

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

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

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

#### **SECTION 6-101: DEFINITIONS**

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

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

#### **SECTION 6-102: GENERAL AUTHORITY**

A. 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)

B. The city shall have the power to prevent and remove all encroachments, including snow, ice, and other similar obstructions upon all sidewalks and other city property. (Neb. Rev. Stat. §17-557, 17-558)

#### **SECTION 6-103: 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.

B. 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 use or construction of any public improvement or so that the roots thereof interfere with any utility wires or pipe shall be deemed obstructions. It shall be the duty of owners and occupants to keep all such similar growth trimmed and pruned at all times.

C. Whenever any such growth is allowed contrary to the provisions of this section, the City Council may pass a resolution ordering the owner or occupant to remove such obstruction within five days after having been served with a copy thereof. The said resolution shall state 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.

D. Said growth 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. 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. §17-555, 17-557.01)

#### **SECTION 6-104: OVERHANGING BRANCHES**

A. The owner or occupant of any lot, piece or parcel of ground abutting or adjacent to any street or sidewalk over which the branches of trees extend shall at all times keep the branches or limbs thereof trimmed. A clearance of 8 feet must be maintained over walkways and a clearance of 12 feet must be maintained over streets and alleys.

B. Whenever the limbs or branches of any tree or trees extend over streets or 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 street or 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. The said resolution shall state that the city will remove said branches and charge the costs to the owner or occupant as a special assessment for improvements as herein provided if said resolution is not complied with.

C. 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. §17-557.01) (Am. by (Ord. No. 373, 6/7/94)

#### **SECTION 6-105: TREES; DISTANCES AND CLEARANCES FOR PLANTING**

A. Street trees may be planted in the tree lawn where there is more than 6 feet between the edge of the sidewalk and the curb of the street. Street trees shall be planted no closer than 3 feet from a sidewalk, driveway, or street.

B. No street tree shall be planted closer than 35 feet from any street corner, measured from the point of the nearest intersection of curbs or curb lines.

C. No street tree shall be planted closer than 10 feet from any fireplug.

D. Special permission must be obtained from the city superintendent when planting street trees within 10 feet of any point on a line on the ground immediately below any overhead utility wire.

**SECTION 6-106: TREES; RIGHTS OF CITY**

A. The city shall have the right to plant, prune, maintain, and remove trees, plants and shrubs within the right-of-way or bounds of all streets, alleys, lanes, squares, and public grounds as may be necessary to insure the public safety.

B. The city may remove or cause or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature may be injurious to electric power lines or other public improvement or is seriously affected with any fatal disease. The abutting property owners shall have the right to perform normal tree care on all street trees.

**SECTION 6-107: CONSTRUCTION MATERIALS; 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 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 6-108: BARRICADES AND LIGHTS**

Whenever any excavation on any public property, including without limitation parking sites, sidewalks, curbs and streets, occurs within the zoning jurisdiction of the city, the party responsible for the excavation shall provide adequate barricades around the excavation and shall install sufficient warning lights and signs around the excavation to protect the public. (Neb. Rev. Stat. §17-505)

**SECTION 6-109: 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 wastewaters 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 alleys or shall be buried beneath the sidewalks and drain into the streets where it is found to be impossible to drain said eave spouts into the alley.

**SECTION 6-110: DAMAGE**

It shall be unlawful for any person to willfully, maliciously, or carelessly injure, change, deface, or destroy any street, sidewalk, building, ditch, drain, or grade within the corporate limits. No person shall cause or permit any offensive or corrosive material to be discharged or thrown out upon any street, sidewalk, alley, or public ground.

### **SECTION 6-111: CUTTING CURB; DRIVEWAYS**

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 permission from the city superintendent therefor. It shall also be unlawful for any person to construct a driveway where no curb cutting is required without having first obtained permission from the city superintendent and then following the procedures set out herein.

B. All driveway construction requests shall provide the following information to the city superintendent:

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

C. Upon approval by the city superintendent, the applicant shall be required to build said driveway and complete said curb cut to the city's specifications, including size and type of materials. When the applicant is ready to close the opening made, he or she shall inform the city superintendent, who shall supervise and inspect the materials used and work done in closing the opening.

D. If the curb is in good condition where the cut is proposed, as determined by the city superintendent, the homeowner shall perform the cut and shall pay all costs. If the curb is in substandard condition, as determined by the city superintendent, the city shall remove and replace the said curb at city expense; the homeowner shall pay only the cost of the driveway approach.

(Neb. Rev. Stat. §17-567)

### **SECTION 6-112: 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; or 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 such moving 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 6-113: REAL PROPERTY; ACQUISITION; 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. 416, 3/7/95)

### **SECTION 6-114: REAL PROPERTY; ACQUISITION; APPRAISAL**

The city shall not purchase, lease-purchase or acquire for consideration real property having an estimated value of \$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. 417, 3/7/95)

### **SECTION 6-115: 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 below, before any such purchase can be made or building erected, the question shall be submitted to the electors of the city at a general 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 required 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 electors 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 \$25,000.00. The purchase shall be approved by the council after notice and public hearing as provided in section Neb. Rev. Stat. §16-1755.

(Neb. Rev. Stat. §17-953, 17-953.01) (Am. by Ord. No. 445, 12/5/95)

## **SECTION 6-116: REAL PROPERTY; SALE AND CONVEYANCE**

A. Except as provided 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 real property and the manner and terms thereof, except that such real 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 property described above 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 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. Upon receipt of the remonstrance, the election commissioner shall issue to the City Council a written receipt that the remonstrance is in his or her custody. The election commissioner 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 election commissioner shall also compare the signer's printed name, street and number or voting precinct, and municipal 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 municipal 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 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.

F. 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 election commissioner shall set forth the reason for the invalidity of the signature. If the election 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 election 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.

G. The election commissioner shall certify to the City Council the number of valid signatures necessary to constitute a valid remonstrance. He or she shall deliver the remonstrance and the certifications to the 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. Not more than 20 signatures on one signature page shall be counted. 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 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.

H. 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. §16-1001 to 16-1006.

I. 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. The city clerk shall, upon passage of such ordinance, certify the name of the purchaser to the register of deeds of the county in which the property is located.

J. Subsections (A) to (I) 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. 403, 6/7/94; 444, 12/5/95; 519, 7/7/98)

## **SECTION 6-117: 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 6-118: SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND**

## **CREATION PROCEDURE**

The City Council may by ordinance create a special improvement district for the purpose of replacing, reconstructing, or repairing an existing water line, sewer line, or any other such improvement. Except as provided in Neb. Rev. Stat. §19-2428 to 19-2431, the 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 City 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. §18-1751) (Ord. No. 283, 9/8/87)

### **SECTION 6-119: SPECIAL IMPROVEMENT DISTRICT; LAND ADJACENT; EXCEPTION**

Supplemental to any existing law on the subject, a city may include land adjacent to such city when creating an improvement as a sewer, 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 6-120. (Neb. Rev. Stat. §19-2427) (Ord. No. 284, 9/8/87)

### **SECTION 6-120: SPECIAL IMPROVEMENT DISTRICT; LAND ADJACENT; DEFERRAL**

A. Whenever the City Council creates an improvement district which includes land adjacent to the city that 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 as specified herein. Any owner of record title who makes application for the deferral provided by this section shall notify the 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 (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 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. 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 (D)(2) or (3), the lien for assessments and interest shall attach as of the day preceding such sale or transfer.

(Neb. Rev. Stat. §19-2428 thru 19-2431) (Am. by Ord. No. 288, 9/8/87)

## **SECTION 6-121: PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS**

A. Except as provided in subsection (B) of this section, the city shall not engage in the construction of any public works involving architecture or engineering unless the plans, specifications, and estimates have been prepared and the construction has been observed by an architect, a professional engineer, or a person under the direct supervision of an architect, professional engineer or those under the direct supervision of an architect or professional engineer.

B. Subsection (A) of this section shall not apply to the following activities:

1. Any public works project with contemplated expenditures for the completed project that do not exceed \$80,000. (Neb. Rev. Stat. §81-3445, 81-3449(3), and 81-3453(3))
2. Any alteration, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building. (Neb. Rev. Stat. §81-3449(4) and 81-3453(4))
3. Performance of professional services for itself if the city appoints a municipal engineer or employs a full-time person licensed under the Engineers and Architects Regulation Act who is in responsible charge of architectural or engineering work. (Neb. Rev. Stat. §81-3423, 81-3449(9), and 81-3453(6))
4. The practice of any other certified trade or legally recognized profession. (Neb. Rev. Stat. §81-3449(11) and 81-3453(7))

5. Earthmoving and related work associated with soil and water conservation practices performed on any land owned by the city that is not subject to a permit from the Department of Natural Resources. (Neb. Rev. Stat. §81-3449(13) and 81-3453(12))
6. The work of employees and agents of the city performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land use regulations and their customary duties in utility and public works construction, operation, and maintenance. (Neb. Rev. Stat. §81-3449(14) and 81-3453(13))
7. Those services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, marine operating engineers, power plant operating engineers, or manufacturers who supervise the operation of or operate machinery or equipment or who supervise construction within their own plant. (Neb. Rev. Stat. §81-3453(10))
8. The construction of municipal water wells as defined in Neb. Rev. Stat. §46-1212, the installation of pumps and pumping equipment into municipal water wells, and the decommissioning of municipal water wells, unless such construction, installation, or decommissioning is required by the city to be designed or supervised by an engineer or unless legal requirements are imposed upon the city as a part of a public water supply. (Neb. Rev. Stat. §81-3453(15))
9. Any other activities described in Neb. Rev. Stat. §81-3449 to 81-3453. (Ord. No. 520, 7/7/98) (Am. by Ord. No. 551, 5/9/00)

## **SECTION 6-122: SIGNS**

A. *Signs in the Public Right of Way.* No signs shall be allowed in the public right of way, except for the following:

1. Public signs erected by or on behalf of a governmental body to post legal notices, identify public property, convey public information, advertise community events, and direct or regulate pedestrian or vehicular traffic;
2. Bus stop signs erected by a transit company; and
3. Informational signs of a public utility regarding its poles, lines, pipes, or facilities.

B. *Emergency Signs Permitted.* Emergency warning signs erected by a governmental agency, public utility company, or a contractor doing authorized or permitted work within the public right of way shall be allowed.

C. *Other Signs Forfeited.* Any sign installed or placed on the public right of way, except in conformance with the requirements of Sections (A) and (B) above, shall be forfeited and subject to confiscation. In addition, the city shall have the right to recover from the owner or person placing the confiscated sign the full costs of removal and disposal of the sign.

(Ord. No. 687, 3/14/17)

## **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 street commissioner, upon the erection of any new building, to assign the proper numbers to said building and give notice to the owner(s) and occupant(s) of the same.

### **SECTION 6-202: 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; 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 thru 76-724) (Am. by Ord. No. 570, 7/9/02)

### **SECTION 6-203: CROSSINGS**

The City Council may order and cause street, avenue and alley crossings to be constructed under the supervision of the street commissioner and the same shall be constructed of such materials as the council shall deem necessary. When a petition for the construction of any such crossing is filed by an interested resident in the office of the city clerk, he or she shall refer such application to the street commissioner, who shall investigate and recommend to the council allowance or rejection as final action by the council on such application.

### **SECTION 6-204: 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, authorizing such excavations. (Neb. Rev. Stat. §17-567)

### **SECTION 6-205: 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 authorization from the street commissioner. (Neb. Rev. Stat. §17-567)

### **SECTION 6-206: 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. (Neb. Rev. Stat. §17-567)

**SECTION 6-207: HARMFUL LIQUIDS**

It shall be unlawful for any person to place or permit to leak in the gutter of any street any waste gasoline, kerosene, or high lubricating oils, which damage or act as a solvent upon said streets. (Neb. Rev. Stat. §17-567)

**SECTION 6-208: UTILITY POLES, WIRES, MAINS**

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 written application shall have been made to the city clerk and permission in writing shall have been given by the City Council. When requested by the council, public service companies heretofore or hereafter granted right of way for the erection and maintenance of appurtenances for the purpose of transacting their business upon, under or over the streets, alleys and public grounds shall at all times erect, locate or relocate their said appurtenances to such places and in such manner as shall be designated by said council.

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

**SECTION 6-209: DRIVEWAY APPROACHES**

The street commissioner 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 certified mail to the last known address of such owner or the agent of such owner, directing the repair or replacement of such driveway approach. If within 30 days of mailing such notice the property owner fails or neglects to cause such repairs or replacements to be made, the street commissioner may cause such work to be done and assess the cost upon the property served by such approach. (Neb. Rev. Stat. §16-1748)

**SECTION 6-210: POWER TO IMPROVE**



The City Council may grade, partially or to an established grade, change grade, curb, recurb, gutter, regutter, pave, gravel, regravels, macadamize, remacadamize, widen or narrow streets or roadways, resurface or relay existing pavement, or otherwise improve any streets, alleys, public grounds, public ways, entirely or partially, and streets which divide the city corporate area and the area adjoining the city; construct or reconstruct pedestrian walks, plazas, malls, landscaping, outdoor sprinkler systems, fountains, decorative water ponds, lighting systems, and permanent facilities; and construct sidewalks and improve the sidewalk space. These projects may be funded at public cost or by the levy of special assessments on the property especially benefited in proportion to such benefits, except as provided in Neb. Rev. Stat. §19-2428 to 19-2431. (Neb. Rev. Stat. §17-509) (Am. by Ord. No. 570, 7/9/02)

### **SECTION 6-211: IMPROVEMENT DISTRICTS; SPECIAL ASSESSMENTS**

The City Council may by ordinance create paving, repaving, grading, curbing, recurbing, resurfacing, graveling, or improvement districts, to be consecutively numbered, which may include two or more connecting or intersecting streets, alleys, or public ways, and may include two or more of the improvements in one proceeding. All of the improvements which are to be funded by a levy of special assessment on the property especially benefited shall be ordered as provided in Sections 6-213 to 6-215, unless the council improves a street which divides the city corporate area and the area adjoining the city as provided in Section 6-212. (Neb. Rev. Stat. §17-509)

### **SECTION 6-212: IMPROVEMENT OF STREETS ON CORPORATE LIMITS**

Whenever the City Council improves any street which divides the city corporate area and the area adjoining the city, the council shall determine the sufficiency of petition as set forth in Section 6-213 by the owners of the record title representing more than 60% of the front footage of the property directly abutting upon the street to be improved, rather than 60% of the resident owners. Whenever the council shall deem it necessary to make any of the improvements allowed by statute on a street which divides the city corporate area and the area adjoining the city, the City Council shall by ordinance create the improvement district pursuant to Section 6-214 and the right of remonstrance shall be limited to owners of record title, rather than resident owners. (Neb. Rev. Stat. §17-509)

### **SECTION 6-213: PETITION FOR IMPROVEMENTS**

Whenever a petition signed by the owners of record title representing more than 60% per cent 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 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, except as provided in Neb. Rev. Stat. §19-2428 to 19-2431, to pay the cost of such improvement. 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 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 6-214: IMPROVEMENT DISTRICTS; OBJECTIONS**

A. Whenever the City Council deems it necessary to make any improvements allowed by statute which are to be funded by a levy of special assessment on the property especially benefited, the council shall by ordinance create a paving, graveling, or other improvement district and, after the passage, approval, and publication or posting of such ordinance, shall publish notice of the creation of any such district for six days in a legal newspaper of the city, if a daily newspaper, or for two consecutive weeks if a weekly newspaper. If no legal newspaper is published in the city, the publication shall be in a legal newspaper of general circulation in the city.

B. If the owners of the record title representing more than 50% of the front footage of the property directly abutting on the street or alley to be improved file with the city clerk within 20 days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance but the ordinance shall be repealed. If objections are not filed against the district in the time and manner prescribed in this section, the City Council shall immediately cause such work to be done or such improvement to be made, shall contract for the work or improvement, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street or alley especially benefited in such district in proportion to such benefits to pay the cost of such improvement.  
(Neb. Rev. Stat. §17-511) (Am. by Ord. No. 446, 12/5/95)

#### **SECTION 6-215: IMPROVEMENT OF MAIN THOROUGHFARES**

The City Council shall have power by a three-fourths vote to enact an ordinance creating a paving, graveling or other improvement district and to order such work to be done without petition upon any federal or state highways in the city or upon a street or route designated by the council as a main thoroughfare, connecting to either a federal or state highway or a county road. The council shall contract therefor and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, alley or alleys especially benefited thereby in such district in proportion to such benefits to pay the cost of such improvement. (Neb. Rev. Stat. §17-512)

#### **SECTION 6-216: 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 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.

C. Every such assessment shall be known as a "special assessment 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. Such assessment 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. After it shall have become delinquent, said assessment shall draw interest at the legal interest rate per annum.

D. 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. §17-511, 17-524, 19-2428 through 19-2431, 45-104.01)

## **SECTION 6-217: CONSTRUCTION NOTICE**

The chief street official 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 6-218: 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 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.

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 shall have no effect on claims for special damages by the abutting property owners but shall create the presumption that the 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 Neb. Rev. Stat. §17-558 and 17-559.

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

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 will have an easement for maintaining all utilities.
3. A method or procedure for ascertaining special damages to abutting property owners.

D. The clerk shall file a copy of the ordinance with the county register 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.  
(Neb. Rev. Stat. §17-558, 17-559)

## **SECTION 6-219: VACATING PUBLIC WAYS; DEFINITIONS; ASCERTAINING DAMAGES**

A. In reference to vacating of public ways, "special damages" shall mean only those losses, damages or injuries which a property owner suffers that are peculiar, special or unique to his or her property and which result from the vacating of such street, avenue, alley, lane or similar public way by the City Council.

B. "Special damages" shall not mean those losses, damages or injuries suffered by a property owner that are in common with the rest of the city or public at large, even

though those losses, damages or injuries suffered by the property owner are greater in degree than the rest of the city or public at large.

C. The mayor, with approval of the City Council, shall appoint three, 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 vacating of such street, avenue, alley, lane or similar public way. Only special damages, as herein defined, 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 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) (Am. by Ord. No. 571, 7/9/02)

## **SECTION 6-220: 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 six 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 9:00 a.m. the following day. 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: MAINTENANCE AND REPAIR**

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 parcels of land in good and proper repair and in a condition reasonably safe for travel for all travelers thereon.

B. 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.

C. 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, he, she or 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.

D. 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. §17-557.01)

### **SECTION 6-303: CONSTRUCTION BY OWNER; APPLICATION, PERMIT**

A. Any person desiring to construct or cause to be constructed any sidewalk shall do so only as herein provided. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit.

B. Said owner 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 street commissioner shall issue the desired permit unless good cause shall appear why said permit should be denied.

C. All sidewalks shall be built and constructed on the established grade or elevation, and if there is no established grade, then on the grade or elevation indicated by the street commissioner. If it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, elevation and thickness, the street commissioner shall submit the application to the City Council, which shall determine whether the permit should be granted or denied. .

#### **SECTION 6-304: 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 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.

C. 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 this estimate shall be assessed against the property.

D. 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. §17-522, 17-523)

#### **SECTION 6-305: CONSTRUCTION BY PETITION**



A. If the owners of record title 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. 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 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. §17-510)



## **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 an offense 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.

### **SECTION 6-402: ABATEMENT OF NUISANCE**

Whenever a nuisance exists as defined in this chapter, the city may proceed by a suit in equity to enjoin and abate the same in the manner provided by law. Whenever in any action it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (Neb. Rev. Stat. §18-1720, 18-1722)