

## **CHAPTER 6 – PUBLIC WAYS AND PROPERTY**

### **ARTICLE 1 – MUNICIPAL PROPERTY**

- 6-101 MAINTENANCE AND CONTROL**
- 6-102 PERMITTED OBSTRUCTIONS; PERMIT REQUIRED**
- 6-103 DEPOSITING SNOW ON PUBLIC WAYS PROHIBITED**
- 6-104 SEDIMENT ON PUBLIC WAYS; NUISANCE; NOTICE TO REMOVE; PENALTY**
- 6-105 DANGEROUS STAIRWAY**
- 6-106 CUTTING CURB; PERMIT, DEPOSIT, BOND**
- 6-107 DRIVEWAY APPROACHES**
- 6-108 HEAVY EQUIPMENT**
- 6-109 REAL PROPERTY; SALE AND CONVEYANCE**
- 6-110 REAL PROPERTY; ACQUISITION; CONSTRUCTION; ELECTIONS, WHEN REQUIRED**
- 6-111 PERSONAL PROPERTY; SALE AND CONVEYANCE**
- 6-112 SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCEDURE**
- 6-113 IMPROVEMENT DISTRICT; LAND ADJACENT**
- 6-114 DEFERRAL FROM SPECIAL ASSESSMENTS**

### **ARTICLE 2 – STREETS**

- 6-201 NAMES AND NUMBERS**
- 6-202 EXCAVATION**
- 6-203 DRIVING STAKES**
- 6-204 MIXING CONCRETE**
- 6-205 HARMFUL LIQUIDS**
- 6-206 UTILITY LINES, WIRES, ETC.**
- 6-207 IMPROVEMENT OF STREETS ON CORPORATE LIMITS**
- 6-208 IMPROVEMENT OF MAIN THOROUGHFARES**
- 6-209 IMPROVEMENT DISTRICTS; OBJECTIONS**
- 6-210 CONSTRUCTION NOTICE**
- 6-211 CONSTRUCTION ASSESSMENT**
- 6-212 PETITION FOR IMPROVEMENTS**
- 6-213 OPENING, WIDENING, IMPROVING OR VACATING**
- 6-214 VACATING PUBLIC WAYS; PROCEDURE; DAMAGES**
- 6-215 VACATING PUBLIC WAYS; TITLE**

### **ARTICLE 3 – SIDEWALKS**

- 6-301 DUTY TO KEEP CLEAN**
- 6-302 DUTY TO REMOVE BRANCHES AND SHRUBBERY**
- 6-303 EDIBLE PRODUCE GARDENS; NUISANCE**
- 6-304 MAINTENANCE**
- 6-305 REPAIR**
- 6-306 CONSTRUCTION BY OWNER; PERMIT**
- 6-307 CONSTRUCTION BY CITY**
- 6-308 CONSTRUCTION BIDS**

## **6-309 CONSTRUCTION BY PETITION**

### **ARTICLE 4 – PENAL PROVISIONS**

#### **6-401 VIOLATION; PENALTY**

## **CHAPTER 6 – PUBLIC WAYS AND PROPERTY**

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

#### **SECTION 6-101: 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 and in repair, and free from nuisances. (Neb. Rev. Stat. §17-567)

#### **SECTION 6-102: PERMITTED OBSTRUCTIONS; PERMIT REQUIRED**

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 City Council 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 official issuing the permit.

#### **SECTION 6-103: DEPOSITING SNOW ON PUBLIC WAYS PROHIBITED**

It shall be unlawful for any person to push, move or deposit snow from private property onto or upon any public sidewalk, street, avenue, alley or other city-owned property.

#### **SECTION 6-104: SEDIMENT ON PUBLIC WAYS; NUISANCE; NOTICE TO REMOVE; PENALTY**

A. Any person responsible for sediment deposited into or upon any street, alley, sidewalk public way, storm drainage system, or public ground as a result of tracking, runoff or other erosion and sedimentation from a building or development site, shall remove the same within a reasonable period of time as required by the City of Hickman, Department of Environmental Quality, or other agency. Whenever the person responsible for sediment deposited into or upon any street, alley, sidewalk, public way, storm drainage system, or public grounds refuses or neglects to remove the same, the City may elect to remove the sediment and the expense of such removal shall be recoverable by the City.

B. If the City, Department of Environmental Quality, or other agency determines that the conditions described above constitute an immediate nuisance and hazard to public safety, the City shall issue a written notice to abate and remove such nuisance or

hazard within 24 hours. If such person responsible shall have failed or refused to abate and remove such nuisance at the expiration of 24 hours from delivery of notice, the City may remove such nuisance and the expense of such removal shall be recoverable by the City.

(Ord. No. 2007-20, 12/11/07)

### **SECTION 6-105: DANGEROUS STAIRWAY**

It shall be unlawful for any person to construct or maintain any stairway, open cellarway, open basement way, or open entrance thereto in or adjacent to any sidewalk, pavement or street, and any such entrance is hereby declared to be a public nuisance. However, all existing stairways, open cellarways, open basement ways or open entrances thereto in said sidewalks, pavements or streets may be permitted to remain from and after the passage, approval and publication of this article if said person owning or using said opening in the sidewalk or street shall satisfy the street superintendent that the same is properly protected by a balustrade or coping of durable material. Said person shall furnish the City with a bond in such amount as may be set by the City Council for the benefit of any person who might suffer an injury or damage by reason of the use of said stairway, cellarway, or open basement way. (Neb. Rev. Stat. §17-555)

### **SECTION 6-106: CUTTING CURB; PERMIT, DEPOSIT, BOND**

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 City Council therefor. Before any person shall obtain a permit, he shall inform the city clerk of the place where such cutting is to be done, and it shall be the duty of the facilities and maintenance director to inspect the place of entry into the paving, sidewalk, or curb, before the same is cut.

B. Before any permit is issued by the City Council, 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 and shall be set by ordinance of the City Council, on file at the office of the city clerk and available for public inspection during office hours. 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 director. In addition to making the deposit above set forth, the applicant shall, 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 in a sum set by resolution of the City Council, on file at the office of the city clerk and available for public inspection during office hours.

C. 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 City Council or the city engineer. When the applicant is ready to close the opening made, he shall inform the director, who shall supervise and inspect the materials used and the work done in closing the opening. It shall be discretionary with the City Council to order the director to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit. The City Council may consent to the work of cutting and closing the paving to be done by the party holding such permit.

(Neb. Rev. Stat. §17-567)

## **SECTION 6-107: DRIVEWAY APPROACHES**

The facilities and maintenance director may require the owner of property served by a driveway approach constructed or maintained upon the street right of way to repair or replace any such driveway approach which is cracked, broken, or otherwise deteriorated to the extent that it is causing or is likely to cause damage to or interfere with any street structure, including pavement or sidewalks. The city clerk shall give the property owner notice by registered letter or certified mail, directed to the last-known address of such owner or the agent of such owner, directing the repair or replacement of such driveway approach. If the property owner fails or neglects to cause such repairs or replacements to be made within 30 days of mailing such notice, the director may cause such work to be done and assess the cost upon the property served by such approach. (Neb. Rev. Stat. §16-1748)

## **SECTION 6-108: HEAVY EQUIPMENT**

A. It shall hereafter be unlawful for any person or persons to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk or crossing on any unpaved street without first having protected such structure with heavy plank sufficient in strength to warrant against the breakage or damage of the same. Hereafter, it shall be unlawful to 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, 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.

B. Where heavy vehicles, structures, and machines move along paved or unpaved streets, the City Council is hereby authorized and empowered to choose the route over which the moving of such vehicles, structures or machines will be permitted and allowed.

C. It shall be permissible (1) for school buses and emergency vehicles to use metal or metal-type studs any time of the year; (2) to use farm machinery with tires having protuberances which will not damage the streets; and (3) 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 6-109: REAL PROPERTY; SALE AND CONVEYANCE**

A. Except as provided in subsection (L) of this section, the power of the City to convey any real 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 property and the manner and terms thereof, except that such 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 real 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 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 is signed by registered voters of the City equal in number to 30% of the registered voters of the City voting at the last regular municipal election held therein and 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 the receipt of the remonstrance, the City Council, with the aid and assistance of the election commissioner, shall determine the validity and sufficiency of signatures on the remonstrance. The City Council shall deliver the remonstrance to the election commissioner by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested.

F. Upon receipt of the remonstrance, the election commissioner shall issue to the City Council a written receipt that the remonstrance is in the custody of the election commissioner, who shall compare the signature of each person signing the remonstrance with the voter registration records to determine if each signer was a registered voter on or before the date on which the remonstrance was filed with the City Council. The commissioner shall also compare the signer's printed name, street and number or voting precinct, and city or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the election commissioner determines that the printed name, street and number or voting precinct, and city or post office address matches the registration records and that the registration was received on or before the date on which the remonstrance was filed with the City Council. The determinations of the election commissioner may be rebutted by any credible evidence which the City Council finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the remonstrance, the sufficiency of the remonstrance, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the remonstrance process.

G. Upon completion of the comparison of names and addresses with the voter registration records, the election commissioner shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the non-registration of the signer, the commissioner shall set forth the reason for the invalidity of the signature. If the commissioner determines that a signer has affixed his or her signature more than once to the remonstrance and that only one person is registered by that name, the commissioner shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature.

H. The election commissioner shall certify to the City Council the number of valid signatures necessary to constitute a valid remonstrance. The commissioner shall deliver the remonstrance and the certifications to the City Council within 40 days after the receipt of the remonstrance from the City Council. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than 20 signatures on one signature page shall be counted.

I. The City Council shall, within 30 days after the receipt of the remonstrance and certifications from the election commissioner, hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. The City 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.

J. 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, shall be conveyed strictly in accordance with the conditions of Neb. Rev. Stat. §16-1001 to 16-1006.

K. Following passage of the resolution directing a sale, publishing of the notice of the proposed sale, and 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. (Neb. Rev. Stat. §17-503)

L. Subsections (A) through (K) of this section shall not apply to the sale of real property if the authorizing resolution directs the sale of real property having a total fair market value less than \$5,000. 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. §17-503.01) (Am. by Ord. Nos. 96-8, 2/22/96; 04-14, 11/9/04)

## **SECTION 6-110: REAL PROPERTY; ACQUISITION; CONSTRUCTION; ELECTIONS, WHEN REQUIRED**

A. The City is authorized and empowered to purchase, accept by gift or devise, purchase real estate upon which to erect, and erect a building or buildings for an auditorium, fire station, city building, or community house for housing city enterprises and social and recreation purposes, and other public buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of the City.

B. Except as provided in subsection (C) of this section, before any such purchase can be made or building erected, the question shall be submitted to the electors of the City at a general city election or at an election duly called for that purpose, or as set forth in Neb. Rev. Stat. §17-954, and be adopted by a majority of the electors voting on such question.

C. If the funds to be used to finance the purchase or construction of a building pursuant to this section are available other than through a bond issue, then either:

1. Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the City and no election shall be re-

quired to approve the purchase or construction unless within 30 days after the publication of the notice, a remonstrance against the purchase or construction is signed by registered voters of the City equal in number to 15% of the registered voters of the City voting at the last regular city election held therein and is filed with the City Council. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be considered timely if filed or postmarked on or before the next business day. If a remonstrance with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the City at a general city election or a special election duly called for that purpose. If the purchase or construction is not approved, the property involved shall not then, nor within one year following the election, be purchased or constructed; or

2. The City Council may proceed without providing the notice and right of remonstrance required in subdivision (1) of this subsection if the property can be purchased below the fair market value as determined by an appraisal, there is a willing seller, and the purchase price is less than \$25,000. The purchase shall be approved by the City Council after notice and public hearing as provided in Neb. Rev. Stat. §16-1755.

(Neb. Rev. Stat. §17-953, 17-953.01) (Ord. No. 96-3, 2/22/96)

## **SECTION 6-111: PERSONAL PROPERTY; SALE AND CONVEYANCE**

In order to sell personal property owned by the City, the City Council shall adopt a resolution directing the sale and the manner and terms of the sale. 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. If the fair market value of the property is greater than \$5,000.00, notice of the sale shall also be published once in a legal newspaper in or of general circulation in such city at least 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. When such personal property is being sold in compliance with the requirements of federal or state grants or programs or conveyed to another public agency, the notice procedure set forth above may be dispensed with. (Neb. Rev. Stat. §17-503.02)

## **SECTION 6-112: SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCEDURE**

A. The City Council may, by ordinance, create a special improvement district for the purpose of replacing, reconstructing, or repairing an existing street, alley, water line, sewer line, or any other such improvement.

B. Except as provided in Neb. Rev. Stat. §19-2428 to 19-2431, the City Council shall have power to assess, to the extent of such benefits, the costs of such improvements upon the properties found especially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the Council shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law.

(Neb. Rev. Stat. §16-1751)

## **SECTION 6-113: 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 6-114. (Neb. Rev. Stat. §19-2427)

## **SECTION 6-114: DEFERRAL FROM SPECIAL ASSESSMENTS**

A. Whenever the City Council creates an improvement district which includes 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 meaning 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 is within an agricultural use zone and is used exclusively for agricultural use, and 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 subsection (C) (3) of this section.
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 subsection (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)

## **Article 2 – Streets**

### **SECTION 6-201: 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. It shall be the duty of the facilities and maintenance director, upon the erection of any new building or buildings, to assign the proper numbers to said building or buildings and give notice to the owner or owners and occupant or occupants of the same.

### **SECTION 6-202: EXCAVATION**

It shall be unlawful for any person to make an excavation in any street or streets for any purpose whatsoever unless a written permit is issued by the facilities and maintenance director authorizing such excavations. (Neb. Rev. Stat. §17-567)

### **SECTION 6-203: 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 chief city street official.

### **SECTION 6-204: 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 6-205: 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 6-206: UTILITY LINES, WIRES, ETC.**

A. Poles, wires, gas mains, pipe lines and other appurtenances of public service companies shall be located or erected over, upon or under the streets, alleys and common grounds after a proper application shall have been made to the city clerk in writing and permission in writing shall have been given by the City Council. Public service companies heretofore or hereafter granted right of way for the erection and maintenance of poles, conduits, gas mains, pipe lines and wires for the purpose of transacting

their business upon, under or over the streets, alleys and public grounds shall at all times, when requested by the City Council, erect, locate or relocate their poles, wires, gas mains, pipe lines and other appurtenances to such places and in such manner as shall be designated by the Council. Such poles, wires, gas mains, pipe lines and other appurtenances shall be removed or relocated by said companies at their own expense when requested to do so by the City Council.

B. Whenever it becomes necessary for the City Council to request such relocation for the public safety and convenience, it shall order said relocation by resolution and the city clerk shall notify any company or companies affected. Within 24 hours after receiving notice, said companies shall cause the poles, wires, gas mains, pipe lines or other appurtenances to be removed at their own expense. The City Council shall designate another location as close as possible where said poles, wires, gas mains, pipe lines or other appurtenances may be reset or placed. All poles, wires, gas mains, pipe lines or other appurtenances shall be reset, placed or erected in such manner that they will not interfere with the water system, sewer system or poles, wires, and mains of any public utility located on the same street or alley or with travel, buildings constructed or hereafter to be constructed.

C. Whenever possible, all poles, lines, wires, gas mains, pipe lines or appurtenances shall be confined to the alleys of the City. No water pipe, underground electric line or telephone conduit shall be laid in the same trench with sewer pipe in any street, alley or public grounds in the City or nearer than three feet to any sewer pipe. No underground electric line shall be laid in the same trench with any water pipe, sewer pipe or telephone conduit in any street, alley or public grounds or nearer than three feet to any such pipes or conduit.

#### **SECTION 6-207: IMPROVEMENT OF STREETS ON CORPORATE LIMITS**

The mayor and Council shall have the power to improve any street or part thereof which divides the city corporate area and the area adjoining the City. When creating an improvement district including land adjacent to the City, the Council shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby. (Neb. Rev. Stat. §17-509)

#### **SECTION 6-208: IMPROVEMENT OF MAIN THOROUGHFARES**

The mayor and City Council shall have the power, by a three-fourths vote of the Council, to create by ordinance a paving, graveling or other improvement district and to order such work done upon any federal or state highway in the City or upon a street or route designated by the mayor and Council as a main thoroughfare that connects to either a federal or state highway or a county road. The Council shall contract therefor and shall have the power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby. (Neb. Rev. Stat. §17-512) (Am. by Ord. No. 89-5, 6/8/89)

#### **SECTION 6-209: IMPROVEMENT DISTRICTS; OBJECTIONS**

A. Whenever the City Council shall deem it necessary to make any improvements allowed by statute, the Council shall by ordinance create a paving, graveling, or other improvement district or districts, and after the passage, approval, and publication or posting of such ordinance, shall publish notice of the creation of any such district or

districts for six days in a legal newspaper of the City, if a daily newspaper, or for two consecutive weeks, if the same be a weekly newspaper.

B. If the owners of the record title representing more than 50% of the front footage of the property directly abutting on the street, streets, alley, or alleys to be improved, shall file with the city clerk within 20 days after the first publication of said notice, written objections to the creation of such district or districts, said improvements shall not be made as provided in said ordinance; but said ordinance shall be repealed. If said objections are not filed against the district in the time and manner aforesaid, the City Council shall forthwith cause such work to be done or such improvement to be made, and shall contract therefor, 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 improvement.

(Neb. Rev. Stat. §17-511)

### **SECTION 6-210: CONSTRUCTION NOTICE**

The facilities and maintenance director 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 6-211: CONSTRUCTION ASSESSMENT**

A. To defray the costs and expenses of street improvements, as may be authorized 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 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.

C. Such assessments shall be known as "special assessments for improve-

ments" 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 and shall be certified to the county clerk by the city clerk forthwith after the date of levy, for collection by the treasurer of said county unless otherwise specified. After it shall become delinquent said assessment shall draw interest at the legal interest rate per annum.

D. 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. The last known address 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, 19-2428 through 19-2431, 45-104.01)

### **SECTION 6-212: PETITION FOR IMPROVEMENTS**

Whenever a petition signed by the owners of record title representing more than 60% 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, and shall contract therefor, 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 improvement. The City 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)

### **SECTION 6-213: OPENING, WIDENING, IMPROVING, OR VACATING**

The City shall have power to create, open, widen, extend or otherwise improve or vacate any street, avenue, alley, lane, off-street parking area or other public way within the limits of the City or annul, vacate, or discontinue the same. All damages sustained by the citizens of the City, or by the owners of the property therein, shall be ascertained in such manner as shall be provided by ordinance. Whenever any street or alley is vacated, the same shall revert to the owners of the abutting real estate, one-half on each side thereof and become a part of such property. When a portion of a street, avenue, alley, or lane is vacated only on one side of the center thereof, the title to such land shall vest in the owner of the abutting property and become a part of such property. When the City vacates all or any portion of a street, avenue, alley, or lane, the City shall, within 30 days after the effective date of the vacation, file a certified copy of the vacating ordinance with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots. (Neb. Rev. Stat. §17-558, 17-559) (Am. by Ord. No. 02-06, 5/14/02)

### **SECTION 6-214: VACATING PUBLIC WAYS; PROCEDURE; 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 vacating a 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. 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 City Council shall comply with the following procedure:

1. *Notice.* Notice shall be given to all abutting property owners either by first class mail to their 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 shall 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.
2. *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 City Council and waive their right of access. The signing of such form shall have no effect on claims for special damages by the abutting property owners but shall create the presumption that the City Council's action was proper. If the abutting property owners do not sign the consent/waiver form, the City Council may still proceed with vacating the street, avenue, alley, lane, or similar public way under the authority granted by sections 17-558 and 17-559 RS Neb.
3. *Ordinance.* The City Council shall pass an ordinance that includes essentially the following provisions:
  - a. A declaration that the action is expedient for the public good or in the best interests of the City.
  - b. A statement that the City will have an easement for maintaining all utilities.
  - c. A method or procedure for ascertaining special damages to abutting property owners.

C. 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 vacating the street, avenue, alley, lane, or similar public way. The appointees of the special commission shall be approved by the Council. Only special damages shall be awarded to the abutting property owners.

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

*An abutting property owner is entitled to recover as compensation the*

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

E. The clerk shall file a copy of the ordinance with the county registrar of deeds to ensure that abutting property owners can gain title to their share of the vacated street, avenue, alley, lane, or similar public way, and so that such land will be drawn to the attention of the county assessor.

(Am. by Ord. No. 02-07, 5/14/02)

## **SECTION 6-215: VACATING PUBLIC WAYS; TITLE**

A. Upon the vacation of any street or alley or any part thereof by the City, the title of such property shall vest in the owner of the abutting property and become part of such property, one-half on each side thereof, except that the City may reserve title to such property in the ordinance vacating such street or alley. If title is retained by the City, such property may be sold, conveyed, exchanged or leased upon such terms and conditions as shall be deemed in the best interest of the City.

B. In the event the City does not elect to reserve title in the vacated portion of such street or alley, the title to said property nonetheless shall be subject to the following:

1. There is reserved to the City the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; 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, gas mains, 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.

(Neb. Rev. Stat. §17-558)

## **Article 3 – Sidewalks**

### **SECTION 6-301: 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 8:30 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 6-302: DUTY TO REMOVE BRANCHES AND SHRUBBERY**

It shall be the duty of the occupant of each lot or parcel of ground in said city to keep the sidewalk adjacent thereto free from overhanging branches and limbs to a height of eight feet and to keep such sidewalk free from encroaching hedges or shrubbery. It shall be the duty of the occupant of each lot or parcel of ground abutting on any intersection to trim and or remove any shrubbery, sign or other obstacle which obstructs the view for a distance of ten feet from such intersection. Any such occupant or owner who fails to remove the overhanging branches and limbs or other encroachments within five days after receiving written notice to do so shall be fined in any sum not exceeding \$500.00 upon conviction and shall pay the costs of prosecution and the costs of the removal of such encroachments. (Neb. Rev. Stat. §17-557.01)

## **SECTION 6-303: EDIBLE PRODUCE GARDENS; NUISANCE**

A. No person shall plant, or allow to grow, any edible produce garden within the sidewalk space or city right of way. Any edible produce garden planted within the sidewalk space or city right of way after the adoption date of this section shall be deemed to be unlawfully planted and growing and shall, at the discretion of the City Council, be deemed to be a nuisance. When any such edible produce garden is declared to be a nuisance, the Council shall, with proper notice, order the said garden to be removed at the expense of the owner of the property adjacent to the sidewalk space or city right of way upon which it has been unlawfully planted.

B. If the property owner fails or neglects to remove, or cause to be removed, the said edible produce garden, the Council shall order the same removed and assess the expense of such removal against the property adjacent to the sidewalk space or city right of way wherein the edible produce garden is planted and growing. 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. The last known address 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, 16-1720) (Ord. No. 04-09, 9/14/04; 2009-12, 6/9/09)

## **SECTION 6-304: MAINTENANCE**

A. 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, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the City Council shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property.

B. 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 prop-

erty, 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. The last known address 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 6-305: REPAIR**

A. The City Council 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 within 48 hours from issuance of notice said owners to make arrangements to have the sidewalk repaired. 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 repair within the time prescribed and in the event that such owner fails to repair, the City shall cause the repairs to be made and assess the property owner the expense of such repairs.

B. 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. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

### **SECTION 6-306: CONSTRUCTION BY OWNER; PERMIT**

A. No person shall erect, construct or locate any building or structure on any lot or piece of ground within the City which does not have a sidewalk along and contiguous to said lot or piece of ground without also constructing a sidewalk on such lot or piece of ground in conjunction with the erection, construction or location of such building or structure; provided, however, upon application the City Council may waive such sidewalk requirement upon a showing of undue hardship or incompatibility with sidewalks, or the lack thereof, on contiguous parcels of land.

B. Any person desiring to construct, or cause to be constructed, any sidewalk including those persons subject to subsection (A) hereof, shall do so only as provided by this section.

C. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit. Such person shall make application in writing for a permit and file such application in the office of the city clerk. The permit shall give a description of the lot, or piece of land along which the sidewalk is to be constructed. The City Council shall issue the desired permit unless good cause shall appear why said permit should be denied, provided, if it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, or elevation, the person shall submit the application to the City Council who shall determine whether the permit should be granted or denied. It shall be unlawful for any person to construct, or cause to be constructed said sidewalk at any other location, grade, or elevation than so designated by the City. The Council shall, by resolution, establish general policies and standards with regard to location, grade and elevation of sidewalks within the City.

(Am. by Ord. No. 86-3, 8/11/88)



## **SECTION 6-307: 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.

B. 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 sent by first class mail to such premises 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.

C. Said notice shall notify the owner of the premises of the passage of the resolution ordering him to construct or cause to be constructed a sidewalk within 60 days after the date of publication and further that if he 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 this estimate shall be assessed against the property.

D. 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. The last known address 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) (Am. by Ord. No. 90-14, 8/23/90)

## **SECTION 6-308: CONSTRUCTION BIDS**

A. Whenever the City shall construct, widen, replace, or reconstruct any sidewalk, notice prepared by the city Attorney, specifying the work to be done and calling for bids for doing such work and supplying the necessary materials and labor shall be published in at least one issue of a legal newspaper of general circulation in the City; provided, bids so invited shall be filed in the office of the city clerk within ten days after the date of publication. Bids shall be opened at the next regular or special meeting of the City Council, and the City Council shall then award the work to the lowest responsible bidder.

B. Upon approval of the work, the City Council may require the contractor to accept payment in certificates issued to him by the city clerk entitling him to all assessments or special taxes, against such real estate whenever such assessments or special taxes, shall be collected together with the interest or penalty collected thereon. Each certificate shall give the legal description of the lot, lots, or parcel of ground against which the assessments or special taxes are assessed. Such certificate or certificates may be assigned and transferred, entitling the holder to the same rights as if held by the original contractor. The county treasurer shall pay over to such contractor or other holder of the certificate or certificates all assessments or special taxes against such real estate, together with the interest and penalty thereon, at any time upon presentation of

such certificate or certificates after said assessments or special taxes against such real estate, together with interest or penalty thereon, shall have been collected.

### **SECTION 6-309: CONSTRUCTION BY PETITION**

A. If the owners of record representing more than 60% of the front footage of the directly abutting property, subject to assessment for sidewalk improvements, petition the City Council to make the same, the Council shall proceed in all things as though such construction had been ordered by it. Upon the petition of any freeholder who is an abutting owner in fee simple of property subject to assessment for sidewalk improvements, the City Council may order permanent sidewalks built in accordance with this article upon the freeholder making, executing, and delivering to the City an agreement to the effect that the petitioning freeholder will pay the engineering service fee and all other incidental construction costs until paid shall be a perpetual lien upon the real estate along which the freeholder desires such sidewalk to be constructed and that the petitioner gives and grants to the City the right to assess and levy the costs of such construction against the freeholder's real estate abutting the sidewalk improvement and promises to pay such costs with interest. The total cost of such improvement shall be levied, allocated, financed, and specially assessed as provided by law.

B. 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. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

## **Article 4 – Penal Provisions**

### **SECTION 6-401: 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 five hundred dollars for each offense. A new violation shall be deemed to have been committed every 24 hours of such failure to comply.