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

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

#### **SECTION 6-101: MAINTENANCE AND CONTROL**

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

#### **SECTION 6-102: 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. Said trees, shrubs and their roots may be removed by the City at the expense of the owner of the property upon which the tree or shrub is located should the owner fail, or neglect, after notice, to do so. It shall be unlawful for any person, persons, firm, or corporation to obstruct, or encumber, by fences, gates, building, structures, or otherwise, any of the streets, alleys, or sidewalks. Monument-style mailboxes in the right-of-way shall be deemed an obstruction on all streets and highways in the City except on residential streets. (Neb. Rev. Stat. §17-557.01) (Ord. No. 335, 4/7/87; 900, 12/19/06)

#### **SECTION 6-103: BUILDING MATERIALS AND EQUIPMENT; PERMIT**

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

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

A. The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any street or sidewalk over which branches of trees extend shall at all times keep the branches or limbs thereof trimmed to the height of at least eight feet above the surface of said walkway and a clearance of 12 feet over streets and alleys. Whenever the limbs or branches of any trees extend over streets or sidewalks contrary to the provisions herein so as to interfere with the lighting of the street from street lights or with the convenience of the public using said street or sidewalk, the City Council at any regular or special meeting may pass a resolution ordering the owner or occupant to cut or remove said obstructions within five days after having received a copy thereof from the street superintendent stating that the City will remove said branches and charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided, if said resolution is not complied with.

B. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

(Neb. Rev. Stat. §17-557.01) (Ord. No. 335, 4/7/97; 911, 7/17/07)

#### **SECTION 6-105: SIGNS AND CANOPIES**

No person, firm, or corporation shall erect or maintain any sign, signboard, poster, or rigid canopy over any street, sidewalk, alley, or on other public property without having first obtained a permit therefor. Permits for signs, canopies, posters, and signboards shall be issued by the city clerk, subject to the approval of the City Council, upon the payment of a fee set by resolution of the Council. All signs and canopies extending over any public sidewalk, street, alley, or other public place must be securely fastened and constructed so that there will be no danger of the same being dislodged by ordinary winds or falling from other causes. No sign or canopy shall be erected or maintained which extends over any public sidewalk, street, alley, or other public place in such a location as to obstruct the view of any traffic light, sign, or signal. Upon the written order of the City Council, any person owning or occupying the premises where such a sign, canopy, poster, or signboard is located shall cause the same to be removed within the time limit specified on such notice.

#### **SECTION 6-106: EAVE AND GUTTER SPOUTS**

It is hereby declared unlawful for any person to erect or maintain any dwelling house or business building within the limits of the City where the said dwelling or building abuts on any sidewalk or street without providing proper guttering and eave spouts to receive the waste waters that collect on the said sidewalks and streets. All eave spouts erected on any dwelling house or business building shall be constructed to drain into the 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 6-107: CURB AND GUTTER; IMPROVEMENTS**

When curb and gutter improvements shall be authorized and ordered according to law, the cost of such improvements shall be paid by the City. The City Council is hereby authorized to assess such improvements, issue improvement bonds, and levy and collect a special tax from the abutting and adjacent property owners specially benefited, in the manner provided by law for the payment thereof.

#### **SECTION 6-108: CUTTING CURB**

A. It shall be unlawful for any person to cut into any paving, curb, or sidewalk for the purpose of constructing a driveway or any other purpose whatsoever without first having obtained a written permit from the official designated by the City Council. Before any person shall obtain a permit, he/she 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. When cutting into any paving, it shall be the duty of the party to cut the paving under such rules and

regulations as may be prescribed by the street superintendent; provided, that all such cuts shall be "saw cuts" unless the applicant secured written permission to use another method from the City Council. When the applicant is ready to close the opening made, he/she shall inform the street superintendent, who shall supervise and inspect the materials used and the work done in closing the opening. It shall be discretionary with the City Council to order the street superintendent to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit.

B. Before any permit is issued by the City Council, the applicant for such permit shall deposit with the city treasurer a fee for all paving, curb, or sidewalk to be cut, which fee shall be set on a per-square-foot cost of construction basis. Said fee shall be set by ordinance of the City Council, on file at the office of the city clerk and available for public inspection during office hours. The deposit shall be retained by the City for the purpose of replacing the paving, curb, or sidewalk, in the event the work is done by the City. In the event the City elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the City until the work is completed to the satisfaction of the city engineer. No permit shall be granted unless the applicant shall in addition to all other requirements, agree in writing to the following conditions:

1. That the applicant will, if requested by the City, promptly replace and repair each and every place cut into any pavement, curb, or sidewalk under such rules as may be prescribed by the street superintendent as approved by the City Council, and leave the same in as good a condition as before the same was cut.
2. That the applicant will promptly compensate the City for all work done by the City in replacing or repairing any places cut in the pavement, curb, or sidewalk by the applicant.
3. That the applicant will obey all laws of the City in doing such work and will save the City harmless from any damages which may occur as the result of either cutting or repairing the pavement, curb, or sidewalk.
4. That the applicant will maintain and keep in repair the place where the pavement, curb, or sidewalk is cut to the satisfaction of the City and its officers for a period of one year after the completion of the work.

## **SECTION 6-109: HEAVY EQUIPMENT**

A. It shall hereafter be unlawful for any person or person to move any equipment or vehicle with a gross weight exceeding five tons on any street, alley or highway within the City unless the street, alley or highway is marked otherwise. It shall further 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 curb, gutter, bridge, culvert, sidewalks, crosswalk, or crossing with heavy plank sufficient in strength to warrant against the breaking or damaging of such curb, gutter, bridge, culvert., sidewalk, crosswalk, or crossing. Hereafter, it shall be unlawful to run, drive, move, operate, or convey over or across any paved street a vehicle, machine, or implement with sharp discs or sharp wheels that bear upon said pavement; with wheels having cutting edges; with wheels having lugs, any protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent, or

otherwise injure or damage any pavement, gutter, or curb; provided, where heavy vehicles, structures, and machines move along paved or unpaved streets, city law enforcement is hereby authorized and empowered to choose the route over which the moving of such vehicles, structures, or machines will be permitted and allowed.

B. Nothing in this section shall be construed to apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths of an inch in diameter inclusive of the stud-casting with an average protrusion beyond the tread surface of not more than seven sixty-fourths of an inch between October 1, and April 15; provided, school buses and emergency vehicles shall be permitted to use metal or metal-type studs all year; and it shall be permissible to drive farm machinery with tires having protuberances which will not injure the streets.

(Neb. Rev. Stat. §60-680)

### **SECTION 6-110: 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. 526, 3/6/95)

### **SECTION 6-111: REAL PROPERTY; ACQUISITION; APPRAISAL**

The City shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value of \$100,000.00 or more unless an appraisal of such property has been performed by a certified real estate appraiser. (Neb. Rev. Stat. §13-403) (Ord. No. 524, 3/6/95)

### **SECTION 6-112: REAL PROPERTY; SALE AND CONVEYANCE**

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

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

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

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

D. If, within 30 days after the third publication of the notice, a remonstrance against such sale is signed by registered voters of the City equal in number to 30% of

the registered voters of the City voting at the last regular city election held therein and is filed with the City Council, such property shall not then, nor within one year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the 30-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

1. Upon the receipt of the remonstrance, the City Council, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the remonstrance. The City Council shall deliver the remonstrance to the election commissioner or county clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested.
2. Upon receipt of the remonstrance, the election commissioner or county clerk shall issue to the City Council a written receipt that the remonstrance is in the custody of the election commissioner or county clerk, who shall compare the signature of each person signing the remonstrance with the voter registration records to determine if each signer was a registered voter on or before the date on which the remonstrance was filed with the City Council. The election commissioner or county clerk shall also compare the signer's printed name, street and number or voting precinct, and city or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the election commissioner or county clerk determines that the printed name, street and number or voting precinct and city or post office address matches the registration records and that the registration was received on or before the date on which the remonstrance was filed with the City Council. The determinations of the election commissioner or county clerk may be rebutted by any credible evidence which the City Council finds sufficient. In addition to helping to determine the validity of the remonstrance, the sufficiency of the remonstrance, and the qualifications of the signer, the express purpose of the comparison of names and addresses with the voter registration records shall be to prevent fraud, deception, and misrepresentation in the remonstrance process.
3. Upon completion of the comparison of names and addresses with the voter registration records, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found. If the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reason for the invalidity of the signature. If the election commissioner or county clerk determines that a signer has affixed his or her signature more than once to the remonstrance and that only one person is registered by that name, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature.
4. The election commissioner or county clerk shall certify to the City Council the number of valid signatures necessary to constitute a valid remon-

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

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

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

F. Following passage of the resolution directing a sale, publishing of the notice of the proposed sale, and passing of the 30-day right-of-remonstrance period, the property shall then be sold. Such sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. (Neb. RS 17-503)

G. Subsections (A) through (F) of this section shall not apply to the sale of real property if the authorizing resolution directs the sale of real property, the total fair market value of which is less than \$5,000. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the City for a period of not less than seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required. (Neb. Rev. Stat. §17-503.01)  
(Ord. No. 245, 10/19/82) (Am. by Ord. Nos. 503, 5/17/94; 562, 1/16/96; 667, 2/16/99; 849, 6/1/07)

### **SECTION 6-113: PERSONAL PROPERTY; SALE AND CONVEYANCE**

The power of the City to convey any personal property owned by it shall be exercised by resolution directing the sale and the manner and terms thereof. 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, notice of the sale shall also be published once in a legal newspaper published in or of general circulation in the 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. (Neb. Rev. Stat. §17-503.02) (Ord. No. 849, 6/1/04)

### **SECTION 6-114: SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCEDURE**

The City Council may by ordinance create a special improvement district for the purpose of replacing, reconstructing, or repairing an existing 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 power to assess, to the extent of such benefits, the costs of such improvements upon the properties found especially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the City Council shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law. (Neb. Rev. Stat. §18-1751) (Ord. No. 351, 9/15/87)

### **SECTION 6-115: IMPROVEMENT DISTRICT; LAND ADJACENT**

Supplemental to any existing law on the subject, a City may include land adjacent to such City when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The City Council shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby, except as provided in Section 6-116. (Neb. Rev. Stat. §19-2427) (Ord. No. 350, 9/15/87)

### **SECTION 6-116: DEFERRAL FROM SPECIAL ASSESSMENTS**

A. Whenever the City Council creates an improvement district as specified in Section 6-114 which includes land adjacent to the City which is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments. For purposes of this section, the terms "agricultural use" and "agricultural use zone" shall have the meanings specified in Neb. Rev. Stat. §77-1343.

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

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

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

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

1. The total amount of special assessments which would have been assessed against such property, to the extent of special benefits, had such deferral not been granted; and
2. Interest upon the special assessments not paid each year at the rate of 6% from the dates at which such assessments would have been payable if no deferral had been granted.

E. In cases where the deferral provided by this section is terminated as a result of a sale or transfer described in subsection (C) (2) or (3) above, the lien for assessments and interest shall attach as of the day preceding such sale or transfer.

(Neb. Rev. Stat. §19-2428 through 19-2431) (Ord. No. 273, 10/18/83; 352, 9/15/87)

### **SECTION 6-117: PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS**

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

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

1. Any public works project with contemplated expenditures for the completed project that do not exceed \$80,000; (Neb. Rev. Stat. §81-3445, 81-3449(3), and 81-3453(3))
2. Any alteration, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building; (Neb. Rev. Stat. §81-3449(4) and 81-3453 (4))
3. Performance of professional services for itself if the City appoints a city engineer or employs a full-time person licensed under the Engineers and Architects Regulation Act who is in responsible charge of architectural or engineering work; (Neb. Rev. Stat. §81-3423, 81-3449(9), and 81-3453 (6))
4. The practice of any other certified trade or legally recognized profession; (Neb. Rev. Stat. §81-3449(11) and 81-3453 (7))
5. Earthmoving and related work associated with soil and water conservation practices performed on any land owned by the City that is not subject to a permit from the Department of Natural Resources; (Neb. Rev. Stat. §81-3449(13) and 81-3453(12))
6. The work of employees and agents of the City performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land use regulations and their customary duties in utility and public works construction, operation,

and maintenance; (Neb. Rev. Stat. §81-3449(14) and 81-3453(13))

7. Those services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, marine operating engineers, power plant operating engineers, or manufacturers who supervise the operation of or operate machinery or equipment or who supervise construction within their own plant; (Neb. Rev. Stat. §81-3453(10))
8. The construction of city water wells as defined in Neb. Rev. Stat. §46-1212, the installation of pumps and pumping equipment into City water wells, and the decommissioning of City water wells, unless such construction, installation, or decommissioning is required by the City to be designed or supervised by an engineer or unless legal requirements are imposed upon the City as a part of a public water supply; and (Neb. Rev. Stat. §81-3453(15))

9. Any other activities described in Neb. Rev. Stat. §81-3449 to 81-3453.  
(Ord. Nos. 668, 2/16/99; 711, 7/6/00)

## **Article 2 – Streets**

### **SECTION 6-201: NAMES AND NUMBERS**

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

### **SECTION 6-202: CROSSINGS**

The City Council may order and cause to be constructed, under the supervision of the street superintendent such street, avenue, and alley crossings as the Council shall deem necessary. When a petition for the construction of any such crossings is filed by an interested resident in the office of the city clerk, said city clerk shall refer such application to the street superintendent who shall investigate and make his/her recommendation to the City Council. Action by the Council on such application, whether the application is approved or rejected, shall be considered final.

### **SECTION 6-203: OPENING, WIDENING, IMPROVING OR VACATING**

A. 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 also 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 by ordinance. Whenever any street or alley is vacated, the same shall revert to the owners of the abutting real estate, one-half on each side thereof and become a part of such property. When a portion of a street, avenue, alley, or lane is va-

cated only on one side of the center thereof, the title to such land shall vest in the owner of the abutting property and become a part of such property. When the City vacates all or any portion of a street, avenue, alley, or lane, the City shall, within 30 days after the effective date of the vacation, file a certified copy of the vacating ordinance with the Register of Deeds for the county in which the vacated property is located to be indexed against all affected lots. (Neb. Rev. Stat. §17-558)

B. The City shall have power 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. (Neb. Rev. Stat. §17-559)  
(Am. by Ord. No. 779, 4/16/02)

#### **SECTION 6-204: EXCAVATION**

It shall be unlawful for any person to make an excavation in any street or streets for any purpose whatsoever unless a written permit is issued by the street superintendent authorizing such excavations.

#### **SECTION 6-205: DRIVING STAKES**

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

#### **SECTION 6-206: MIXING CONCRETE**

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

#### **SECTION 6-207: HARMFUL LIQUIDS**

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

#### **SECTION 6-208: DRIVEWAY APPROACHES**

A. The street superintendent may require the owner of property served by a driveway approach constructed or maintained upon the street right-of-way to repair or replace any such driveway approach which is cracked, broken, or otherwise deteriorated to the extent that it is causing or is likely to cause damage to or interfere with any street structure including pavement or sidewalks.

B. The city clerk shall give the property owner notice by registered letter or certified mail, directed to the last-known address of such owner or the agent of such owner, directing the repair or replacement of such driveway approach. If 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) (Ord. No. 290, 9/18/84)

## **SECTION 6-209: PIPELINES AND WIRES**

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

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

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

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

C. After it shall become delinquent, said assessment shall draw interest at the legal interest rate per annum. In the event the property owner is a 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. (Neb. Rev. Stat. §17-511, 17-524)

### **SECTION 6-211: CONSTRUCTION NOTICE**

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

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

Whenever a petition signed by the owners of record title representing more than 60% of the front footage of the property directly abutting upon the street, streets, alley, alleys, public way, or the public grounds proposed to be improved, shall be presented and filed with the city clerk, petitioning therefore, the City Council shall by ordinance create a paving, graveling, or other improvement district or districts, and shall cause such work to be done or such improvement to be made, and shall contract therefore, 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 preparation to such benefits, to pay the cost of such improvement. The City Council shall have the discretion to deny the formation of the proposed district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the City Council should deny a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties. (Neb. Rev. Stat. §17-510) (Am. by Ord. No. 272, 10/18/83)

### **SECTION 6-213: IMPROVEMENT OF STREETS ON CORPORATE LIMITS**

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

### **SECTION 6-214: IMPROVEMENT DISTRICTS; OBJECTIONS**

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 City 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 it is 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. 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 improvements shall not be made as provided in such ordinance, but such ordinance shall be repealed. If objections are not filed against the district in the time and manner prescribed in this section, the City Council shall immediately cause such work to be done or such improvement to be made, shall contract for the work or improvement, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street or alley especially benefited in such district in proportion to such benefits to pay the cost of such improvement. (Neb. Rev. Stat. §17-511) (Am. by Ord. No. 563, 1/16/96)

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

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

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

1. *Notice.* Notice shall be given to all abutting property owners either by first class mail to their last known address or if there is no known address then by publishing the notice in a newspaper that is of general circulation in the City. The content of the notice shall advise the abutting property owners that the City Council will consider vacating such street, avenue, alley, lane, or similar public way at its next regular meeting or, if a special meeting is scheduled for such discussion, then the date, time, and place of such meeting.
2. *Consent; waiver.* The City Council may have all the abutting property owners sign a form stating that they consent to the action being taken by the City Council and waive their right of access. The signing of such form shall have no effect on claims for special damages by the abutting property owners but shall create the presumption that the City Council's action was proper. If the abutting property owners do not sign the consent/waiver form, the City Council may still proceed with vacating the street, avenue, alley, lane, or similar public way under the authority granted by Neb. Rev. Stat. §17-558 and 17-559.
3. *Ordinance.* The City Council shall pass an ordinance that includes essentially the following provisions:

- a. A declaration that the action is expedient for the public good or in the best interests of the City.
- b. A statement that the City will have an easement for maintaining all utilities.
- c. A method or procedure for ascertaining special damages to abutting property owners.

C. The mayor shall appoint three, five, or seven disinterested residents of the City to a special commission to ascertain the amount of special damages that the abutting property owners are entitled to receive and which resulted from the City Council vacating the street, avenue, alley, lane, or similar public way. The appointees of the special commission shall be approved by the City Council. Only special damages shall be awarded to the abutting property owners.

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

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

(Ord. No. 329, 11/18/86) (Am. by Ord. No. 780, 4/16/02)

## **SECTION 6-216: VACATING STREETS OR ALLEYS; TITLE**

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

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

1. There is reserved to the City the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and
2. There is reserved to the City, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, above, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times.

(Neb. Rev. Stat. §17-558)

## **Article 2 – Sidewalks**

### **SECTION 6-301: DEFINITION**

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

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

### **SECTION 6-302: WEEDS**

A. It is hereby the duty of the street superintendent or his/her duly authorized agent to view and inspect the sidewalk spaces for growing weeds during the growing season, and if rank and noxious weeds are found growing thereon he/she shall notify the owner or occupant thereof to cut down such weeds as close to the ground as can be practicably done and keep the weeds cut thereon in like manner during the growing season for weeds; provided, any weeds growing in excess of six inches on any sidewalk space shall be considered a violation of this section.

B. In the event that the owner of any lot or parcel of land abutting said sidewalk space within the City is a non-resident of the City or cannot be found therein, the notice may be given to any person having the care, custody, or control of such lot or parcel of land. In the event that no one can be found within the City to whom notice can be given, it shall be the duty of the street superintendent or his/her agent to post a copy of the notice on the premises and then to cut or cause the weeds thereon to be cut as herein provided and report the cost thereof in writing to the City Council. The cost shall then be audited and paid by the City; the amount thereof shall be assessed against the lot or parcel of land as a special tax thereon and shall be collected as are other taxes of the City or may be recovered by civil suit brought by the City against the owner of the parcel of land.

C. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

### **SECTION 6-303: TREES; PERMIT; UNLAWFUL PLANTING, NUISANCE**

A. No person or persons shall plant, or allow to grow any tree within the sidewalk space without first making a written or verbal application to and receiving a written permit from the City Council. No fee shall be charged for said permit. Any tree planted within the sidewalk space after the adoption date of this section (4/7/87) shall be deemed to be unlawfully planted and growing and shall, at the discretion of the Council, be deemed to be a nuisance. When any such tree is declared to be a nuisance, the Council shall order, with proper notice, the tree removed at the expense of the owner of the property adjacent to the sidewalk space upon which the tree has been unlawfully planted. If the property owner fails or neglects to remove or cause to be removed the said tree, the

City Council shall order the same removed and assess the expense of such removal against the property adjacent to the sidewalk space wherein the tree is planted and growing.

B. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

(Neb. Rev. Stat. §17-557.01, 18-1720) (Ord. No. 335, 4/7/87)

**SECTION 6-304: DUTY TO KEEP CLEAN; REMOVAL REQUIRED; REMOVAL BY CITY; PENALTIES; INJURIES TO PERSONS OR PROPERTY**

A. It shall be the duty of an occupant as well as the duty of an owner of any lot, land, or real estate in the City to clear all ice and snow from the sidewalks adjoining said lot, land, or real estate within 24 hours after the cessation of any storm or fallen snow.

B. It shall be duty of the occupant as well as the duty of the owner of any lot, land, or real estate in the City to clear all obstructions and accumulations from the sidewalks adjoining said property within 24 hours of becoming aware of the presence of such obstructions or accumulations. Such obstructions or accumulations shall include, but are not limited to, snow, ice, glass and other sharp objects, grease and mud or other slick material, loose gravel, leaves, tree limbs, animal waste material and other hazardous material.

C. If any sidewalk in front of any lot, land, or real estate within the City shall not be cleared of ice or snow or other accumulations or obstructions by the occupant or owner as required by this section, the code enforcement officer may cause such sidewalk to be cleared forthwith and he shall thereafter bill the property owner and/or renter the cost of the clearance. Upon failure to pay the bill when presented, the code enforcement officer shall report the cost and expense thereof to the City Council. The Council may either file suit for payment or may thereupon levy a special tax on such land or lot sufficient to pay the cost and expenses of removal of ice or snow or other accumulations or obstructions. This special tax shall be due and payable on the date of the levy, becoming delinquent 50 days after the date of the levy, and from and after becoming delinquent shall bear interest at the rate of 1% per month until paid. Said tax shall be set by ordinance of the City Council, on file at the office of the city clerk and available for public inspection during office hours. When any such tax is levied, the city clerk shall forthwith deliver a copy of the ordinance levying the same to the city treasurer; and to every such copy of such ordinance so delivered to the treasurer, the clerk shall append a warrant in the usual form requiring the treasurer to collect said special taxes in the same manner as all other special assessments if the same shall not have been paid before the time fixed for the same to become delinquent.

D. It shall be unlawful for any person, persons, firm, or corporation at any time to place such snow, ice, accumulations or obstructions from private sidewalks, driveways, parking lots, routes or other private property on any alley, sidewalk, street, or street right of way other than emergency snow removal provided by the City, County, or State.

E. In the event any person, persons, firm, or corporation violates the provisions of this section, and the City has to replot the street in which such snow has been placed, such violator shall, in addition to any other penalties imposed in relation to violations of any provisions of this chapter, be responsible for the cost of such second plowing. The City shall send a written statement to such violator showing the amount due to the City, and such amount shall be payable within 15 days after the date it is mailed by the City and, if not paid within such period, shall accrue interest at the highest rate allowable.

F. In the event any person shall be injured in body or property by reason of neglect, failure or refusal of any occupant or owner to clear sidewalks contiguous to the premises occupied or owned by him/her of snow and ice and other accumulations or obstructions as herein provided, and such persons shall recover damages and costs from the City for the injuries so sustained, such owner shall be liable to the City for the amount of the damages and costs so recovered and the City may sue and recover same at law.

G. Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this section, set forth at full length herein or incorporated by reference, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$100.00 for each offense. A new violation shall be deemed to have been committed every 24 hours of such failure to comply.  
(Neb. Rev. Stat. §17-557) (Am. by Ord. Nos. 923, 2/5/08; 972, 1/19/10)

#### **SECTION 6-305: SPACE BENEATH**

No person shall be allowed to keep or use the space beneath the sidewalk lying between lot line and curb line unless a permit therefore shall have been obtained from the City Council. Before any permit shall be granted, the applicant for said permit shall submit plans and specifications of any present or proposed construction to the street superintendent. Should such plans or specifications be disapproved by him/her, no permit shall be granted therefore. All permits hereafter granted shall continue only upon the condition that the party receiving the same shall build, maintain, and keep in repair a sidewalk over such space used or constructed to be used and pay all damages that may be sustained by any person by reason of such use or by reason of said sidewalk being defective or in a dangerous condition. As a condition precedent to the issuance or continuance of any permit for the use of any space underneath the City sidewalks as herein contemplated, the City Council may require applicant to furnish a bond to the City as obligee for the benefit of any person or persons who may suffer any damage or damages by reason of such use. The bond shall be in such sum as the City Council, in its discretion, may designate.

#### **SECTION 6-306: MAINTENANCE**

Every owner of any lot, lots, or piece of land within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to said lot, lots, or pieces of land, as the case may be, in good and proper repair, and in a condition reasonably safe for travel for all travelers thereon. In the event that the owner or owners of any lot, lots, or lands, abutting on any street, avenue, or part thereof shall fail to construct or repair any sidewalk in front of his, her, or their lot, lots, or lands, within the time and in the manner as directed and required herein after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous con-

dition of any sidewalk, and the City Council shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (Neb. Rev. Stat. §17-557.01)

### **SECTION 6-307: REPAIRS**

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

### **SECTION 6-308: NEW SIDEWALK; CONSTRUCTION BY OWNER**

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; 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 who shall determine whether the permit should be granted or denied. It shall be unlawful for any person to construct, or cause to be constructed said sidewalk at any other location, grade, or elevation than so designated by the City. 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. All sidewalks constructed under this section must be in accordance with the building regulations set forth in Chapter 9 of this code.

### **SECTION 6-309: NEW SIDEWALK; CONSTRUCTION BY CITY**

A. The City Council may, by resolution, order the construction of a sidewalk on any lot or piece of ground within the City. Notice of the 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.

B. A copy of said notice shall be personally served upon the occupant in pos-

session of such property, or, when personal service is not possible, said notice shall be posted upon such premises ten days prior to the commencement of construction. The notice required in this section shall be prepared by the city attorney in accordance with the provisions of this section. Such service shall include a form of return evidencing personal service or posting as herein required.

C. Said notice shall notify the owner of the premises of the passage of the resolution ordering him/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. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

(Neb. Rev. Stat. §17-522, 17-523)

#### **SECTION 6-310: NEW SIDEWALK; CONSTRUCTION BIDS**

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

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

#### **SECTION 6-311: NEW SIDEWALK; REQUIREMENTS AND LOCATION**

Any persons constructing a new dwelling or business or substantially renovating (60% or more) an existing dwelling within the City or its one-mile zoning jurisdiction shall construct or cause to be constructed a sidewalk along and contiguous to said building lot, lots or pieces of land, as the case may be. If the required location of the sidewalk is in

conflict with other physical improvements or land features of said land or adjacent lands, the City Council may waive the sidewalk or its location and/or determine acceptable alternatives.

## **SECTION 6-312: NEW SIDEWALK; CONSTRUCTION BY PETITION**

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

B. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

## **Article 4 – Stormwater Management**

(Adopted by Ord. No. 896, 12/5/06) (Am. by Ord. No. 966, 2/2/10)

### **SECTION 6-401: PURPOSE AND AUTHORITY**

A. The purpose of these regulations is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with increased and altered stormwater runoff. Proper management of stormwater runoff will minimize damage to public and private property, reduce the harmful effects of development on land, control stream channel erosion, reduce local flooding, and maintain after development, as nearly as possible, the pre-development runoff characteristics.

B. The application of these regulations and provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation on such management practices. The City shall be responsible for the coordination and enforcement of the provisions of these regulations. The provisions of this chapter shall be applicable to all that property within the City's zoning jurisdiction.

## **SECTION 6-402: MANUAL; INCORPORATION BY REFERENCE**

For the purpose of these regulations, the *Omaha Regional Stormwater Design Manual*, in its most current form, is incorporated by reference.

## **SECTION 6-403: DEFINITIONS**

The following words, phrases and terms as used in this chapter shall have the meanings ascribed to them in this chapter.

“Best management practices” (BMP) shall mean pollution control practices designed and carried out to reduce the pollutants contained in discharges.

“Building drain” means that part of the lowest horizontal piping of a wastewater drainage system that receives the discharge from soil and waste pipes inside the walls of the building and conveys it to the building sewer, beginning two feet outside the inner face of the building wall.

“City” shall mean City of Gretna.

“Clean Water Act” shall mean the Federal Water Pollution Control Act, which was enacted in 1972 to prohibit the discharge of pollutants to receiving waters of the United States and later amended in 1987, to establish a framework for regulating municipal, industrial, and construction stormwater discharges under the NPDES Program.

“Commercial activity” means any public or private activity not defined as an industrial activity in 40 Code of Federal Regulations (CFR) 122.26(b)(14) as of the date of this ordinance, involved in the storage, transportation, distribution, exchange or sale of goods and/or commodities or providing professional and/or non professional services.

“Construction activity” means any clearing, grading, or excavation that results in soil disturbance, and also includes, but is not limited to, construction, repairs, dewatering, remodeling, building, and emergency construction activities required to immediately protect public health and safety.

“Director” means the municipal utility superintendent for the City or his/her authorized agent or representative.

“Discharge” means any release, spill, leak, pump, flow, escape, dumping, or disposal of any liquid, semi-solid, or solid substance to the municipal storm sewer system.

“Hazardous substance” means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the Clean Water Act.

“Illicit connection” means any human made conveyance that is directly or indirectly connected to the municipal separate storm sewer system and allows for an illicit discharge.

“Illicit discharge” means any discharge to the municipal separate storm sewer system that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. Illicit discharges include all non-stormwater discharges except discharges pur-

suant to a NPDES permit or conditionally exempted by ordinance and include those prohibited in Sections 6-404 and 6-405 below.

“Illicit disposal” means any disposal, either intentional or unintentional, of material(s), substance(s), or waste(s) that has the potential to pollute runoff unless otherwise allowed by law.

“Industrial activity” means any public or private activity which is associated with any other of the 11 categories of activities defined in 40 CFR 122.26(b)(14).

“Industrial/commercial facility” means any public or private facility involved and/or used in the production, manufacture, storage, transportation, distribution, exchange or sale of goods and/or commodities, or any facility involved and/or used in providing professional services. This category of facility includes but is not limited to, any facility defined by a Standard Industrial Code (SIC).

“Low impact development (LID)” means de-centralized management of precipitation that would otherwise be stormwater runoff, utilizing design techniques that infiltrate, filter, store, evaporate, or temporarily detain stormwater.

“Municipal storm sewer system” means any pipe, ditch or gully or system of pipes, ditches, or gullies that is owned or operated by the City and used for collecting and conveying stormwater.

“Maximum extent practicable” means a standard for implementation of stormwater management programs to reduce pollutants in stormwater. It is the maximum extent possible taking into account equitable consideration of competing factors, including, but not limited to the seriousness of the problem, public health risk, environmental benefits, pollutant removal effectiveness, regulatory compliance, ability to implement, cost and technical feasibility.

“New development” means land-disturbing activities; structural development, including construction or installation of a building or structure, the creation of impervious surfaces; and land subdivision.

“NPDLS” means the National Pollutant Discharge Elimination System and is implemented and enforced by a permit issued by the U.S. Environmental Protection Agency (EPA), or the Nebraska Department of Environmental Quality (NDEQ) pursuant to the Clean Water Act that authorizes discharges to waters of the United States and requires the reduction of pollutants in the discharge.

“Non-stormwater runoff” means any discharge to the municipal storm sewer system that is not composed entirely of stormwater.

“Nuisance” means public nuisance as provided in Chapter 3 and also as defined in this section.

“Pollutant” means the same as defined in Section 502(6) of the Clean Water Act including but not limited to the following, but does not include uncontaminated stormwater, potable water, groundwater, or reclaimed water by a lawfully permitted water treatment facility:

- A. Materials (including but not limited to fuels, solvents, chemicals, detergents, plastic, pellets, hazardous substances, radioactive wastes, fertilizers, pesticides, paints, soot, slag, ash, sludge);
- B. Metals and non-metals both soluble and insoluble (including but not limited to cadmium, lead, zinc, copper, silver, nickel, chromium, chlorine, phosphorous, and arsenic);
- C. Petroleum Hydrocarbons (including but not limited to fuels, oils, lubricants, surfactants, waste oils, solvents, coolants, and grease);
- D. Eroded soils, sediment, and particulate materials in amounts, which may adversely affect the beneficial use of the receiving waters, flora, or fauna of the state;
- E. Animal wastes (including but not limited to discharge from confinement facilities, kennels, pens, recreational facilities, and stables);
- F. Substances having acidic or corrosive characteristics, unusual coloration or turbidity;
- G. Any domestic or industrial wastewater;
- H. Any hazardous substance.

“Private stormwater conveyance system” shall mean a stormwater conveyance system that is not owned or maintained by the City including any instrumentality that drains or conveys water from a building or from/through one or more properties to the environment or the City's stormwater system.

“Public nuisance” means any discharge in violation of the provisions of this chapter, a wastewater discharge permit, or an order of the City Council.

“Receiving waters” means all surface water: bodies, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation drainage systems, and all other bodies or accumulation of water, natural or artificial, public or private, situated wholly or partly within or bordering upon the extra-territorial jurisdiction of the City of Gretna.

“Runoff” means any stormwater or non-stormwater discharges from a drainage area that enters the municipal storm sewer system. The term “runoff” is interchangeable with the term “urban runoff.”

“Sanitary sewage” means liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions.

“Separate storm sewer” means pipe or conduit, which by designation of the director, carries only stormwater runoff, discharges pursuant to a NPDES permit or discharges conditionally exempted by ordinance.

“Significant redevelopment” means land-disturbing activity that results in the creation, addition or replacement of at least 5,000 square feet of impervious surface area on an already developed site. Redevelopment includes, but is not limited to the following activities that meet the minimum standards set forth in this definition:

- A. The expansion of a building footprint;
- B. Addition or replacement of a structure;

- C. Replacement of impervious surface that is not part of a routine maintenance activity; and
- D. Land-disturbing activities related to structural or impervious surfaces.
- E. Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety.

“Standard industrial classification” (SIC) means a classification pursuant to the current edition of the *Standard Industrial Classification Manual* issued by the Executive Office of the president of the United States, Office of Management and Budget.

“Stormwater Pollution Prevention Plan” (SWPPP) means a plan required by the State of Nebraska under either the general permit for stormwater discharges or an individual NPDES permit, which includes requirements for stormwater discharges associated with either industrial or construction activities. The purpose of the plan is to help identify the sources of pollution that affect the quality of stormwater discharges from a site and to describe and ensure the implementation of practices to reduce pollutants in stormwater discharges.

“Stormwater runoff” means that part of natural precipitation (rainfall or snowmelt, including that of any frozen precipitation), which travels via flow across any surface to the municipal storm sewer system.

“Street wash water” means the water and the associated debris resulting from the washing of streets and/or sidewalks.

“Urban runoff” means any stormwater and non-stormwater runoff from developed land in, or adjacent to, any municipality.

“USEPA” means the United States Environmental Protection Agency.

#### **SECTION 6-404: ILLICIT DISCHARGES PROHIBITED**

A. No person shall cause the discharge of non-stormwater runoff to enter the municipal separate storm sewer system unless the discharge is one of the following:

1. Authorized by a NPDES permit issued by EPA, or NDEQ.
2. Authorized by the City of Gretna.
3. Caused by or resulting from one of the following:
  - a. Firefighting activities, where such discharges or flows contain no significant sources of pollutants.
  - b. Landscape irrigation
  - c. Diverted stream flows
  - d. Rising ground waters
  - e. Uncontaminated ground water infiltration, as defined at 40 CFR 35.2005(20)
  - f. Uncontaminated pumped ground water

- g. Discharges from potable water sources
- h. Foundation drains
- i. Air conditioning condensation
- j. Irrigation water
- k. Springs
- l. Water from crawl space pumps
- m. Footing drains
- n. Lawn watering.
- o. Individual residential car washing
- p. Flows from riparian habitats and wetlands
- q. Dechlorinated swimming pool discharges
- r. Street wash water.

B. All exempt discharges, as listed above, must be in conformance with all other provisions of this code.

#### **SECTION 6-405: PROHIBITION OF ILLICIT CONNECTIONS**

No person shall install, maintain, or use any connection to the municipal separate storm sewer system that may result in an illicit discharge to the municipal storm sewer system. All connections to the municipal storm sewer system that provide for an illicit discharge from inside a building are prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. For illicit connections made in the past, a plan to remedy the illicit connection shall be submitted to the director.

#### **SECTION 6-406: REMOVAL OF ILLICIT CONNECTION**

If any person fails to disconnect an illicit connection upon 30 days' prior notification by the director, he/she may cause the removal of such connection from the municipal storm sewer system. The City may pursue the recovery of costs by appropriate means including a suit at law against the person or persons responsible for such disconnection.

#### **SECTION 6-407: PRIVATE STORMWATER CONVEYANCE SYSTEMS**

A. The owner of a property where a private stormwater conveyance system is located shall be responsible for the maintenance and repair, and proper operation of the private stormwater conveyance system regardless of whether the private stormwater conveyance system is completely located on the private property or partially within the public right of way. The City shall have no responsibility or obligation for the maintenance, repair, or proper operation of a private stormwater conveyance system.

B. If the director determines that a private stormwater conveyance system is not operating properly and causes the improper discharge of stormwater to the street, sidewalk or municipal storm sewer system, the director may declare this condition to constitute a public nuisance and proceed to abate that nuisance.

#### **SECTION 6-408: DISCHARGE OF SANITARY SEWAGE PROHIBITED**

No person shall cause discharge of sanitary sewage to the municipal separate storm

sewer system. In addition, if the director determines that a building drain or building sewer is not operating properly and causes the discharge of sewage to the street, sidewalk, or municipal separate storm sewer system, the director may declare this condition to constitute a public nuisance and proceed to abate that nuisance.

#### **SECTION 6-409: DAMAGE TO THE MUNICIPAL STORM SEWER SYSTEM**

It is unlawful for any person to maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the municipal storm sewer system.

#### **SECTION 6-410: WASTE DISPOSAL PROHIBITIONS**

No person shall throw, deposit, place, leave, maintain, litter, keep, or permit to be thrown, deposited, left, maintained or kept any pollutant, refuse, rubbish, food waste, yard waste, garbage, or any other discarded or abandoned objects in or upon any public or private property, driveway, parking area, street, alley, sidewalk, or other location that may result in an illicit discharge to the municipal storm sewer system. Wastes placed in containers protected from urban runoff such as bags, cans, or recycling bins, and City approved wastes from construction on public right-of-way are exempted from this prohibition.

#### **SECTION 6-411: PROHIBITED DISCHARGES FROM INDUSTRIAL/ COMMERCIAL ACTIVITIES**

The following list of discharges from industrial/commercial activities shall be considered prohibited unless permitted under a separate NPDES permit or approved by the City Public Works Department. This list is based on Section 6-404 (Illicit Discharges Prohibited), but is not an exhaustive list of prohibited discharges to the municipal storm sewer system.

A. Water from the cleaning of vehicle fueling stations, vehicle service garages, or other types of vehicle service facilities.

B. Water, cleansers, or solvents from the cleaning of vehicles, machinery or equipment, and other such commercial and industrial operations.

C. Water from the washing or rinsing of vehicles containing soap, detergents, solvents, or other cleaners.

D. Water from the cleaning or rinsing of vehicle engine, undercarriage, or auto parts cleaning.

E. Vehicle fluids.

F. Mat wash water from food service facilities.

G. Food and kitchen cleaning water from food service facilities.

H. Leakage from dumpsters or trash containers.

I. Water from the cleaning or rinsing of garbage dumpster areas and areas where garbage is stored or contained.

J. Water from pressure washing, steam cleaning, and hand scrubbing of sidewalks, gutters, plazas, alleyways, outdoor eating areas, steps, building exteriors, walls, driveways, and other outdoor surfaces.

K. Wastewater or cleaning fluids from carpet cleaning.

L. Swimming pool and spa water.

M. Washout from concrete trucks.

N. Runoff from areas where hazardous substances, including diesel fuel, gasoline and motor oil are stored.

O. Super-chlorinated (greater than 4 mg/l chlorine) water normally associated with the disinfection of potable water systems.

#### **SECTION 6-412: NOTIFICATION OF PROHIBITED DISCHARGES REQUIRED**

A. In the event of discovery of a discharge to the municipal storm sewer system that is prohibited by this code, the discharger or permittee shall immediately notify the director of the incident by telephone, facsimile or e-mail. The notification shall include the discharge location, type of materials discharged, estimated concentration and volume of the discharge, and corrective actions taken to contain or minimize the effects of the discharge.

B. In addition, a written report, facsimile or e-mail, addressed to the director detailing the date, time and cause of the discharge, the quantity and characteristics of the discharge, corrective actions taken to contain or minimize the effects of the discharge, and corrective actions taken to prevent future discharges shall be filed by the responsible person within five days of the occurrence of the non-complying discharge.

#### **SECTION 6-413: GRADING PERMIT REQUIRED**

It shall be unlawful for any person to engage in or cause any grading, clearing, or excavation activities that result in the disturbance of any land areas sufficiently large to require a general NPDES construction site stormwater permit, without the property owner, tenant, or easement holder, or their agent, first obtaining a grading permit from the official designated by the City Council. This section shall not apply to grading performed solely for agricultural purposes.

#### **SECTION 6-414: APPLICATION FOR GRADING PERMIT**

A. Any property owner, tenant, or easement holder, or his/her agent, desiring a grading permit shall make an application to the permits and inspections division on the forms provided by the division.

B. Any property owner, tenant, or easement holder, or his/her agent, desiring a grading permit shall also submit to the official designated by the City Council a com-

pleted NDEQ notice of intent/permit application for coverage under general NPDES construction site stormwater permit. Such permit application shall be made on forms provided by the NDEQ and distributed by the said official. The City shall review all such completed applications and then forward the documents to the NDEQ for approval or denial.

#### **SECTION 6-415: GRADING PERMIT FEE**

Before any grading permit application will be accepted by the official designated by the City Council, the applicant shall pay to the City a fee set by ordinance of the Council and filed in the office of the city clerk for inspection during office hours.

#### **SECTION 6-416: ISSUANCE OF GRADING PERMIT**

If, after examination of the application for a grading permit, the official designated by the City Council has determined that the proposed plan will meet the requirements of this article, and if the NDEQ approved the NPDES application for the project or fails to review and approve or deny the application within seven days, then the said official shall issue the grading permit.

#### **SECTION 6-417: EROSION AND SEDIMENT CONTROL AT CONSTRUCTION AND DEVELOPMENT SITES**

Provisions for erosion and sediment control at construction and development sites are set forth in the *Omaha Regional Stormwater Design Manual*. The provisions thereof shall be controlling of all subjects contained therein within the corporate limits and within the jurisdictional area outside the city limits. In the event of any conflict between the provisions of the *Omaha Regional Stormwater Design Manual*, or any other ordinance, and the provisions of an NPDES permit issued by the State of Nebraska, the provision that imposes the higher or most specific practice shall prevail.

#### **SECTION 6-418: REQUIREMENT FOR ALL NEW DEVELOPMENT AND REDEVELOPMENT PROJECTS**

Land development and significant redevelopment projects with the potential to add pollutants to stormwater or to affect the flow rate or velocity of stormwater runoff after construction is completed must include provisions for the management of the increased post construction runoff in a Post-Construction Stormwater Management Plan.

#### **SECTION 6-419: POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN**

A. The Post-Construction Stormwater Management Plan shall be submitted to the municipal utilities superintendent on a form or format specified by the superintendent at the same time the application for a City of Gretna grading permit is submitted.

B. The Post-Construction Stormwater Management Plan, at a minimum, shall include the BMP or BMPs selected, the BMP design, schedules and procedures for inspection and maintenance of the BMPs.

C. The Post-Construction Stormwater Management Plan, at a minimum, shall include Low Impact Development (LID) BMPs to provide for water quality control of the

first one-half inch of runoff from the site and shall maintain the peak discharge rates during the two-year storm event to baseline land use restriction, measured at every drainage outlet (stormwater discharge) from the new development or significant re-development. The utilities superintendent may also require this minimum control level for replats that significantly increase the amount of impervious area in a preliminarily platted subdivision.

(Am. by Ord. No. 966, 2/2/10)

#### **SECTION 6-420: EXEMPTIONS FROM THE POST-CONSTRUCTION STORM-WATER MANAGEMENT PLAN**

Systems designed to accommodate only one single family dwelling unit, duplex, triplex, or quadraplex, provided the single unit is not part of a larger common plan of development or sale, are exempt from the requirements in these regulations to submit a Post-Construction Stormwater Management Plan.

#### **SECTION 6-421: MAINTENANCE OF POST-CONSTRUCTION BMPS**

A. The owners and occupants of lands on which structural post-construction BMPs have been installed to meet the requirements of these regulations shall ensure the maintenance of these BMPs and shall themselves maintain those BMPs if other persons or entities who are also obligated to maintain those BMPs (by contract or covenant, or pursuant to these regulations) fail to do so. Structural BMPs shall be inspected at least annually, and a written record of inspection results and any maintenance work shall be maintained and available for review by the City.

B. The responsibility to maintain a BMP may be transferred through a contract or other agreement. The person or entity accepting a maintenance obligation in such a contract or agreement will also be legally obliged to maintain that BMP pursuant to these regulations. However, no contract or other agreement imposing an obligation to maintain a BMP can relieve a person or entity of any obligation to maintain a BMP imposed by these regulations.

C. The maintenance agreement shall require the applicant or owner to execute an inspection and maintenance agreement, to be filed of record, binding on all subsequent owners of land served by a private stormwater management facility. Such agreement shall provide for access to the facility, at reasonable times, for inspections by the City or its authorized representative to ensure that the facility is maintained in proper working condition to meet design standards.

D. The applicant and/or owner shall record the maintenance agreement with the register of deeds.

E. The maintenance agreement shall also provide that if after notice by the City to correct a violation requiring maintenance work, satisfactory corrections are not made by the owner(s) or occupant within a reasonable period of time (30 days maximum), the City may perform all necessary work to place the facility in proper working condition. The owner(s) or occupant of the facility shall be assessed the cost of the work and any lawful penalties.

## **SECTION 6-422: ADMISSION TO PROPERTY**

Whenever it shall be necessary for the purposes of these rules and regulations, the official designated by the City Council, upon the presentation of credentials, may enter upon any property or premises at reasonable times for the purpose of copying any records required to be kept under the provisions of this article, inspecting any BMPs, and sampling any discharge to the municipal storm sewer system. The said official may enter upon the property at any hour under emergency circumstances. The authority to so inspect, sample and copy records shall be limited to only those things, and only to the extent, that it has a direct bearing on the land and source of discharges into the municipal storm sewer system.

## **SECTION 6-423: REGULATORY ACTIONS**

If substances in violation of Section 6-404 of this code are discharged or proposed to be discharged into the municipal storm sewer system of the City or any tributary thereto, the City may take action necessary to:

- A. Prohibit the discharge of such effluent.
- B. Require a discharger to demonstrate that modifications to such discharger's facilities will reduce or eliminate the discharge of such substances in conformity with this article.
- C. Require pretreatment, including storage, detention or retention facilities necessary to reduce or eliminate the objectionable characteristics or substances so that the discharge will not violate these prohibitions and limitations.
- D. Require the person making, causing, or allowing the discharge to pay an additional cost or expense incurred by the City for taking remedial actions as may be deemed to be desirable or necessary to achieve the purpose of this chapter.
- E. Require any combination or all of the above.

## **SECTION 6-424: NOTICE OF VIOLATION; CORRECTION OF VIOLATION**

Whenever the director finds that any person has violated or is violating this article or any prohibition, limitation or requirement contained herein, such person shall be notified in writing.

## **SECTION 6-425: PENALTY; RECOVERY OF DAMAGES**

Any person who is found to have violated an order provided for in this article, or who willfully or negligently failed to comply with any provisions of this article and the rules and regulations issued hereunder, shall be deemed guilty of a misdemeanor and shall be fined as provided for at the end of this chapter. Each day any such violation or failure to perform such act shall continue, shall constitute a separate offense, unless otherwise specifically provided. Except as prohibited by the state or federal Constitutions, a prosecution under this ordinance shall not be the exclusive penalty for such acts or omissions.

## **SECTION 6-426: ADDITIONAL RULES AND REGULATIONS**

The director may make rules and regulations, which expand upon or add to the provisions of this article but are not inconsistent with them. Prior to taking effect, such rules and regulations, or any amendments thereto, shall be approved by resolution of the City Council. A copy of such rules and regulations, with any current amendments, shall be on file with the city clerk.

## **SECTION 6-427: APPEALS**

Any person aggrieved by the issuance, denial, suspension, cancellation, modification, or revocation of any permit provided for in this article or by any other order of the official designated by the City Council may, within ten days of the receipt of written notice of the entry of such order, appeal to the Board of Adjustment by complying with the provisions of Section 2-304 (Appeals) herein.

## **SECTION 6-428: CONFLICTS WITH OTHER CODE SECTIONS**

The provisions of this chapter shall control over any inconsistent or conflicting provision of this code.

## **SECTION 6-429: SEVERABILITY**

If any portion of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of this chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

## **Article 5 – Penal Provision**

### **SECTION 6-501: VIOLATION; PENALTY**

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