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

### **ARTICLE I – PUBLIC PROPERTY REGULATIONS**

#### **SECTION 5-101: 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. (Ref. Neb. Rev. Stat. §17-567)

#### **SECTION 5-102: OBSTRUCTIONS**

Trees and shrubs growing upon or near the lot line or upon public ground and interfering with the use or construction of any public improvements shall be deemed an obstruction under this article. Said trees, shrubs and their roots may be removed by the street superintendent at the expense of the owner of the property upon which the tree or shrub is located, should the owner fail or neglect to do so after notice. It shall be unlawful for any person, firm or corporation to obstruct or encumber by fences, gates, buildings, structures or otherwise, any of the streets, alleys or sidewalks. (Ref. Neb. Rev. Stat. §17-557.01)

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

Any person 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 person shall make written application to do so; provided, no permit shall be granted for the occupancy of the sidewalk space or 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; 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 City Council.

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

1. Except as provided in subsection (4) of this section, the power of the City to convey any real and personal property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution, directing the sale at public auction or by sealed bid of such real and personal property and the manner and terms thereof. Such real and personal property shall not be sold at public auction or by sealed bid when:

- A. Such property is being sold in compliance with the requirements of federal or state grants or programs;
- B. Such property is being conveyed to another public agency; or
- C. Such property consists of streets and alleys.

2. 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.

3. After the passage of the resolution directing the sale, notice of all proposed sales of real and personal property described in subsection (1) 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; provided, if a remonstrance against such sale, signed by registered voters thereof equal in number to 30% of the registered voters of the City voting at the last regular municipal election held therein, be filed with the City Council within 30 days after the third publication of the notice, 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 next 30-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. Real estate now owned or hereafter owned by the City may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, such property shall be conveyed strictly in accordance with the conditions of Neb. Rev. Stat. §18-1001 to 18-1006.

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

5. 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 which has 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. Confirmation of the sale by passage of an ordinance may be required.

6. This section shall apply to personal property if the authorizing resolution directs the sale of personal property. Following passage of the resolution directing the sale of the personal 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 published in or of general circulation in such city at least seven days prior to the sale. The notice shall give a general description of the property offered for sale and state the terms and conditions of the sale.  
(Ref. Neb. Rev. Stat. §17-503, 17-503.01, 17-503.02)

## **SECTION 5-105: ACQUISITION OF PROPERTY; CONSTRUCTION; ELECTIONS, WHEN REQUIRED**

1. The City is authorized and empowered to (A) purchase, (B) accept by gift or devise, (C) purchase real estate upon which to erect, and (D) erect a building or buildings for an auditorium, fire station, municipal 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.

2. 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 municipal 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.

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

A. 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 registered voters equal in number to 15% of the registered voters of the City voting at the last regular municipal election 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 collected within the 30-day period, but the filing 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 municipal 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

B. The City Council may proceed without providing the notice and right of remonstrance required in subdivision A of this section 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 City Council after notice and public hearing as provided in Neb. Rev. Stat. §18-1755. (Ref. next page)

(Ref. Neb. Rev. Stat. §17-953 and 17-953.01)

#### **SECTION 5-106: SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCESS**

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. Except as provided in Neb. Rev. Stat. §19-2428 to 19-2431, the City Council shall have the 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 districts, the City Council shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law.

#### **SECTION 5-107: 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 the 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 Neb. Rev. Stat. §19-2428 to 19-2431.

#### **SECTION 5-108: ACQUISITION OF REAL PROPERTY**

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. (Ref. Neb. Rev. Stat. §18-1755)

#### **SECTION 5-109: ACQUISITION OF REAL PROPERTY; 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. (Ref. Neb. Rev. Stat. §13-403)

## ARTICLE II – STREETS

### SECTION 5-201: NAMES AND NUMBERS

The City Council may at any time, by ordinance, rename any street or provide a name for a new street. Upon the erection of any new building, it shall be the duty of the street superintendent to assign the proper numbers to said building and give notice to the owner(s) or occupant(s) of the same.

### SECTION 5-202: PREMISES IDENTIFICATION

Each property owner shall maintain suitable numbers marking the property's street address, which shall be visible and legible from the street or road fronting the property. This identification will help to improve response times of police, fire and rescue by making it easier to find the right location. The address numbers should contrast with their background and be a minimum of four inches high and one-half inch wide. If the residence is located too far back from the street or road for the address numbers to be readily seen, then the numbers must be (1) larger; or (2) posted in such a way that they can be read from the street or road; or (3) posted at or near the edge of the street or road; or (4) painted on the curb.

### SECTION 5-203: CROSSINGS

The City Council may order and cause to be constructed any street, avenue and alley crossing under the supervision of the street superintendent, and the same shall be constructed of such materials as the City 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/she shall refer such application to the street superintendent, who shall investigate and recommend to the City Council allowance or rejection as final action by the City Council on such application.

### SECTION 5-204: EXCAVATIONS; PERMIT; BOND

#### 1. *Permit Required; Procedure.*

- A. It is hereby declared to be unlawful for any person, whether or not operating under a franchise or contract, to excavate the surface or the ground beneath the surface of any street, avenue or alley without making a written application for a permit from the city clerk. The applicant for a permit shall specify in the application the location, extent and character of the work proposed to be done and the time when it is to be done, and shall pay a fee in the sum of \$5.00 to the City for each permit issued.
- B. Every application for a permit to make any excavation in connection with the water or sewer systems of the City shall be accompanied by the written consent of the building inspector.
- C. Upon the filing of any application as prescribed above and compliance with any other requirement of this article, the city clerk shall issue a permit for such excavation, subject to the provisions of this article and the other applicable sections of this code.

2. *Permit Terms; Time Limit.* Permits issued pursuant to this article shall be numbered consecutively and each shall be valid for a period of ten days. No work shall be done under any such permit after the expiration of such ten days. Each permit shall contain the name of the party authorized to use the same, the time limit within which the same

may be used, and the location and nature of the work to be done.

3. *Pavement Breaking by Sawing.* It is unlawful for any person to break paving except by sawing to a depth of at least two inches; provided, however, sawing is not required if the paving is partially granite or if permission is obtained from the street superintendent to break by means other than sawing.

4. *Refilling by City; Charges.*

- A. Where any permit is issued for excavating in any street, avenue or alley (excluding that area commonly called the parkway, being that area between the curb line and the lot line), all work of replacing paving, filling trenches or holes and tamping in the same shall be done by the Public Works Department or its representatives.
- B. The charges for replacing concrete or brick paving where cuts have been made for installing sewer, water, gas or conduits of any nature, whether telephone, electric or otherwise, and for filling in excavations in unpaved streets, avenues and alleys and tamping the same with a mechanical tamper shall be set by resolution of the City Council and kept on file in the office of the city clerk.
- C. Tunneling or undercutting is not permitted, and if such does occur, the holder of the permit shall be penalized on a square foot basis on all tunneling or undercutting.
- D. When it is necessary to remove material unfit for filling trenches and substitute suitable material, there shall be an extra charge based on the time required for the removal and replacement of such material.

5. *Refilling Measurement.* All excavations regulated by this article shall be measured by the street superintendent before filling. Such measurements shall be reported to the city clerk, who shall check such figures with the minimum charge. Where excavations are larger than set forth according to the minimum charge, the city clerk shall collect for such excavations according to the schedule as set forth in subsection (4).

6. *Refilling Parkway Area.*

- A. Where any permit is obtained for the excavating in any street, avenue or alley, which includes the parkway (being that area between the curb line and the lot line), all work of replacing any paving, filling any trenches or holes, tamping and reseeding in such parkway shall be done by the plumber or other person having the permit. Replacement of the parkway excavation shall be done in a workmanlike manner so that the area excavated shall be returned substantially to its previous condition. This shall include the repaving or replacing of sidewalk, reseeding or resodding and appropriate tamping, all as may be necessary, to restore such parkway to its previous condition.
- B. Such parkway area between curb line and lot line is the property of the City, and the plumber or other excavator when working in such area shall comply with all applicable provisions of this code and all appropriate ordinances, resolutions and rules governing the use of streets, avenues and alleys, and particularly shall comply with subsection (7).

7. *Permit Requirements, Notice.* Permits pursuant to this article shall be issued only to bonded and/or insured persons. Back charges shall be paid immediately and no permit shall be issued to anyone who has an unpaid charge hereunder. The holder of

each permit shall notify the Public Works Department not later than 1:00 P.M. every Friday of any excavations that have been inspected and are ready to fill. The holder of each permit shall light and maintain until the following Monday all excavations not reported by 1:00 P.M. Friday. Such person shall provide, at his/her own expense, substantial barricades with his/her name clearly marked thereon. These barricades shall be Type II of the federal *Manual on Uniform Traffic Control Devices* for streets and highways. In addition to the barricades, sufficient lights shall be used to protect the public.

8. *Inspections.* The building inspector shall make such inspections as are necessary to determine whether the work performed by any plumber pursuant to this section is in accordance with the requirements of the same. If the building inspector determines that the replacement of any parkway excavation is not performed in compliance herewith, he/she shall immediately notify said plumber to correct the deficiency. If the plumber shall fail to do so, the Public Works Department shall make a report in writing, which shall be placed on the agenda for the consideration of the mayor and Council.

9. *Bond Required.* Every person engaged in excavating the streets, avenues, alleys or other public places of the City for the purpose of laying, removing or repairing gas mains or pipes is hereby required to file with the city clerk and have approved by the mayor and Council a bond, payable to the City, with two or more good and sufficient sureties or reputable surety company as surety in the sum of \$5,000.00, conditioned that such person will indemnify and keep harmless the City from any liability for damages or injuries to persons or property arising from any negligence or mismanagement in doing or protecting such work, and that such person will restore the streets, sidewalks and pavements over all pipes laid or repaired, and fill all excavations made by him/her so as to leave such streets, avenues, alleys and public places in their original condition so far as practicable, and keep and maintain the same in good order to the satisfaction of the Public Works Department for a period of 90 days thereafter. Such bond shall be for the period ending on April 1 following and shall be renewable annually on or before April 1. The regulations contained in this section are in addition to those contained elsewhere in this article and shall not be construed to modify, alter, waive or repeal any other provision of this article.

10. *Unprotected, Dangerous.* No person shall excavate on any lot or part of a lot contiguous to any sidewalk and leave the same open and exposed in such a manner as to endanger the safety of any person passing along any street, avenue or sidewalks therein or adjacent thereto.

11. *Violations.* Any person who shall fail, neglect or refuse to comply with or shall violate any requirements or provisions of this article shall be deemed guilty of a misdemeanor. He/she shall be charged a double fee for the permit, and the minimum fee for the type of pavement being replaced shall be doubled.  
(Ref. Neb. Rev. Stat. §17-567)

#### **SECTION 5-205: 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 first procuring the written consent of the street superintendent.

#### **SECTION 5-206: 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 and use said pavement as a mixing surface for said material.

#### **SECTION 5-207: 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.

### **SECTION 5-208: EAVES AND GUTTER SPOUTS**

It is hereby declared unlawful for any person to erect or maintain any dwelling or business building within the limits of the City, where the said dwelling or building abuts on any sidewalk or street, without providing proper guttering and eave spouts to receive the waste waters that collect on the said sidewalks and streets. All eave spouts erected on any dwelling 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 5-209: HEAVY EQUIPMENT**

1. It shall hereafter be unlawful for any person 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.

2. 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.

3. It shall be permissible (A) for school buses and emergency vehicles to use metal or metal-type studs any time of the year; (B) to use farm machinery with tires having protuberances which will not damage the streets; and (C) 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.

### **SECTION 5-210: VACATION OF STREETS; RESERVATION OF TITLE**

1. Upon the vacation of any street or alley or any part thereof, the title to 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.

2. 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:

A. 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

B. 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.

(Ref. Neb. Rev. Stat. §17-558, 17-559)

## **SECTION 5-211: UTILITY LINES, WIRES, ETC.**

1. 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 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 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 said Council.

2. 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.

3. 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 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 5-212: CONSTRUCTION ASSESSMENT**

1. 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.

2. 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 the same. The vote shall be recorded in the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in a legal newspaper published or of general circulation in the City at least four weeks before the same shall be held. In lieu of such aforementioned notice, personal service may be had upon the persons owning or occupying the property to be assessed. Such assessments shall be known as "special assessments for improvements" and, with the cost of notice, shall be levied and collected

as a special tax in addition to the taxes for general revenue purposes. Said assessments shall be subject to the same penalties and collected in like manner as other municipal taxes and shall be certified by the city clerk to the county clerk forthwith after the date of levy for collection by the county treasurer unless otherwise specified.

3. After it has become delinquent, said assessment shall draw interest at the legal interest rate per annum. 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. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

(Ref. Neb. Rev. Stat. §17-511, 17-524, 19-2428 through 19-2431, 45-104.01)

### **SECTION 5-213: IMPROVEMENT DISTRICTS, OBJECTIONS**

1. Whenever the City Council shall deem it necessary to make any improvements allowed by statute, it 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 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.

2. If the owners of record representing more than 50% of the front footage of the property directly abutting on any street or alley to be improved shall file written objections to the creation of such district(s) with the city clerk within 20 days after the first publication of said notice, said improvements shall not be made as provided in said ordinance but it 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 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.

(Ref. Neb. Rev. Stat. §17-511)

### **SECTION 5-214: IMPROVEMENT OF STREETS ON CORPORATE LIMITS**

The mayor and City Council shall have the power to improve any street or part thereof which divides the city corporate area and the land 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. (Ref. Neb. Rev. Stat. §17-509)

### **SECTION 5-215: IMPROVEMENT OF MAIN THOROUGHFARES**

The mayor and City Council shall have the power by a 3/4 vote 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 City Council as a main thoroughfare that connects on both ends to either a federal or state highway or a county road. The City 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. (Ref. Neb. Rev. Stat. §17-512)

### **SECTION 5-216: 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 any street, alley, public way or public grounds proposed to be improved shall be presented and filed with the city clerk,

the City Council shall by ordinance create a paving, graveling, or other improvement district and shall cause such work to be done or such improvement to be made and shall contract therefor and 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. 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. (Ref. Neb. Rev. Stat. §17-510)

## **SECTION 5-217: DEFERRAL FROM SPECIAL ASSESSMENTS**

1. Whenever the City Council creates an Improvement District which includes land adjacent to the City within an agricultural use zone and is used exclusively for agricultural use, the owners of record 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.

2. Any owner of record eligible for the deferral granted by this section shall make application to the City Council within 90 days after creation of an Improvement District. Any owner of record 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 upon determination that the property (A) is within an agricultural use zone and is used exclusively for agricultural use, and (B) the owner has met the requirements of this section.

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

- A. Notification by the owner of record to the City Council to remove such deferral;
- B. 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(C) below;
- C. Transfer by reason of death of a former owner to a new owner who does not make application within 125 days of the transfer;
- D. Use of land is no longer agricultural; or
- E. Change of zoning to other than an agricultural zone.

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

- A. 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
- B. 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.

5. In cases where the deferral provided by this section is terminated as the result of a sale or transfer described in subsection (3)(B) or (3)(C) of this section, the lien for assessments and interest shall attach as of the day preceding such sale or transfer.

## **SECTION 5-218: CUTTING CURB; PERMIT AND BOND REQUIRED**

1. 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 without first obtaining a written permit from the City Council. Before any person shall obtain a permit, the applicant shall inform the city clerk, on a form obtained from the city office, of the place and time such cutting shall be done. Before any permit is issued, the applicant for such permit shall deposit with the city treasurer a sum set by resolution of the City Council for paving, curb or sidewalk to be cut. The deposit shall be retained by the City until the work is completed to the satisfaction of the street superintendent. In addition to making said deposit, before any permit is issued the applicant shall 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.

2. It shall be the duty of the street superintendent to inspect the place of entry into the paving, sidewalk or curb before the same is cut. It shall be the duty of the permit holder to cut the paving under such rules and regulations as may be prescribed by the City Council or the street superintendent. When the permit holder is ready to close the opening made, he/she shall inform the street superintendent, who shall supervise and inspect the work done in closing the opening. Unless specifically authorized by the street superintendent, all closing shall be done in concrete. It shall be the discretion of the City Council to order the street superintendent to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained said permit. In the event of a disagreement of proper closing between the permit holder and the street superintendent, the City Council shall be the final authority on all matters under this article.

## **SECTION 5-219: VACATING PUBLIC WAYS; DEFINITIONS AND ASCERTAINING DAMAGES**

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

2. The mayor 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 which resulted from the City Council's vacation of such street, avenue, alley, lane or similar public way. The appointees to the special commission shall be approved by the Council. Only special damages, as herein defined, shall be awarded to the abutting property owners.

3. 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.*

(Ref. Neb. Rev. Stat. §17-558, 17-559)

## **SECTION 5-220: 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 City Council shall comply with the following procedure:

1. 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 notice will advise the abutting property owners that the City Council will consider vacating such street, avenue, alley, lane or similar public way at its next regular meeting or, if a special meeting is scheduled for such discussion, then the date, time and place of such meeting.

2. 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 has no effect on claims for special damages as defined in Section 5-218 by the abutting property owners, but does create the presumption that the City Council's action was proper. However, if all the abutting property owners do not sign the consent/waiver form, the City Council may still proceed with vacating such street, avenue, alley, lane or similar public way under the authority granted them by Neb. Rev. Stat. §17-558 and 17-559.

3. The City Council shall pass an ordinance that shall state essentially the following:

- 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 shall have an easement for maintaining all utilities.
- C. A method or procedure for ascertaining special damages to abutting property owners.

4. 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.

(Ref. Neb. Rev. Stat. §17-558, 17-559)

## **SECTION 5-221: DISCHARGING WATER ONTO STREETS; PROHIBITED**

1. It shall be unlawful for any person to discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, surface drainage, or unpolluted industrial waters into or onto any street or alley of the City from October 1 of any year through April 1 of the following year.

2. Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$100.00 for each offense. A new violation shall be deemed to have been committed every 24 hours that such pumping shall occur.

(Ord. No. 305, 11/9/93)

## **ARTICLE III – SIDEWALKS**

### **SECTION 5-301: DUTY OF PROPERTY OWNERS; LIABILITY**

Every owner of any lot(s) or piece of land within the limits of this city shall keep and maintain the sidewalks along and contiguous to said property in good and proper repair and in a condition reasonably safe for all travelers thereon. In case the owner of any lot(s) or

land abutting on any street or part thereof shall fail to construct or repair any sidewalk in front of his/her lot(s) or land within the time and in the manner as directed and required by this article after having received due notice to do so, said owner shall be liable for all damages and injuries occasioned by reason of the defective or dangerous condition of such sidewalk, and the mayor and City Council shall have power to cause such sidewalks to be constructed or repaired and assess the cost thereof against such property. (Ref. Neb. Rev. Stat. §17-557.01)

### **SECTION 5-302: NEW SIDEWALK; NOTICE**

1. 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 City Council's intention to construct said sidewalk shall be given by the city clerk by publication of notice one time in a legal newspaper of general circulation in the City. A copy of said notice shall be personally served upon the occupant in possession of such property or, when personal service is not possible, said notice shall be sent by first class mail to such premises ten days prior to the commencement of construction. Such service shall include a form of return evidencing personal service or mailing as herein required.

2. The notice required in this section shall be prepared by the city attorney in accordance with the provisions of this section. Said notice shall notify the owner of the premises of the passage of the resolution ordering him/her to construct or cause to be constructed a sidewalk within 30 days after the date of publication, and further, that if he/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.

3. 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 such property, send to the last known address of the non-resident property owner by certified mail, return receipt requested, a copy of any notice required by law to be published. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

(Ref. Neb. Rev. Stat. §17-552, 17-523)

### **SECTION 5-303: REPAIRING SIDEWALK; NOTICE**

Whenever the street superintendent shall deem it necessary that any sidewalk shall be repaired, or it shall be required by the City Council, the committee on streets and walks or the street superintendent, the owner of the lot or piece of land along and contiguous to which such sidewalk is situated shall be notified to repair the same within two weeks from and after the giving of such notice. Oral notice to the owner shall be deemed sufficient. If the owner is not found by the street superintendent, then a written notice left in the house situated on such lot or piece of ground, or posted upon said premises, shall be sufficient, and the two weeks shall begin to run from the leaving or posting of such notice as the case may be.

### **SECTION 5-304: RECONSTRUCTING SIDEWALKS; NOTICE**

Whenever the City Council shall deem it necessary that an old sidewalk shall be replaced or reconstructed, it shall order the same to be done and the street superintendent shall give notice in the manner and form provided in Section 5-303 of this article, to replace or reconstruct the same within 30 days from and after such notice.

### **SECTION 5-305: FAILURE TO CONSTRUCT, RECONSTRUCT OR REPAIR**

If any such owner shall neglect or refuse, or shall have failed, after notice has been given as provided in this article, to construct, repair, replace or reconstruct any sidewalk within the time limit in the notice given in such case and whose duty it is made by this article to construct, repair or rebuild such walks, the street superintendent or other officer empowered herein to act shall proceed at once to have such sidewalks constructed, repaired, rebuilt or reconstructed, as the case may be, without further notice to such owner, and the expense of such work shall be assessed to such lot or piece of land and collected as provided by law.

### **SECTION 5-306: CONSTRUCTION BY PETITION**

1. 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 such improvements, the City Council shall proceed 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's making, executing and delivering to the City an agreement to the effect that (A) the petitioning freeholder will pay the engineering service fee; 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 (B) 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.

2. 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 such property, send to the last known address of the non-resident property owner by certified mail, return receipt requested, a copy of any notice required by law to be published. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

### **SECTION 5-307: CONSTRUCTION BY OWNER**

Any person desiring to construct any sidewalk or cause the same to be constructed shall do so only as herein provided. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit. Application for a permit shall be made on a form provided by the City and filed in the office of the city clerk. Such permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed. The street superintendent 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 street superintendent shall submit the application to the City Council, which 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. 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 superintendent.

### **SECTION 5-308: DUTY TO REMOVE SNOW, SLEET AND ICE; PENALTY**

It shall be unlawful for the occupant of any lot(s) or the owner of any vacant lot(s) 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. (Ref. Neb. Rev. Stat. §17-557)

### **SECTION 5-309: DUTY TO REMOVE BRANCHES AND SHRUBBERY**

It shall be the duty of the occupant of each lot or parcel of ground to keep the sidewalk adjacent thereto free from overhanging branches and free from limbs to a height of eight feet and to keep such sidewalk free from encroaching hedges or shrubbery. No tree, shrubbery or hedge shall be permitted closer than 18 inches to the sidewalk. 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, upon conviction shall be fined in any sum not exceeding \$500.00 and shall pay the costs of prosecution and the costs of the removal of such encroachments. (Ref. Neb. Rev. Stat. §17-557.01)

### **SECTION 5-310: DANGEROUS STAIRWAY; BOND**

It shall be unlawful for any person to construct or maintain any stairway, open cellarway, basement access, or open entrance thereto in or adjacent to any sidewalk, pavement or street. Any such entrance is hereby declared to be a public nuisance; provided, any existing stairway, open cellarway, basement access, or open entrance thereto in any sidewalk, pavement or street may be permitted to remain from and after the passage, approval and publication of this code if said person owning or using such 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, and shall furnish the City with a bond in such amount as the City Council may set, for the benefit of any person who might suffer an injury or damage by reason of the use of said stairway, cellarway, or basement access.

## **ARTICLE IV – CONSTRUCTION OF PRIVATE DRIVES**

### **SECTION 5-401: APPLICATION FOR CONSTRUCTION OF PRIVATE DRIVE**

Before any person, firm or corporation constructs a private drive onto any public street or alley, an application shall first be made to the building inspector for a permit for such construction on a form available at the office of the city clerk. Such application shall be accompanied by a fee of \$25.00.

### **SECTION 5-402: APPLICATION REQUIREMENTS**

All driveway applications shall contain the following information: (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; and (3) the width of the driveway and type of street surface to which the driveway will connect.

### **SECTION 5-403: ISSUANCE OF PERMIT**

In the event that the building inspector determines that such application is in due and proper form and that the same complies with this article, he/she shall issue a permit for construction of such requested driveway.

### **SECTION 5-404: PENALTIES**

Any person, firm or corporation violating the terms of this article and who constructs a



driveway onto a city street or alley without first securing a permit therefor shall be deemed guilty of a misdemeanor and shall be fined in a sum not to exceed \$500.00. Each day's maintenance of the same shall constitute a separate offense.

## **ARTICLE V – PENAL PROVISION**

### **SECTION 5-501: VIOLATION; PENALTY**

Any and all persons violating any of the provisions of the several articles of this chapter for which penalty is not therein provided shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum of not more than \$500.00 for each offense. Each day's maintenance of the same shall constitute a separate offense.