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CHAPTER 6 – PUBLIC WAYS AND PROPERTY

Article 1 – Municipal Property

SECTION 6-101: DEFINITIONS

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

“Right of way” shall mean an area or strip of land, public or private, on which an irrevocable right of passage has been dedicated, recorded or otherwise legally established for the use of vehicles, pedestrians, or both, in which all pavement and most utilities are located; comprised of streets, parking areas and sidewalks.

"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: REMOVING DIRT

It is hereby declared unlawful for any person to remove, disturb, or take away from any street, alley, or public grounds any dirt, earth, stones, or other materials forming a part of such street, alley, or public grounds without first having obtained written permission to do so from the City Council. (Neb. Rev. Stat. §17-557)

SECTION 6-104: 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. If such abutting property owner refuses or neglects, after five days' notice by publication or, in place thereof, personal service of such notice, to remove all encroachments, the city may cause such encroachments to be removed and the cost of removal paid out of the street fund. The City Council shall assess the cost of the notice and removal of the encroachment against the abutting property. Such special assessment, together with the cost of notice, shall be levied and collected as special taxes in addition to the general revenue taxes and shall be subject to the same penalties as other special assessments and shall draw interest from the date of the assessment. Upon payment of the assessment, the same shall be credited to the street fund.

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. §§17-555, 17-557.01)

SECTION 6-105: PERMITTED OBSTRUCTIONS; MAILBOXES

A. Definitions.

1. "Breakaway mailbox" shall mean any mailbox which is designed to bend or fall away when struck by a vehicle, such as a mailbox constructed with a 4-inch by 4-inch wooden gate post or a 2-inch tubular street gate post; or a one-piece plastic mailbox placed upon a steel sleeve 3½ inches in diameter; or a mailbox with a similar design as those aforementioned but not constructed of brick and/or blocks.
2. "Multi-compartment mailbox" shall mean a structure which typically contains multiple mailboxes for two or more separate residences upon a single post or pedestal.
3. "Non-breakaway mailbox" shall mean any mailbox which is not designed to bend or fall away when struck by a vehicle. "Non-breakaway mailbox" shall include brick, block or pillar mailbox structures.
4. "Pillar" shall mean a decorative structure placed at the back of a curb or abutting a street which is not designed to bend or fall away when struck by a vehicle. "Pillar" shall include brick or block decorative structures.

B. Regulations.

1. Residents are not allowed to build or maintain any building or structure which will be placed upon any street right of way, except breakaway mail-

boxes. Such mailboxes may be installed in the street right of way without a building permit from the city.

2. No person shall construct, use or maintain any multi-compartment mailbox, non-breakaway mailbox, pillar, or a combination thereof in the city unless and until permission is granted to construct the same by the issuance of a building permit by the city zoning administrator. Multi-compartment mailboxes, non-breakaway mailboxes, pillars, or a combination thereof shall not exceed the total square footage of 4 square feet per structure and 5 feet in height. Multi-compartment mailboxes, non-breakaway mailboxes, pillars, or a combination thereof shall not exceed two structures per each residential property and shall be positioned at the end of the driveway or property entrance abutting a city street or one structure per residential property without a driveway or property entrance abutting a city street. Multi-compartment mailboxes, non-breakaway mailboxes, pillars, or a combination thereof shall meet site-triangle guidelines of the city and other city zoning regulations as may be applicable.
3. Any property owner who places or constructs any structure or item of any kind in the street right of way, be it general, implied, or specific, including mailboxes and pillars, shall hold the city harmless from any liability relating to the construction and maintenance of the structure in the street right of way or because of any defect therein of said structure. The property owner of any structure located in the street right of way, be it general, implied, or specific, which is subject to damage or destruction at any time as the result of the city removing snow, repairing pavement, or cleaning streets, or a person with a utility easement entering upon the street right of way to construct, repair or maintain facilities located in the street spaces, shall hold the city harmless from any liability relating to such damage or destruction to the structure. Structures in the street right of way, be it general, implied, or specific, have no absolute right to be there.

(Ord. No. 1064, 12/12/07)

SECTION 6-106: 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 to a height of at least 8 feet above the surface of said walk and at least 14 feet above the surface of said street.

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 may order the owner or occupant to cut or remove said obstructions within five days after having been served with notice stating 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 notice 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)

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 so long as is necessary if such persons shall make application to and receive a permit in writing from the street superintendent 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 superintendent. (Ord. No. 1064, 12/12/07)

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 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 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; DRIVEWAY; PERMIT, DEPOSIT AND BOND

A. It shall be unlawful for any person to cut into any paving, curb, or sidewalk for the purpose of constructing a driveway or any other purpose without first having obtained a written permit therefor. It shall also be unlawful for any person to construct a driveway where no curb cutting is required without having first obtained a permit following the procedures set out herein.

B. 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;
3. The width of the driveway and type of street surface to which the driveway will connect.

C. Before any permit for curb cutting is issued:

1. The applicant for such permit shall deposit with the city treasurer a sum set by resolution of the council for all paving, curb, or sidewalk to be cut. Such sum shall be set on a per-square-foot cost of construction basis. The deposit shall be retained by the city for the purpose of replacing the paving, curb, or sidewalk in the event the work is done by the city. In the event the city elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the city until the work is completed to the satisfaction of the street superintendent.
2. In addition to making the deposit set forth herein, the applicant shall, before any permit is issued, execute a bond to the city with a good and sufficient surety or sureties to be approved by the City Council in a sum set by resolution.
3. The applicant shall inform the city clerk of the place where such cutting is to be done and it shall be the street superintendent's duty to inspect the place of entry into the paving, sidewalk, or curb before the same is cut.

D. Upon approval of said permit by the City Council, 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 street superintendent, who shall supervise and inspect the materials used and work done in closing the opening.

E. It shall be discretionary with the City Council to order the street superintendent, under the supervision and inspection of the city engineer or the committee of the council on streets and alleys, to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit.

(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. Nothing in this section shall be construed to apply to pneumatic tires with metal or metal-type studs not exceeding 5/16 inch in diameter, inclusive of the stud-casting, with an average protrusion beyond the tread surface of not more than 7/64 inch between November 1 and April 1; provided, 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.

D. It shall be unlawful for any person, partnership, firm or corporation to drive with heavier loads on the streets, pavement or public roads within the city other than as authorized by resolution of the City Council. Said streets and routes shall be posted by the street superintendent pursuant to resolution of the council. This section shall constitute notice to the public.

(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. 854, 4/8/98)

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)

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 Neb. Rev. Stat. §18-1755.

(Neb. Rev. Stat. §§17-953, 17-953.01)

SECTION 6-116: REAL PROPERTY; SALE AND CONVEYANCE

A. Except as provided in subsection (G) herein, 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 of such real property.

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

C. 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 percent 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. The procedure for determining the validity of the said remonstrance shall be as provided in Neb. Rev. Stat. §17-503(3).

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

E. Following (1) passage of the resolution directing a sale, (2) publishing of the notice of the proposed sale, and (3) passing of the 30-day right of remonstrance period, the property shall then be sold. Such sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale.

F. Notwithstanding the procedures in subsections (A) through (E) of this section, real property owned by the city may be conveyed when such property:

1. Is sold in compliance with the requirements of federal or state grants or programs;
2. Is conveyed to another public agency; or
3. Consists of streets and alleys.

G. Subsections (A) to (F) of this section shall not apply to the sale of real property if the authorizing resolution directs the sale of an item or items of real 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)

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: EMINENT DOMAIN

The city shall have the power:

A. To create, open, widen, or extend any street, avenue, alley, off-street parking area, or other public way or annul, vacate, or discontinue the same; to take private property for public use for the purpose of erecting or establishing market houses; market places; parks; swimming pools; airports; gas systems, including distribution facilities; water systems; power plants, including electrical distribution facilities; sewer systems; or for any other needed public purpose; and to exercise the power of eminent domain within or without the city limits for the purpose of establishing and operating power plants, including electrical distribution facilities, to supply such city with public utility service and for sewerage purposes, water supply systems, or airports.

B. The procedure to condemn property shall be exercised in the manner set forth in Neb. Rev. Stat. §§76-704 to 76-724, except as to property specifically excluded by Neb. Rev. Stat. §76-703 and as to which Neb. Rev. Stat. §§19-701 to 19-707 or the Municipal Natural Gas System Condemnation Act is applicable. For purposes of this section, electrical distribution facilities shall be located within the retail service area of such city as approved by and on file with the Nebraska Power Review Board, pursuant to Neb. Rev. Stat. Chapter 70, Article 10.
(Neb. Rev. Stat. §17-559)

Article 2 – Streets

SECTION 6-201: DEDICATION TO PUBLIC USE

No street or alley which shall hereafter be dedicated to public use by the proprietor of ground in the city shall be deemed a public street or alley or be under the use or control of the City Council unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose. (Neb. Rev. Stat. §17-567)

SECTION 6-202: NAMES AND NUMBERS

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

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 superintendent and the same shall be constructed of such materials as the superintendent 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 superintendent, who shall investigate and recommend to the council allowance or rejection as final action by the council on such application.

SECTION 6-204: STREET CLOSING; PERMIT

No person shall close any street or alley in the city for purposes such as auction sales, parades, races, rallies, block parties or other related activities without first obtaining a permit from the City Council. The applicant shall file a written application for such permit with the city clerk upon a form provided by the city and shall pay the applicable fee as set by resolution of the council and kept on file in the office of the city clerk. Upon receipt of the application and fee, the clerk shall submit the application to the city administrator, who shall approve or deny the application for the street closure permit. If the application is denied, the fee shall be returned to the applicant. If the application is approved, the applicant shall be required to comply with all rules, regulations and conditions contained in such permit, with all other applicable laws and ordinances. (Neb. Rev. Stat. §17-567)

SECTION 6-205: 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 superintendent, authorizing such excavation. (Neb. Rev. Stat. §17-567)

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

SECTION 6-207: 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 6-208: 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 6-209: UTILITY POLES, WIRES, MAINS

A. Poles, wires, gas mains, pipelines, 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 has been made to the city clerk and permission in writing 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, pipelines, 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, 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 6-210: DRIVEWAY APPROACHES

The city 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 ap-

proach 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 minimum thickness of a driveway approach shall be 5 inches. At the direction of the City Council, the city clerk shall give the property owner notice by registered letter or certified mail, directed to the last known address of such owner or the agent of such owner, requiring 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 superintendent may cause such work to be done and assess the cost upon the property served by such approach. (Neb. Rev. Stat. §18-1748)

SECTION 6-211: POWER TO IMPROVE; IMPROVEMENT DISTRICTS; SPECIAL ASSESSMENTS

A. The City Council may grade, partially or to an established grade, change grade, curb, re-curb, gutter, re-gutter, pave, gravel, re-gravel, macadamize, re-macadamize, widen or narrow streets or roadways, resurface or relay existing pavement, or otherwise improve any streets, alleys, public grounds, or 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.

B. 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 6-212 to 6-214, unless the council improves a street which divides the city corporate area and the area adjoining the city as provided in Section 6-213 (Petition for Improvements). (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% 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)

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 AND COLLECTION

Assessments for improvements made under the provisions herein shall be made and assessed in the following manner:

A. Such assessments shall be made by the City Council at a special meeting, by a resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements, and the amount charged against the same, which, with the vote thereon by “yeas” and “nays,” shall be spread at length upon 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 newspaper published or of general circulation in said city at least four weeks before the same shall be held or, in lieu thereof, personal service may be had upon persons owning or occupying property to be assessed.

B. All such assessments shall be known as “special assessments for improvements” and shall be levied and collected as a separate tax, in addition to the taxes for general revenue purposes, and shall be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other city taxes.

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. §17-524)

SECTION 6-217: VACATING PUBLIC WAYS; PROCEDURE

The city shall have power to open, widen, or otherwise improve or vacate any street, avenue, alley, or lane within the limits of the city and to create, open, and improve any new street, avenue, alley, or lane. All damages sustained by the citizens of the city or by the owners of the property therein shall be ascertained in such manner as shall be provided in Section 6-218.

A. *Notice.* Notice shall be given to the abutting property owner(s) 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 will advise the abutting property owner that the council will consider vacating such street, avenue, alley, lane or similar public way at the next regular meeting or if a special meeting is scheduled for such discussion, then the date, time and place of such

meeting.

B. *Consent/Waiver.* The City Council may have all the abutting property owners sign a form stating that they consent to the action being taken by the council and waive their right of access. The signing of such form has no effect on claims for special damages, as defined in Section 6-218, by the abutting property owners but does create the presumption that the council's action was proper. However, if all the abutting property owners do not sign the consent/waiver form, the council may still proceed with vacating such street, avenue, alley, lane or similar public way under the authority granted them by Neb. Rev. Stat. §§17-558 and 17-559.

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

1. A declaration that the action is expedient for the public good or in the best interests of the city;
2. A statement that the city shall have an easement for maintaining all utilities; and
3. A method or procedure for ascertaining special damages to abutting property owners.

D. *Filing.* The clerk shall file a copy of the ordinance with the county register of deeds, within 30 days after the effective date of the vacation, 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.

E. *Title; All of Street Vacated.* Whenever any street, avenue, alley, or lane is vacated, the same shall revert to the owners of the abutting real estate, one-half on each side thereof, and become a part of such property unless the city reserves title 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 interests of the city.

F. *Title; Portion of Street Vacated.* When a portion of a street, avenue, alley, or lane is vacated only on one side of the center thereof, the title to such land shall vest in the owner of the abutting property and become a part of such property unless the city reserves title in the ordinance vacating a portion of such street, avenue, alley, or lane. 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 interests of the city.

G. *Conditions.* The title to property vacated pursuant to this section 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) (Ord. No. 664, 8/27/86)

SECTION 6-218: VACATING PUBLIC WAYS; DEFINITIONS; ASCERTAINING DAMAGES

A. "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, which result from the City Council vacating a 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.

B. The mayor shall appoint three, five or seven disinterested residents of the city to a special commission to ascertain the amount of special damages the abutting property owner(s) are entitled to receive which resulted from the City Council vacating a street, avenue, alley, lane or similar public way. The appointees of the special commission shall be approved by the council. Only special damages, as herein defined, shall be awarded to the abutting property owner(s).

C. In determining the amount of compensation to award the abutting property owner(s) 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 a 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[1]) (Ord. No. 663, 8/27/86)

Article 3 – Sidewalks

SECTION 6-301: DUTY TO KEEP CLEAN

A. 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 any sidewalk or to permit any snow, sleet, ice, mud, or other substance to remain upon said sidewalk.

B. All sidewalks within the Business District shall be cleaned within five hours after the cessation of a storm unless the fall of snow shall have taken place during the night, in which case the sidewalk shall be cleaned before 8:30 a.m. the following day; provided, sidewalks within the residential areas of the city shall be cleaned within 24 hours after the cessation of the storm. (Neb. Rev. Stat. §§17-557, 17-557.01)

SECTION 6-302: CANOPIES OR AWNINGS

All canopies or awnings hereafter erected or allowed to remain extending over the city sidewalks shall be of suitable sturdy material and, wherever possible, on iron frames. All canopies and awnings shall be elevated at least 7 feet at the lowest part from the top of the public sidewalk and shall not project over said sidewalk in excess of three-fourths of the width thereof. Canopies and awnings shall be supported without posts by iron brackets or by an iron framework attached firmly to the building so as to leave the sidewalk wholly unobstructed; provided, nothing herein shall be construed to prevent the owner of any building from constructing a substantial awning or marquee of non-combustible material, supported with or without posts, over the sidewalk space if located flush with the outer edge thereof and if written permission shall have been secured from the mayor and City Council prior to such construction.

SECTION 6-303: CONSTRUCTION OR REPAIR; ORDERED BY CITY

A. Every owner of any lot or piece of land within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to said lot, lots, or pieces of land in good and proper repair and in a condition reasonably safe for travel for all travelers thereon.

B. The City Council may by resolution order the construction or repair of a sidewalk on any lot or piece of ground within the city and may assess the expense thereof on the property in front of which such construction or repairs are made, after having given notice of its intention to do so:

1. By publication in one issue of a legal newspaper of general circulation in the city; and
2. By causing a written notice either to be served upon the occupant in possession of the property involved or to be posted upon such premises ten days prior to the commencement of such repair. Such service shall include

a form of return evidencing personal service or posting as herein required.

C. Notice to the property owner upon which a sidewalk in disrepair is located shall require the owner to make arrangements to have the sidewalk repaired within 48 hours from issuance of said notice. Repairs shall be completed within 21 days after the notice is issued. No special assessment shall be levied against the property unless the owner shall neglect or refuse to repair the sidewalk within the time prescribed herein.

D. All sidewalks shall be constructed or repaired in conformity with such plans, specifications, and materials as may be approved by the street superintendent.

E. If any owner shall fail to construct or repair any sidewalk in front of his or her property within the time and in the manner as directed herein after having received due notice to do so, the council may cause the sidewalk to be constructed or repaired and may assess the cost thereof against the property. The owner shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk.

F. 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) (Am. Ord. Nos. 720, 5/9/90; 882, 12/8/99)

SECTION 6-304: CONSTRUCTION OR REPAIR BY OWNER; APPLICATION, PERMIT

A. Sidewalks shall be constructed along the front property line and along the side property line where the side property line is adjacent to a street within 12 months from the date of issuance of a building permit for a new residence in any Residential District within the city limits, except where unusual conditions exist which eliminate the need for sidewalks and an exception to eliminate all or a portion of the sidewalk construction requirement is recommended by the Planning Commission and approved by the City Council. Sidewalks shall be constructed along the front property line and along the side property line where the side property line is adjacent to a street at the time a new commercial business or industrial building is constructed, except where unusual conditions exist which eliminate the need for sidewalks and an exception to eliminate all or a portion of the sidewalk construction requirement is recommended by the Planning Commission and approved by the City Council. Sidewalk construction shall hereinafter be a requirement of the building permit.

B. 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. 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 superintendent 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 superintendent. If it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, elevation, and thickness, the street superintendent shall submit the application to the City Council, which shall determine whether the permit should be granted or denied.

(Am. Ord. Nos. 720, 5/9/90; 780, 9/13/93; 788, 1/12/94; 882, 12/8/99)

SECTION 6-305: CONSTRUCTION BY PETITION; IMPROVEMENT DISTRICT; SPECIAL ASSESSMENTS; ABUTTING OWNER

A. If the owners of the record title representing more than 60% of the front footage of the properties directly abutting upon the street proposed to be improved with a sidewalk shall sign a petition and present it to the city clerk for filing, petitioning therefor, the City Council shall by ordinance create a paving or other improvement district, cause such work to be done or such improvement to be made, contract therefor, and levy special assessments on the lots and parcels of land abutting on or adjacent to such streets or alleys specially 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 City Council may 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 denies a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties.

B. Upon the petition of any property owner 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 owner making, executing, and delivering to the city an agreement to the effect that the petitioning freeholder will pay the engineering service fee and all other incidental construction costs which until paid shall be a perpetual lien upon the real estate along which the owner desires such sidewalk to be constructed and that the petitioner gives and grants to the city the right to assess and levy the costs of such construction against the owner'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.

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. §17-510)

SECTION 6-306: INSTALLATION OR REPAIR; MATERIALS, PROCEDURE

All installation or repair of any part of the sidewalk system shall be done under the supervision of the street superintendent and strictly in accordance with the rules, regulations, and specifications on file with the city clerk and prescribed for such installation by the city engineer, provided that the said rules, regulations, and specifications have been reviewed and approved by the mayor and City Council.

SECTION 6-307: CONSTRUCTION; VIOLATIONS

In case any lot owner(s) of a piece of land within the corporate limits of the city, under notice given or otherwise, shall construct a sidewalk in violation of this article/the materials and procedures on file in the office of the city clerk, the street superintendent or zoning administrator may stop the work of such construction and order the same to be constructed in accordance with city specifications and may order the work already done to be changed. Upon failure of such owner to change any such work, the street superintendent or other officer shall forthwith change the work and the expense shall be assessed and taxed upon the lot, collected as if otherwise taxed as provided by law. (Am. Ord. Nos. 720, 5/9/90; 882, 12/8/99)

Article 4 – Penal Provision

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. (Ord. No. 1119, 1/13/10)