

CHAPTER 92: PUBLIC WAYS AND PROPERTY

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CITY PROPERTY

§ 92.001 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

OVERSEER OF STREETS. The city official with general charge, direction, and control of streets and sidewalks. If one official is responsible for streets and another official is responsible for sidewalks, **OVERSEER OF STREETS** shall mean whichever one is appropriate in the context the term is used.

SIDEWALK SPACE. The portion of a street between curb lines and adjacent property lines.

§ 92.002 STREETS, ALLEYS, WALKS, MALLS, AND OTHER IMPROVEMENTS.

(A) The City Council may grade, partially or to an established grade, change grade, curb, recurb, gutter, regutter, pave, gravel, regravell, macadamize, remacadamize, widen, or narrow streets or roadways, resurface or re-lay existing pavement, or otherwise improve any streets, alleys, public

grounds, or public ways, entirely or partially, and streets which divide the city corporate area and the area adjoining the city; construct or reconstruct pedestrian walks, plazas, malls, landscaping, outdoor sprinkler systems, fountains, decorative water ponds, lighting systems, and permanent facilities; and construct sidewalks and improve the sidewalk space. These projects may be funded at public cost or by the levy of special assessments on the property especially benefitted in proportion to such benefits, except as provided in Neb. RS 19-2428 through 19-2431.

(B) The City Council may by ordinance create improvement districts, to be consecutively numbered, which may include two or more connecting or intersecting streets, alleys, or public ways, and may include two or more types of the improvements authorized under this section in a single district in one proceeding.

(C) All of the improvements which are to be funded by a levy of special assessment on the property especially benefitted shall be ordered as provided in Neb. RS 17-510 through 17-512, except as otherwise provided in Neb. RS 17-509.

(Neb. RS 17-509)

Statutory reference:

Other provisions on improvements, assessments, and bonds, see Neb. RS 17-513 through 17-524, 18-1751, 19-2401, and 19-2408 through 19-2415

§ 92.003 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. RS 17-567)

§ 92.004 REGULATION OF OBSTRUCTIONS.

(A) The city may remove all obstructions from the sidewalks, curbstones, gutters, and crosswalks at the expense of the person placing them there or at the expense of the city and require and regulate the planting and protection of shade trees in and along the streets and the trimming and removing of such trees.

(B) The city may regulate the building of bulkheads, cellar and basement ways, stairways, railways, windows, doorways, awnings, hitching posts and rails, lampposts, awning posts, all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks in the city.

(Neb. RS 17-555)

§ 92.005 REGULATION OF SNOW, ICE, AND OTHER ENCROACHMENTS.

(A) The city shall have the power to prevent and remove all encroachments, including snow, ice, mud or other obstructions, into and upon all sidewalks, streets, avenues, alleys, and other city property. (Neb. RS 17-557)

(B) If the abutting property owner refuses or neglects, after five days' notice by publication or, in place thereof, personal service of such notice, to remove all encroachments from sidewalks as provided in division (A) above, the city, through the proper officers, may cause such encroachments to be removed, and the cost of removal shall be paid out of the Street Fund. The City Council shall assess the cost of the notice and removal of the encroachment against the abutting property as a special assessment. The special assessment shall be known as a special sidewalk assessment and, together with the cost of notice, shall be levied and collected as a special assessment in addition to the general revenue taxes and shall be subject to the same penalties as other special assessments and shall draw interest from the date of the assessment. Upon payment of the assessment, the assessment shall be credited to the Street Fund. (Neb. RS 17-557.01)

§ 92.006 PERMITTED USE OF PUBLIC STREET SPACE.

Any person engaged in the erection, construction, reconstruction, wrecking, or repairing of any building, or the construction or repair of a sidewalk along any street, may occupy the public street space with the building material and equipment as long as is necessary if such person makes application to and receives a permit to do so in writing from the Overseer of Streets. No permit shall authorize the occupancy of more than one-third of the roadway of the public space adjacent to the real estate on which the building or sidewalk is to be erected, constructed, reconstructed, wrecked, or repaired. A suitable passageway for pedestrians shall be maintained within the public space included in the permit, which passageway shall be protected and lighted in the manner required by the Overseer of Streets. Penalty, see § 10.99

§ 92.007 POLES, WIRES, AND PIPE LINES.

(A) Poles, wires, conduits, 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 such appurtenances shall be made to the City Council in writing. Approval by the Council shall be issued in writing. Any public service company granted a right-of-way for the erection and maintenance of poles, wires, conduits, gas mains, pipelines, or other appurtenances shall at all times erect and locate their appurtenances at such places and in such manner as shall be designated by the Council.

(B) (1) All poles, wires, conduits, gas mains, pipelines, and other appurtenances shall be removed or relocated by the companies at their own expense when requested to do so by the Council. Any such removal or relocation shall be ordered by resolution of the Council and the City Clerk shall notify any and all companies affected.

(2) The companies shall, within 24 hours after receiving notice, at their own expense cause the poles, wires, conduits, gas mains, pipelines, or other appurtenances to be removed or relocated. The Council shall designate another location as closely as possible where the appurtenances may be reset or placed.

(C) All poles, wires, conduits, 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; the sewerage system; any poles, wires, conduits, mains, lines, or other appurtenances of any public utility; any adjacent buildings; or travel on the public ways and property. Whenever possible, all poles, wires, conduits, gas mains, pipelines, and appurtenances shall be confined to the alleys of the city.

§ 92.008 DANGEROUS STAIRWAYS AND ENTRANCES.

It shall be unlawful for any person to construct or maintain any stairway, open cellarway, open basement way, or open entrance thereto in or adjacent to any sidewalk, pavement, or street, and any such entrance is hereby declared to be a public nuisance, except that all existing stairways, open cellarways, open basement ways, or open entrances thereto in or adjacent to sidewalks, pavements, or streets may be permitted to remain from and after the adoption of this prohibition if the person owning or using the opening in the sidewalk, pavement, or street satisfies the Overseer of Streets that the opening is properly protected by a balustrade, or coping of durable material, and furnishes the city with a bond in the amount set by the City Council for the benefit of any person who might suffer an injury or damage by reason of the use of the stairway, cellarway, basement way, or entrance.

Penalty, see § 10.99

§ 92.009 EXCAVATIONS AND EXPOSURES; BARRICADES AND LIGHTS.

(A) Any owner or occupant engaged in the construction or demolition of any building or improvement upon or near the public ways and property shall protect all excavations or exposures of any kind by suitable barricades or guards by day and by warning lights at night.

(B) The failure, neglect, or refusal of the owner or occupant to erect and maintain such protections shall constitute a violation of this section, and the city may stop all work upon the buildings and improvements until suitable protections are erected and maintained in the required manner.

Penalty, see § 10.99

§ 92.010 GUTTERING AND EAVE SPOUTS.

It shall be unlawful for any person to erect or maintain any dwelling house or business building within the limits of the city where the dwelling or building abuts on any sidewalk or street without providing proper guttering and eave spouts to receive the wastewaters that collect on the 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 the eave spouts into the alley.

Penalty, see § 10.99

§ 92.011 PROHIBITED OBSTRUCTIONS.

(A) It shall be unlawful for any person to obstruct or encumber by fences, gates, buildings, structures, or otherwise any of the streets, alleys, or sidewalks.

(B) The public ways and property shall be considered to be obstructed when the owner or occupant of the adjacent property permits or suffers to remain on any premises owned or controlled by him or her any hedge, shrubbery, bush, or similar growth within two feet adjacent to the lot line, whether there is a sidewalk abutting or adjoining the premises or not. It shall be the duty of owners and occupants to at all times keep trimmed and pruned all such similar growth.

(C) Trees and shrubs growing upon the lot line partially on public ground and partially upon the abutting property, or wholly upon the abutting property, and interfering with the use, making, or construction of any public improvement, or so that the roots thereof interfere with any utility wire or pipe, shall be deemed an obstruction. Such trees and shrubs and their roots may be removed by the city at the expense of the owner of the property upon which the trees or shrubs are partially or wholly located if the owner fails or neglects, after notice, to do so.

(D) When any obstruction that is described in this section is determined to exist, the city may proceed against the owner or the occupant of the property adjacent to the sidewalk space as provided in § 91.16.

Penalty, see § 10.99

§ 92.012 TREES IN SIDEWALK SPACE.

(A) No person shall plant any tree or allow any tree to grow within the sidewalk space without first making a written or verbal application to and receiving a written permit from the Overseer of Streets upon payment of the fee, if any, established by the City Council.

(B) Any tree planted within the sidewalk space after the adoption of this prohibition shall be deemed to be unlawfully planted and growing and may be determined to be a nuisance. Nothing in this section shall be construed to apply to any trees growing within the sidewalk space prior to the adoption of this prohibition.

(C) When any such tree is determined to be a nuisance, the city may proceed against the owner or occupant of the property adjacent to the sidewalk space as provided in § 91.16.
Penalty, see § 10.99

§ 92.013 OVERHANGING BRANCHES.

The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any street or sidewalk over which there extend the branches of trees shall at all times keep the branches or limbs thereof trimmed to the height of at least eight feet above the surface of the walk and at least 14 feet above the surface of the street or to the heights otherwise specified by the City Council. Whenever the branches or limbs of any tree extend over streets or sidewalks contrary to such provisions so as to interfere with the lighting of the street from street lights or with the convenience of the public using the street or sidewalk, the city may proceed against the owner or occupant of the property abutting or adjacent to the street or sidewalk as provided in § 91.16.

Penalty, see § 10.99

§ 92.014 SIGNS AND CANOPIES.

(A) No person shall erect or maintain any sign, signboard, poster, or rigid canopy over any street, sidewalk, or alley or on other public property without having first obtained a permit therefor. Permits for signs, signboards, posters, and canopies shall be issued by the City Clerk, subject to the approval of the Overseer of Streets, upon the payment of the fee, if any, established by the City Council.

(B) All signs, signboards, posters, 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 them being dislodged by ordinary winds or falling from other causes.

(C) No sign, signboard, poster, 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.

(D) Upon a determination that a sign, signboard, poster, or canopy is in violation of this section, the city may proceed against the owner or occupant of the premises where such sign, signboard, poster, or canopy is located as provided in § 91.16.

Penalty, see § 10.99

§ 92.015 CUTTING INTO PAVING, CURB, OR SIDEWALK.

(A) It shall be unlawful for any person to cut into any paving, curb, or sidewalk for the purpose of constructing a driveway or any other purpose whatsoever without first having obtained a written permit from the City Council. Before any person obtains a permit, he or she shall inform the City Clerk of the place where such cutting is to be done, and it shall be the duty of the Overseer of Streets to inspect the proposed place of entry into the paving, sidewalk, or curb.

(B) When cutting into any paving, curb, or sidewalk, it shall be the duty of the party to comply with such rules and regulations as may be prescribed by the Council or the City Engineer. When the applicant is ready to close the opening made, he or she shall inform the Overseer of Streets, who shall supervise and inspect the materials used and the work done in closing the opening.

(C) It shall be discretionary with the Council to order the Overseer of Streets, under the supervision and inspection of the City Engineer or the committee of the Council on the streets and alleys, to do the cutting and closing of the paving, curb, or sidewalk and charge the costs thereof to the party who obtained the permit. The Council may consent to the cutting and closing of the paving, curb, or sidewalk by the party holding the permit.

(D) Before any permit is issued by the Council, the applicant for the permit shall deposit with the City Treasurer a sum set by resolution of the Council for all paving, curb, or sidewalk to be cut. Such sum shall be set on a per-square-foot cost of construction basis. The deposit shall be retained by the city for the purpose of replacing the paving, curb, or sidewalk in the event the work is done by the city. If the Council 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 Overseer of Streets or of the committee of the Council on streets and alleys.

(E) In addition to making the deposit, the applicant shall, before any permit is issued, execute a bond to the city with a good and sufficient surety, to be approved by the Council, in a sum set by resolution.

§ 92.016 HEAVY EQUIPMENT.

(A) It shall be unlawful for any person to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing on any unpaved street without first having protected such 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.

(B) Except as provided in § 71.05, 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 with sharp wheels that

bear upon the pavement; with wheels that have cutting edges; with wheels that have 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, except that where heavy vehicles, structures, and machines move along paved or unpaved streets, the city police are hereby authorized and empowered to choose the route over which the moving of such vehicles, structures, or machines will be permitted and allowed.

SALE AND ACQUISITION OF PROPERTY; PUBLIC WORKS

§ 92.030 SALE AND CONVEYANCE; REAL PROPERTY.

(A) Except as provided in division (G) below, 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 that property and the manner and terms of such sales, except that the property shall not be sold at public auction or by sealed bid when:

- (1) The property is being sold in compliance with the requirements of federal or state grants or programs;
- (2) The property is being conveyed to another public agency; or
- (3) The 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 division (A) above and the terms of such sales shall be published once each week for three consecutive weeks in a legal newspaper published in or of general circulation in the city.

(D) (1) If, within 30 days after the third publication of the notice, a remonstrance petition against the sale conforms to Neb. RS 32-628, 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, that property shall not then, nor within one year thereafter, be sold. If the date for filing the petition 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.

(2) Upon receipt of the remonstrance, the City Council, with the aid and assistance of the Election Commissioner or the County Clerk, shall determine the validity and sufficiency of signatures on the petition. The City Council shall deliver the petition to the Election Commissioner or the County Clerk by hand carrier, by the use of law enforcement officials, or by certified mail, return receipt requested.

(3) Upon receipt of the petition, the Election Commissioner or County Clerk shall issue to the City Council a written receipt that the petition is in the custody of the Election Commissioner or County Clerk. The Election Commissioner or County Clerk shall compare the signature of each person signing the petition with the voter registration records to determine if each signer was a registered voter on or before the date on which the petition 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 match the registration records and that the registration was received on or before the date on which the petition 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. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the petition, the sufficiency of the petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process.

(4) 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, and 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.

(5) The Election Commissioner or County Clerk shall certify to the City Council the number of valid signatures necessary to constitute a valid remonstrance. 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.

(6) The City Council shall, within 30 days after the receipt of the remonstrance and certifications from the Election Commissioner or County Clerk, hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. The City Council shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

(E) Real estate now owned or hereafter owned by the city may be conveyed without consideration to the state for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of Neb. RS 18-1001 through 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. The 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) Divisions (A) through (F) above 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. RS 17-503.01)

§ 92.031 SALE AND CONVEYANCE; PERSONAL PROPERTY.

(A) 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 of the sale. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the city for a period of not less than seven days prior to the sale of the property. If the fair market value of the property is greater than \$5,000, notice of the sale shall also be published once in a legal newspaper 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.

(B) Personal property may be conveyed notwithstanding the procedure in division (A) above when:

(1) Such property is being sold in compliance with the requirements of federal or state grants or programs; or

(2) Such property is being conveyed to another public agency.
(Neb. RS 17-503.02)

§ 92.032 ACQUISITION OR CONSTRUCTION OF PUBLIC BUILDINGS; ELECTION REQUIREMENTS.

(A) The city is authorized and empowered to purchase, accept by gift or devise, purchase real estate upon which to erect, and erect a building or buildings for an auditorium, fire station, city building, or community house for housing city enterprises and social and recreation purposes, and other public buildings, including the construction of buildings authorized to be constructed by Neb. RS Chapter 72, Article 14, and including the construction of buildings to be leased in whole or in part by the city to any other political or governmental subdivision of the state authorized by law to lease such buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of the city.

(B) Except as provided in division (C) below, before any such purchase can be made or building erected, the question shall be submitted to the electors of the city at a general city election or at an election duly called for that purpose, or as set forth in division (D) below, and be adopted by a majority of the electors voting on such question.

(Neb. RS 17-953)

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

(1) Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the city and no election shall be required to approve the purchase or construction unless, within 30 days after the publication of the notice, a remonstrance petition against the purchase or construction is signed by registered voters of the city equal in number to 15% of the registered voters of the city voting at the last regular city election held therein and is filed with the City Council. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the 30-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. If a petition with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the city at a general city election or a special election duly called for that purpose. If the purchase or construction is not approved, the property involved shall not then, nor within one year following the election, be purchased or constructed; or

(2) The City Council may proceed without providing the notice and right of remonstrance required in division (C)(1) above if the property can be purchased below the fair market value as determined by an appraisal, there is a willing seller, and the purchase price is less than \$25,000. The purchase shall be approved by the City Council after notice and public hearing as provided in § 92.034. (Neb. RS 17-953.01)

(D) (1) The Mayor and City Council adopting the proposition to make such purchase or erect such building or buildings for the purposes set forth in division (A) above shall have the power to borrow money and pledge the property and credit of the city upon its negotiable bonds. No such bonds shall be

issued until after the same have been authorized by a majority vote of the electors voting on the proposition of their issuance, at a general city election or at a special election called for the submission of such proposition. The question of such purchase or erection of such a building or buildings, as set forth in division (A) above, and the question of the issuance of the negotiable bonds referred to in this division (D) may be submitted as one question at a general city or special election if so ordered by resolution or ordinance.

(2) Notice of the time and place of the election shall be given by publication in some legal newspaper printed in or of general circulation in the city three successive weeks immediately prior thereto.

(3) No such election for the issuance of such bonds shall be called until a petition therefor signed by at least 10% of the legal voters of the city has been presented to the City Council. The number of voters voting at the last regular city election prior to the presenting of the petition shall be deemed the number of votes in the city for the purpose of determining the sufficiency of the petition.

(4) The question of bond issues for such purpose in the city, when defeated, shall not be resubmitted for six months from and after the date of such election.

(5) When the building to be constructed is to be used by the state or its agency or agencies under a lease authorized by Neb. RS Chapter 72, Article 14, or the building is to be leased by any other political or governmental subdivision of the state, when the combined area of the building to be leased by the state or its agency or agencies and the political or governmental subdivision of the state is more than 50% of the area of the building, and when such sum does not exceed \$2,000,000, then no such vote of the electors will be required.

(Neb. RS 17-954)

§ 92.033 ACQUISITION OF REAL PROPERTY; APPRAISAL.

Notwithstanding any other provision of law, the city shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value of \$100,000 or more unless an appraisal of such property has been performed by a certified real property appraiser.

(Neb. RS 13-403)

§ 92.034 ACQUISITION OF REAL PROPERTY; PUBLIC MEETING; ACCESS FOR RECREATIONAL USE.

(A) The city shall acquire an interest in real property by purchase or eminent domain only after the City Council has authorized the acquisition by action taken in a public meeting after notice and public hearing.

(B) The city shall provide to the public a right of access for recreational use to real property acquired for public recreational purposes. Such access shall be at designated access points and shall be equal to the right of access for recreational use held by adjacent landowners. The right of access granted to the public for recreational use shall meet or exceed such right held by a private landowner adjacent to the real property.

(Neb. RS 18-1755)

**§ 92.035 PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING;
REQUIREMENTS.**

(A) (1) Except as otherwise provided in this section and Neb. RS 81-3449 and 81-3453, 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, or professional engineer, or those who are under the direct supervision of an architect or professional engineer.

(2) This division (A) shall not apply to any public work in which the contemplated expenditure for the complete project does not exceed \$100,000 or the adjusted dollar amount set by the Board of Engineers and Architects.

(Neb. RS 81-3445)

(B) The provisions of division (A) above regulating the practice of architecture do not apply to the following activities or the other activities specified in Neb. RS 81-3449:

(1) 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;

(2) A public service provider who employs a design professional performing professional services for itself;

(3) The practice of any other certified trade or legally recognized profession;

(4) 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; and

(5) 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. RS 81-3449)

(C) The provisions of division (A) above regulating the practice of engineering do not apply to the following activities, the activities specified in division (B) above, or the other activities specified in Neb. RS 81-3453:

(1) Those services ordinarily performed by subordinates under the 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; and

(2) The construction of water wells as defined in Neb. RS 46-1212, the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells, unless such construction, installation, or decommissioning is required by the city to be designed or supervised by an engineer or unless legal requirements are imposed upon the city as a part of a public water supply.
(Neb. RS 81-3453)

(D) For the purpose of this section, the city is considered a public service provider if it employs or appoints an architect or a professional engineer to be in responsible charge of the city's architectural or engineering work.

(Neb. RS 81-3423)

§ 92.036 SPECIAL ASSESSMENTS FOR PUBLIC WORKS OR IMPROVEMENTS; NOTICE TO NONRESIDENT PROPERTY OWNERS.

(A) Before any political subdivision or special taxing district for public works or public improvements shall be formed, and before the city or any political subdivision or special taxing district may impose any special assessment for public works or public improvements, a copy of any notice required to be published by law shall be mailed to the last known address of all nonresident property owners as shown on the current tax rolls at the time such notice is first published.

(Neb. RS 13-310)

(B) The City Clerk or any other person upon whom the duty is imposed by law to publish notice required by law in regard to the formation of a special taxing district for public works or public improvements shall mail by certified mail, with return receipt requested, a copy of the published notice in regard to the formation of any special taxing district within the city to the last known address as shown on the current tax rolls of each nonresident property owner.

(Neb. RS 13-311)

(C) The City Clerk or any other person upon whom the duty is imposed by law to publish notice required by law in regard to any special assessment by a special taxing district shall mail by certified mail, with return receipt requested, a copy of such notice to be published to the last known address as shown on the current tax rolls of each nonresident property owner.

(Neb. RS 13-312)

(D) The failure of the City Clerk or any other person upon whom the duty is imposed by law to mail a copy of a published notice as provided in this section shall invalidate the assessment against the property involved while permitting all other assessments and procedures to be lawful.

(Neb. RS 13-313)

(E) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

NONRESIDENT PROPERTY OWNER. Any person or corporation whose residence and mailing address, as shown on the current tax rolls, is outside the boundaries of the county and who is a record owner of property within the boundaries of the city, special assessment district, or taxing district involved.

(Neb. RS 13-314)

SIDEWALKS

§ 92.050 REQUIREMENT TO KEEP CLEAN.

It shall be unlawful for the occupant of any lot or lots or the owner of any vacant lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substance to accumulate on the sidewalks or to permit any snow, sleet, ice, mud, or other substance to remain upon the sidewalk. Unless the City Council has provided otherwise, all sidewalks within the business district shall be cleaned within five hours after the cessation of a storm unless the storm or fall of snow shall have taken place during the night, in which case, the sidewalk shall be cleaned before 9:00 a.m. the following day, and sidewalks within the residential areas of the city shall be cleaned within 24 hours after the cessation of the storm. Penalty, see § 10.99

§ 92.051 USE OF SPACE BENEATH.

(A) No person shall be allowed to keep or use the space beneath the sidewalk lying between lot line and curblin unless a permit has been obtained from the City Council. Before any permit is granted, the

applicant shall submit plans and specifications of any present or proposed construction to the City Engineer. If the plans or specifications are disapproved by the Engineer, no permit shall be granted.

(B) All permits hereafter granted shall continue only upon the condition that the party receiving them builds, maintains, and keeps in repair a sidewalk over the space used or constructed to be used and pays all damages that may be sustained by any person by reason of such use or by reason of the sidewalk being defective or in a dangerous condition.

(C) As a condition precedent to the issuance or continuance of any permit for the use of any space underneath the city sidewalks as contemplated in this section, the City Council may require the applicant to furnish a bond to the city as obligee for the benefit of any person who may suffer an injury or damage by reason of such use. The bond shall be in such sum as the City Council, in its discretion, may designate.

Penalty, see § 10.99

§ 92.052 CONSTRUCTION AT OWNER'S INITIATIVE.

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

(B) The 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 Overseer of Streets shall issue the desired permit unless good cause appears why the permit should be denied, except that if it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, or elevation, the Overseer of Streets shall submit the application to the City Council for determination as to whether the permit should be granted or denied. It shall be unlawful for any person to construct, or cause to be constructed, such 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 Overseer of Streets.

Penalty, see § 10.99

§ 92.053 CONSTRUCTION AND REPAIR AT CITY DIRECTION.

(A) (1) The Mayor and City Council may construct and repair sidewalks or cause the construction and repair of sidewalks in such manner as the Mayor and City Council deem necessary and assess the

expense of such construction or repairs on the property in front of which such construction or repairs are made, after having given notice:

(a) By publication in one issue of a legal newspaper of general circulation in the city; and

(b) By either causing a written notice to be served upon the occupant in possession of the property involved or to be posted upon such premises ten days prior to the commencement of such construction or repair.

(2) The powers conferred under this section are in addition to those provided in Neb. RS 17-509 through 17-521 and may be exercised without creating an improvement district.

(3) If the owner of any property abutting any street or avenue or part thereof fails to construct or repair any sidewalk in front of the owner's property within the time and in the manner as directed and requested by the Mayor and City Council after having received due notice to do so, the Mayor and City Council may cause the sidewalk to be constructed or repaired and may assess the cost of such construction or repairs against the property.

(Neb. RS 17-522)

(B) All sidewalks shall be constructed and repaired in conformity with such plans and specifications as may be approved by the City Council.

(C) Assessments made under the provisions of this section shall be made and assessed in the following manner.

(1) Such assessment shall be made by the City Council at a special meeting, by a resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements, and the amount charged against the same, which, with the vote, shall be recorded in the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in a legal newspaper in or of general circulation in the city at least four weeks before the same shall be held or, in lieu thereof, personal service may be made upon persons owning or occupying property to be assessed; and

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

(Neb. RS 17-524)

Statutory reference:

Authority to improve through sidewalk district, see Neb. RS 19-2417 through 19-2419

STREETS AND ALLEYS

§ 92.065 DEDICATION TO PUBLIC USE.

No street or alley which shall hereafter be dedicated to public use by the Proprietor of Ground in the city shall be deemed a public street or alley, or be under the use or control of the City Council, unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose.

(Neb. RS 17-567)

§ 92.066 GRADING, PAVING, AND OTHER IMPROVEMENTS.

The city has the power to provide for the grading and repair of any street, avenue, or alley and the construction of bridges, culverts, and sewers. No street, avenue, or alley shall be graded unless the grading is ordered to be done by the affirmative vote of two-thirds of the City Council.

(Neb. RS 17-508)

Cross-reference:

Other provisions on grading and paving, see § 92.002

Statutory reference:

Acquisition of additional land or easement, see Neb. RS 18-1705

Boundary street with county or another municipality, see Neb. RS 18-2005

Limited street improvement districts, see Neb. RS 19-2416

§ 92.067 IMPROVEMENTS WITHOUT PETITION OR CREATION OF DISTRICT.

(A) The city may, without petition or creating a street improvement district, grade, curb, gutter, and pave:

(1) Any portion of a street otherwise paved so as to make one continuous paved street, but the portion to be so improved shall not exceed two blocks, including intersections, or 1,325 feet, whichever is the lesser;

(2) Any unpaved street or alley which intersects a paved street for a distance of not to exceed one block on either side of that paved street; and

(3) Any side street or alley within its corporate limits connecting with a major traffic street for a distance not to exceed one block from that major traffic street.

(B) Those improvements may be performed upon any portion of a street or alley or any unpaved street or alley not previously improved to meet or exceed the minimum standards for pavement set by the city for its paved streets.

(C) In order to defray the costs and expenses of these improvements, the Mayor and City Council may levy and collect special taxes and assessments or issue paving bonds as provided in Neb. RS 18-2003.

(Neb. RS 18-2001 through 18-2004)

§ 92.068 OPENING, WIDENING, IMPROVING, OR VACATING.

(A) (1) The city shall have the 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 that manner as shall be provided by ordinance.

(2) Whenever any street, avenue, alley, or lane is vacated, the same shall revert to the owners of the abutting real estate, one-half on each side thereof, and become a part of that property unless the city reserves title in the ordinance vacating such street or alley. If title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city.

(3) When a portion of a street, avenue, alley, or lane is vacated only on one side of the center thereof, the title to the land shall vest in the owner of the abutting property and become a part of that property unless the city reserves title in the ordinance vacating a portion of such street or alley. If title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city.

(4) 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.

(5) The title to property vacated pursuant to this section shall be subject to the following:

(a) There is reserved to the city the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

(b) There is reserved to the city, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and

appurtenances, including lateral connections or branch lines, above, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times.

(Neb. RS 17-558)

(B) The city shall have the 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. RS 17-559)

§ 92.069 VACATING PUBLIC WAYS; PROCEDURE.

(A) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

SPECIAL DAMAGES. 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 the 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 that street, avenue, alley, lane, or similar public way at its next regular meeting, or if a special meeting is scheduled for the discussion, then the date, time, and place of that 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 this 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. RS 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; and
- (c) A method or procedure for ascertaining special damages to abutting property owners.

(C) The Mayor shall appoint three or five or seven disinterested residents of the city to a special commission to ascertain the amount of special damages that the abutting property owners are entitled to receive and which resulted from the City Council vacating the street, avenue, alley, lane, or similar public way. The appointees of the special commission shall be approved by the 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 the street, avenue, alley, lane, or similar public way. If no difference in value exists, the abutting property owner is entitled to no compensation.

§ 92.070 CROSSINGS.

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

§ 92.071 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 those streets shall retain those numbers as the City Council may require. It shall be the duty of the Overseer of Streets, upon the erection of any new building, to assign the proper numbers to the building and give notice to the owner and occupant of the same.

Penalty, see § 10.99

§ 92.072 DRIVEWAY APPROACHES.

(A) The Overseer of Streets 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 the owner or the agent of the owner, directing the repair or replacement of the driveway approach. If, within 30 days of mailing the notice, the property owner fails or neglects to cause the repairs or replacements to be made, the Overseer of Streets may cause the work to be done and assess the cost upon the property served by the approach.

(Neb. RS 18-1748) Penalty, see § 10.99

§ 92.073 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 Overseer of Streets authorizing those excavations. Penalty, see § 10.99

§ 92.074 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 Overseer of Streets.

Penalty, see § 10.99

§ 92.075 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.

Penalty, see § 10.99

§ 92.076 HARMFUL LIQUIDS.

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

Penalty, see § 10.99

§ 92.077 SNOW, DEBRIS, AND THE LIKE ON STREET PROHIBITED.

It shall be unlawful to place, push, or deposit snow, sleet, ice, or mud, or any debris, including leaves, grass, and branches, from private property onto the streets of the city.

Penalty, see § 10.99

Statutory reference:

Authority to regulate, see Neb. RS 17-557