108: HEAVY EQUIPMENT**

A. It shall hereafter be unlawful for any person or person to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk or crossing on any unpaved street without first having provided protection with heavy plank sufficient in strength to warrant against the breaking or damaging of such curb, gutter, bridge, culvert, sidewalk, crosswalk or crossing. Hereafter, it shall be unlawful to run, drive, move, operate or convey over or across any paved street a vehicle, machine or implement with sharp discs or sharp wheels that bear upon said pavement; with wheels having cutting edges; with wheels having lugs, any protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent, or otherwise injure or damage any pavement, gutter or curb; provided, where heavy vehicles, structures, and machines move along paved or unpaved streets, the city police are hereby authorized and empowered to choose the route over which the moving of such vehicles, structures or machines will be permitted and allowed.

B. Nothing in this section shall be construed to apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths ( $5/16$ ) of an inch in diameter, inclusive of the stud-casting, with an average protrusion beyond the tread surface of not more than seven sixty-fourths ( $7/64$ ) of an inch between October 1 and April 15; pro-

vided, school buses and emergency vehicles shall be permitted to use metal or metal-type studs all year; it shall be permissible to use farm machinery with tires having protuberances which will not injure the streets; and it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to slide or skid.

(Neb. Rev. Stat. §60-6,250)

### **SECTION 5-109: IMPROVEMENT DISTRICT; LAND ADJACENT**

Supplemental to any existing law on the subject, a city may include land adjacent to such city when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The City Council shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby, except as provided in Section 5-110. (Neb. Rev. Stat. §19-2427) (Ord. No. 735, 9/1/87)

### **SECTION 5-110: DEFERRAL FROM SPECIAL ASSESSMENTS**

A. Whenever the City Council creates an improvement district as specified in Section 5-109, including land adjacent to the City which is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments. For purposes of this section, the terms “agricultural use” and “agricultural use zone” shall have the meanings specified in Neb. Rev. Stat. §77-1343.

B. Any owner of record title eligible for the deferral granted by this section shall, to secure such assessment, make application to the City Council within 90 days after creation of an improvement district. Any owner of record title who makes application for the deferral provided by this section shall notify the county register of deeds of such application in writing prior to approval by the City Council. The Council shall approve the application of any owner of record title upon determination that the property (1) is within an agricultural use zone and is used exclusively for agricultural use, and (2) the owner has met the requirements of this section.

C. The deferral provided for in this section shall be terminated upon any of the following events:

1. Notification by the owner of record title to the City Council to remove such deferral;
2. Sale or transfer to a new owner who does not make a new application within 60 days of the sale or transfer, except as provided in subdivision (C)(3) below;
3. Transfer by reason of death of a former owner to a new owner who does not make application within 125 days of the transfer;
4. The land is no longer being used as agricultural land; or
5. Change of zoning to other than an agricultural zone.

D. Whenever property which has received a deferral pursuant to this section becomes disqualified for such deferral, the owner of record title of such property shall pay to the City an amount equal to:

1. The total amount of special assessments which would have been assessed

against such property, to the extent of special benefits, had such deferral not been granted; and

2. Interest upon the special assessments not paid each year at the rate of 6% from the dates at which such assessments would have been payable if no deferral had been granted.

E. In cases where the deferral provided by this section is terminated as a result of a sale or transfer described in subdivision (C)(2) or (3) of this section, the lien for assessments and interest shall attach as of the day preceding such sale or transfer. (Neb. Rev. Stat. §19-2428 through 19-2431) (Ord. No. 652, 1/3/84) (Am by Ord. No. 736, 9/1/87)

### **SECTION 5-111: ACQUISITION OF REAL PROPERTY; AUTHORIZATION**

When acquiring an interest in real property by purchase or eminent domain, the City shall do so only after the City Council has authorized the acquisition by action taken in a public meeting after notice and public hearing. (Neb. Rev. Stat. §18-1755) (Ord. No. 978, 3/21/95)

### **SECTION 5-112: ACQUISITION OF REAL PROPERTY; APPRAISAL**

The City shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value \$100,000.00 or more unless an appraisal of such property has been performed by a certified real estate appraiser. (Neb. Rev. Stat. §13-403) (Ord. No. 979, 3/21/95)

## **Article 2 – Sidewalks**

### **SECTION 5-201: OVERHANGING BRANCHES**

The owner or occupant of any lot, piece or parcel of ground abutting or adjacent to any street or sidewalk over which branches of trees extend shall at all times keep the branches or limbs thereof trimmed to a height of at least 8feet above the surface of said walk. Whenever the limbs or branches of any tree or trees extend over sidewalks contrary to the provisions herein so as to interfere with the lighting of the street from street lights or with the convenience of the public using said sidewalk, the City Council at any regular or special meeting may pass a resolution ordering the owner or occupant to cut or remove said obstructions within five days after having received a copy thereof from the community forest manager stating that the City will remove said branches and charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided if said resolution is not complied with. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner, which shall be that address listed on the current tax rolls at the time such required notice was first published. (Neb. Rev. Stat. §17-557.01) (Am by Ord. No. 969, 3/7/95)

### **SECTION 5-202: DUTY TO KEEP CLEAN**

It shall be unlawful for the occupant of any lot or lots or the owner of any vacant lot or

lots within the corporate limits to allow snow, sleet, mud, ice or other substance to accumulate on the sidewalks or to permit any snow, sleet, ice, mud or other substance to remain upon said sidewalk. All sidewalks within the business district shall be cleaned within five hours after the cessation of a storm, unless the storm or fall of snow shall have taken place during the night, in which case the sidewalk shall be cleaned before 10:00 A.M. the following day; provided, sidewalks within the residential areas of the City shall be cleaned within 24 hours after the cessation of the storm. (Neb. Rev. Stat. §17-557)

### **SECTION 5-203: MAINTENANCE**

Every owner of any lot, lots or piece of land within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to said lot, lots or pieces of land, as the case may be, in good and proper repair and in a condition reasonably safe for travel for all travelers thereon. In the event that the owner or owners of any lot, lots or lands, abutting on any street, avenue or part thereof shall fail to construct or repair any sidewalk in front of his, her or their lot, lots or lands within the time and in the manner as directed and required herein after having received due notice to do so, such person(s) shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk. The City Council shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner, which shall be that address listed on the current tax rolls at the time such required notice was first published. (Neb. Rev. Stat. §17-557.01)

### **SECTION 5-204: REPAIR**

The street commissioner may require sidewalks of the City to be repaired. Notice to the owners of property upon which such sidewalks in disrepair are located shall require said owners to make arrangements to have the sidewalk repaired within 48 hours from issuance of notice. Said repairs shall be completed within 21 days after issuance of said notice. No special assessment shall be levied against the property unless said owner shall neglect or refuse to make the required repairs within the time prescribed. In the event that such owner fails to complete the said repairs, the City shall cause the repairs to be made and assess the property owner the expense of such repairs. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner, which shall be that address listed on the current tax rolls at the time such required notice was first published.

### **SECTION 5-205: CONSTRUCTION BY OWNER**

A. Any person required by a building permit of the City to construct, desiring to construct or causing to be constructed any sidewalk shall do so only as herein provided and in accordance with sidewalk standards and specifications set forth by the city engineer and approved by resolution of the City Council and after making a deposit, if required by a building permit. Before construction of the sidewalk, the utilities superintendent shall be contacted in order to determine whether the proposed location of the sidewalk will interfere with any water and sewer lines.



B. The sidewalk shall be located on the city right-of-way. The location of the right-of-way may be obtained at the city clerk's office. If other sidewalks exist in the block at the time the sidewalk is to be placed, efforts shall be made to line up the new sidewalk with the existing sidewalks so as to produce a continuous sidewalk for the entire block. If this cannot be done or if existing sidewalks do not line up, the person constructing the sidewalk shall contact the street commissioner, who will establish an acceptable location for the sidewalk.

C. If the sidewalk to be constructed is the first sidewalk on the block, the preferred location shall be on city property along the outside right-of-way line of the street. If this is not feasible due to utility lines or trees, the person constructing the sidewalk shall contact the street commissioner for determination as to the proper location of the sidewalk.

D. Prior to the issuance of a building permit, if a variance or exemption has been granted by the City Council or building inspector from the immediate construction of a sidewalk, the owner shall execute an agreement to later construct the required sidewalk pursuant to the agreement.

(Am by Ord. Nos. 872, 3/3/92; 1047, 4/1/97; 1178, 7/16/01)

#### **SECTION 5-206: CONSTRUCTION BY CITY**

A. The City Council may, by resolution, order the construction of a sidewalk on any lot or piece of ground within the City. Notice of the Council's intention to construct said sidewalk shall be given by the city clerk by publication of notice one time in a legal newspaper of general circulation in the City. A copy of said notice shall be personally served upon the occupant in possession of such property or, when personal service is not possible, said notice shall be posted upon such premises ten days prior to the commencement of construction. The notice required in this section shall be prepared by the city attorney in accordance with the provisions of this section. Such service shall include a form of return evidencing personal service or posting as herein required.

B. Said notice shall notify the owner of the premises of the passage of the resolution ordering him or her to construct or cause to be constructed a sidewalk within 30 days after the date of publication and further, that if he or she fails to construct the sidewalk or cause the same to be done within the time allowed, the City will cause the sidewalk to be constructed and the cost thereof shall be levied and assessed as a special tax against the premises; provided, the notice shall contain the official estimate of the cost of said construction and no special assessment in excess of said estimate shall be assessed against the property. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the non-resident property owner, which shall be that address listed on the current tax rolls at the time such required notice was first published.

(Neb. Rev. Stat. §17-522, 17-523)

### **Article 3 – Streets**

### **SECTION 5-301: NAMES AND NUMBERS**

The City Council may at any time, by ordinance, rename any street or provide a name for any new street. Buildings used for residence or business purposes and located along such streets shall retain such numbers as the Council may require. Upon the erection of any new building, it shall be the duty of the street commissioner to assign the proper numbers to said building and give notice to the owner(s) and occupant(s) of the same.

### **SECTION 5-302: WIDENING OR OPENING**

The City Council shall have the power to open or widen any street, alley or lane within the limits of the City and to create, open and improve any new street, alley or lane; provided, all damages sustained shall be ascertained in such manner as shall be provided by ordinance. (Neb. Rev. Stat. §17-558, 17-559, 76-704 through 76-724)

### **SECTION 5-303: EXCAVATION**

It shall be unlawful for any person to make an excavation in any street for any purpose whatsoever unless a written permit is issued by the street commissioner. (Neb. Rev. Stat. §17-567)

### **SECTION 5-304: DRIVING STAKES**

It shall be unlawful for any person to drive any peg or stake of any kind into the pavement in any street or alley without first procuring the written consent of the street commissioner.

### **SECTION 5-305: MIXING CONCRETE**

It shall be unlawful for any person to mix any concrete or plastering material directly on the street pavement for any reason whatsoever.

### **SECTION 5-306: HARMFUL LIQUIDS**

It shall be unlawful for any person to place or permit to leak in the gutter of any street, waste gasoline, kerosene, or high lubricating oils, which damage or act as a solvent upon said streets.

### **SECTION 5-307: EAVE AND GUTTER SPOUTS**

It is hereby declared unlawful for any person to erect or maintain any dwelling house or business building within the limits of the City where the said dwelling or building abuts on any sidewalk or street without providing proper guttering and eave spouts to receive the waste waters that collect on the said sidewalks and streets. All eave spouts erected on any dwelling house or business building shall be constructed to drain into the alley or shall be buried beneath the sidewalk and drain into the street where it is found to be impossible to drain said eave spouts into the alley.

### **SECTION 5-308: UTILITY POLES, WIRES, MAINS**

Poles, wires, gas mains, pipelines, and other appurtenances of public service compa-

nies shall be located, or erected over, upon, or under the streets, alleys, and common grounds of the City. Application for location of the above shall be made to the City Council in writing. Approval by that body shall be issued in writing. Any public service company granted a right-of-way for the erection and maintenance of appurtenances shall erect and locate them at such places and in such manner as shall be designated by the City Council. Such appurtenances shall be removed or relocated by said companies at their own expense when requested to do so by the City Council. Any such relocation shall be ordered by resolution of the Council and the city clerk shall notify any and all companies affected. Said companies shall, within 24 hours after receiving notice, at their own expense, cause the appurtenances to be removed. The City Council shall designate another location as closely as possible where said appurtenances may be reset or placed. All such appurtenances shall be reset, placed, or erected in such a manner that they will not interfere with the water system; sewerage system; poles, wires and mains of any public utility; adjacent buildings; or with travel on the public ways and property. Whenever possible, all appurtenances shall be confined to the alleys of the City.

### **SECTION 5-309: NOTICE OF CONSTRUCTION**

The city clerk shall notify the owners in fee simple of real estate abutting a street, alley, or a part thereof which is to be put under contract for paving or repaving. Notice shall also be given to all gas, electric service and telephone companies. Notice shall also be given to all consumers of gas, water and sewer services which will be discontinued during such construction. Said notice shall be published one time in a legal newspaper at least 20 days prior to the beginning of such construction by the party undertaking such construction and said notice shall state at what date connections must be made and excavation completed. All gas, water, sewer and underground connections must be made prior to the paving or repaving of the street under construction. After expiration of such time, permits for excavation will not be issued nor will excavation be allowed until after the completion of the pavement in said street or alley and the formal final acceptance thereof by the proper officials of the City.

### **SECTION 5-310: PETITION FOR IMPROVEMENTS**

Whenever a petition signed by the owners of record title representing more than 60% percent of the front footage of the property directly abutting upon the street, streets, alley, alleys, public way, or the public grounds proposed to be improved shall be presented and filed with the city clerk, petitioning therefor, the City Council shall by ordinance create a paving, graveling, or other improvement district or districts and shall cause such work to be done or such improvement to be made. The Council shall contract for such improvements and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley or alleys especially benefited thereby in such district in proportion to such benefits to pay the cost of such improvements. The Council shall have the discretion to deny the formation of the proposed district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the City Council should deny a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties. (Neb. Rev. Stat. §17-510) (Ord. No. 651, 1/3/84)

### **SECTION 5-311: CONSTRUCTION ASSESSMENTS**

A. To defray the costs and expenses of street improvements as may be autho-

alized by law, the City Council shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, abutting upon, or especially benefiting from the street, avenue, alley or sidewalk in whole or in part opened, widened, curbed, curbed and guttered, graded, paved, repaired, graveled, macadamized, parked, extended, constructed, or otherwise improved or repaired. The City Council, sitting as the Board of Equalization, shall review all such improvements in accordance with the procedure provided by law.

B. All special assessments shall be made by the City Council at a regular or special meeting by resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements and the amount charged against same. The vote shall be recorded in the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in a legal newspaper published or of general circulation in the City at least four weeks before the same shall be held. In lieu of such aforementioned notice, personal service may be had upon the persons owning or occupying the property to be assessed. Such assessments shall be known as "special assessments for improvements" and with the cost of notice shall be levied and collected as a special tax in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other city taxes. Said assessments shall be certified to the county clerk by the city clerk forthwith after the date of levy for collection by the county treasurer unless otherwise specified.

C. After it shall become delinquent, said assessment shall draw interest at the legal interest rate per annum. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the non-resident property owner, which shall be that address listed on the current tax rolls at the time such required notice was first published. (Neb. Rev. Stat. §17-511, 17-524)

## **SECTION 5-312: VACATING PUBLIC WAYS; DEFINITIONS AND ASCERTAINING DAMAGES**

A. "Special damages" shall mean only those losses or damages or injuries which a property owner suffers that are peculiar or special or unique to his or her property and which result from the City Council's vacation of such street, avenue, alley, lane or similar public way. "Special damages" shall not mean those losses or damages or injuries that a property owner suffers that are in common with the rest of the City or public at large, even though those losses or damages or injuries suffered by the property owner are greater in degree than the rest of the City or public at large.

B. The mayor shall appoint three or five or seven disinterested residents of the City to a Special Commission to ascertain the amount of special damages that the abutting property owners are entitled to receive and which resulted from the City Council's vacation of such street, avenue, alley, lane or similar public way. The appointees of the Special Commission shall be approved by the Council. Only special damages, as herein defined, shall be awarded to the abutting property owners.

C. In determining the amount of compensation to award the abutting property owners as special damages, the aforementioned Commission shall use the following rule:

The abutting property owner is entitled to recover as compensation the difference between the value of such property immediately before and immediately after the vacating of such street, avenue, alley, lane or similar public way. However, if no difference in value exists, the abutting property owner is entitled to no compensation.

(Neb. Rev. Stat. §17-558, 17-559) (Ord. No. 709, 9/29/86)

### **SECTION 5-313: VACATING PUBLIC WAYS; PROCEDURE**

Whenever the City Council decides that it would be in the best interests of the City to vacate a street, avenue, alley, lane or similar public way, the Council shall comply with the following procedure:

A. *Notice.* Notice shall be given to every abutting property owner either by first class mail to his or her last known address or, if there is no known address, then by publishing the notice in a newspaper that is of general circulation in the City. The content of the notice will advise the abutting property owners that the City Council will consider vacating such street, avenue, alley, lane or similar public way at its next regular meeting or, if a special meeting is scheduled for such discussion, then the date, time and place of such meeting.

B. *Consent/Waiver.* The City Council may have all the abutting property owners sign a form stating that they consent to the action being taken by the Council and waive their right of access. The signing of such form has no effect on claims for special damages, as defined in Section 5-312, by the abutting property owners but does create the presumption that the City Council's action was proper. However, if all the abutting property owners do not sign the consent/waiver form, the Council may still proceed with vacating such street, avenue, alley, lane or similar public way under the authority granted them by Neb. Rev. Stat. §17-558 and 17-559.

C. *Ordinance.* The City Council shall pass an ordinance that shall state essentially the following:

1. A declaration that the action is expedient for the public good or in the best interests of the City;
2. A statement that the City allows the title of such property to vest in the owner of the abutting property and become part of such property, one-half on each side thereof, or that the City reserves title to such property. If title is retained by the City, such property may later be sold, conveyed, exchanged or leased upon such terms and conditions as shall be deemed in the best interest of the City; and
3. A method or procedure for ascertaining special damages to abutting property owners.

D. *Reservation of Easements.* In the event the City does not reserve title or later conveys said property, the City shall:

1. Reserve the right to maintain, operate, repair and renew public utilities existing at the time title to the property is vacated; and
2. There is reserved to the City, any public utilities, and any cable television systems the right to maintain, repair, renew and operate water mains, sanitary sewer mains, gas mains, storm sewer lines or drainage ways, pole

lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, above, on or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times.

E. *Filing.* The clerk shall file a copy of the ordinance with the county register of deeds within 30 days of passage.

(Neb. Rev. Stat. §17-558, 17-559) (Ord. Nos. 710, 9/29/86; 1193, 12/3/01; 1270, 1/9/06; 1273, 4/3/06)

## **SECTION 5-314: BARRICADES REQUIRED**

A. All contractors or other individuals doing excavation or other construction that obstructs city right-of-way, including but not exclusive to streets and alleys, must provide proper State-approved barricades for the protection of the public. The barricades must be properly placed so as to warn and block off the excavation from the public.

B. All excavations left open after dark shall be required to have barricades and flashing yellow warning lights in proper working order and operating correctly placed at the site of the open excavation.

C. It shall be the responsibility of the contractor to furnish said barricades and warning lights, to maintain the same in working order, and to maintain their proper placement as a condition of being allowed to excavate on the city right-of-way. No excavation work shall be allowed to proceed if the barricades or warning lights are not placed and functioning as required by this ordinance.

(Ord. No. 722, 6/2/87)

## **SECTION 5-315: CUTTING PAVING, CURB OR SIDEWALK**

A. It shall be unlawful for any person to cut into any paving, curb or sidewalk for the purpose of constructing a driveway or any other purpose whatsoever without first having obtained a written permit from the street commissioner. The application for such permit shall contain the following information:

1. The addition, block and lot which the improvement is to serve;
2. The location of the proposed improvement with reference to adjacent lot lines; and
3. The width of the improvement and type of surface which the improvement will connect.

B. Upon the application being filed, it shall be the street commissioner's duty to inspect the place of entry into the paving, sidewalk or curb and approve such application on such terms and conditions, including starting and completion dates, as he determines necessary. When cutting into any paving, it shall be the duty of the party to cut the paving under such rules and regulations as may be prescribed by the street commissioner or the city engineer. When the applicant is ready to close the opening made, he or she shall inform the street commissioner, who shall supervise and inspect the materials used and the work done in closing the opening. It shall be discretionary with the commissioner, under the supervision and inspection of the city engineer or the commit-

tee of the City Council on streets and alleys, to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit.

C. Before any permit is issued, the applicant for such permit shall deposit with the city treasurer a sum set by resolution of the City Council for all paving, curb or sidewalk to be cut. Such sum shall be set on a per-square-foot cost of construction basis. The deposit shall be retained by the City for the purpose of replacing the paving, curb or sidewalk in the event the work is done by the City. In the event the City elects to require the applicant to replace the paving, curb or sidewalk, the deposit shall be retained by the City until the work is completed to the satisfaction of the street commissioner or of the committee of the City Council on streets and alleys. In lieu of making the deposit above set forth, the applicant may, before any permit is issued, execute a bond to the City with a good and sufficient surety or sureties to be approved by the City Council for the total cost of the improvement.

D. In the event that the work has not been completed by the completion date as set forth on the approved application, the City may cancel the permit if work has not commenced, complete the work and retain a sufficient sum of the deposit to reimburse the City for such completion work or serve notice on the applicant's bonding company of such failure to complete the work and if necessary file legal action on applicant's bond.

## **Article 4 – Penal Provision**

### **SECTION 5-401: VIOLATION; PENALTY**

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