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## CHAPTER 6 – PUBLIC WAYS AND PROPERTY

### Article 1 – Municipal Property

#### SECTION 6-101: DEFINITIONS

The following definition shall be applied throughout this chapter. When no definition is specified, the normal dictionary usage of the word shall apply. The term "sidewalk space," as used herein, shall mean that portion of a street between curb lines and adjacent property lines.

#### SECTION 6-102: MUNICIPAL POWERS

The City Council shall have (A) the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the City and shall cause the same to be kept open, in repair, and free from nuisances; and (B) power to prevent and remove all encroachments and other obstructions into and upon all sidewalks, streets, avenue, alleys and other city property. (Neb. Rev. Stat. §17-557, 17-567)

#### SECTION 6-103: TREES, BUSHES AND SHRUBS; PERMIT

A. No person or persons shall plant or allow to grow any tree, bush or shrub within the area which extends 15 feet from the curb, where a curb exists, and between the sidewalk and the street, where no curb exists, without first making a written or verbal application to and receiving a written permit from the City Council. Any tree, bush or shrub planted within the area which extends 15 feet from the curb, where a curb exists, and between the sidewalk and the street, where no curb exists, after the adoption date of this section shall be deemed to be unlawfully planted and growing and shall be deemed to be a nuisance.

B. When any such tree, bush or shrub is declared to be a nuisance, the City Council shall order, with proper notice, the tree, bush or shrub removed at the expense of the owner of the property adjacent to the street space upon which tree has been unlawfully planted. If the property owner fails or neglects to remove or cause to be removed the said tree, bush or shrub, the council shall order the same removed and assess the expense of such removal against the property adjacent to the area wherein the tree is planted and growing.

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 the 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, which shall be that address listed on the current tax rolls at the time such required notice was first published.

(Am. by Ord. No. 321, 2/18/82)

**SECTION 6-104: OVERHANGING BRANCHES**

A. The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any street or sidewalk over which the branches of trees extend shall at all times keep the branches or limbs thereof trimmed to a height of at least 12 feet above the surface of said street or walk. Whenever the limbs or branches of any tree or trees extend over streets or sidewalks contrary to the provisions herein so as to interfere with the lighting of the street from street lights or with the convenience of the public using said street or sidewalk, the City Council at any regular or special meeting may pass a resolution ordering the owner or occupant to cut or remove said obstructions within five days after having received a copy thereof from the utilities 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, which shall be that address listed on the current tax rolls at the time such required notice was first published. (Neb. Rev. Stat. §17-557.01)

**SECTION 6-105: CONSTRUCTION MATERIALS; PERMIT REQUIRED**

Persons engaged in the erection, construction, reconstruction, wrecking, or repairing of any building or the construction or repair of a sidewalk along any street may occupy the public street space with such building materials and equipment so long as is necessary if such persons shall make application to and receive a permit in writing from the City Council 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. 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 council.

**SECTION 6-106: BARRICADES AND LIGHTS**

It shall be the duty of the owner, tenant, or lessee causing the construction, demolition, or moving of any building or improvement within the City to have during such work all excavations, open basements, building materials, and debris protected by suitable guards or barricades by day and by warning lights at night. The failure, neglect, or refusal of said persons to erect such guards shall constitute a violation of this section and the code enforcement officer shall stop all work until guards are erected and maintained as required. (Neb. Rev. Stat. §17-505)

**SECTION 6-107: HEAVY EQUIPMENT**

A. It shall hereafter be unlawful for any person or persons to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk or crossing on any unpaved street without first having protected such structure with heavy plank sufficient in strength to warrant against the breakage or damage of the same. Hereafter, it shall be unlawful to drive, move, operate or convey over or across any paved street a vehicle, machine or implement with sharp discs or sharp wheels that bear upon said pavement; with wheels having cutting edges; with wheels having lugs, protruding parts or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent or otherwise injure or damage any pavement, gutter or curb.

B. Where heavy vehicles, structures, and machines move along paved or unpaved streets, the City Council is hereby authorized and empowered to choose the route over which the moving of such vehicles, structures or machines will be permitted and allowed.

C. It shall be permissible (1) for school buses and emergency vehicles to use metal or metal-type studs any time of the year; (2) to use farm machinery with tires having protuberances which will not damage the streets; and (3) to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to slide or skid.

(Neb. Rev. Stat. §17-557, 60-6,250, 60-680)

**SECTION 6-108: REAL PROPERTY; ACQUISITION; CONSTRUCTION, ELECTIONS; WHEN REQUIRED**

A. The City is authorized and empowered to (1) purchase, (2) accept by gift or devise, (3) purchase real estate upon which to erect, and (4) erect a building or buildings for an auditorium, fire station, city building, or community house for housing city enterprises and social and recreation purposes and other public buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of the City.

B. Except as provided below, before any such purchase can be made or building erected, the question shall be submitted to the electors of the City at a general city election or at an election duly called for that purpose, or as set forth in Neb. Rev. Stat. §17-954, and be adopted by a majority of the electors voting on such questions.

C. If the funds to be used to finance the purchase or construction of a building under this section are available other than through a bond issue, 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 such purchase or construction unless a remonstrance against such purchase or construction, signed by electors of the City equal in number to 15% of the electors of the City voting at the last regular city election held therein is filed with the City Council within 30 days of the publication of such notice. If a remonstrance with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the City at a

general city election or a special election duly called for that purpose. If such purchase or construction is not approved, the property involved shall not then nor within one year thereafter be purchased or constructed.

(Neb. Rev. Stat. §17-953) (Ord. No. 299, 9/8/81)

**SECTION 6-109: 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)

**SECTION 6-110: REAL PROPERTY; ACQUISITION; APPRAISAL**

The City shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value of \$100,000.00 or more unless an appraisal of such property has been performed by a certified real estate appraiser. (Neb. Rev. Stat. §13-403)

**SECTION 6-111: REAL PROPERTY; SALE AND CONVEYANCE**

A. Except as provided in subsection (I) 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 real property and the manner and terms thereof, except that such real property shall not be sold at public auction or by sealed bid when:

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

B. The City Council may establish a minimum price for such real 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 any proposed sale of real 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 election held therein and is filed with the City Council, such property shall not then nor within one year thereafter be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the 30-day period but the filing shall be considered timely if filed or postmarked on or before the next business day.

E. Upon receipt of the remonstrance, the City Council, with the aid and assistance of the county clerk, shall determine the validity and sufficiency of signatures thereon. The council shall deliver the remonstrance to the county clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the remonstrance, the county clerk shall issue to the City Council a written receipt that the remonstrance is in his or her custody.

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

G. The City Council shall, within 30 days after the receipt of the remonstrance and certifications from the county clerk, 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.

H. 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, such property shall be conveyed strictly in accordance with the conditions of Neb. Rev. Stat. §16-1001 to 16-1006.

I. Following passage of the resolution directing a sale or 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. Upon passage of such ordinance, the city clerk shall certify the name of the purchaser to the register of deeds of the county in which the property is located.

J. Subsections (A) to (I) of this section shall not apply to the sale of real property if the authorizing resolution directs the sale of an item or items of real property having a total fair market value of less than \$5,000.00. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the City for a period of not less than seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required.

(Neb. Rev. Stat. §17-503, 17-503.01)

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

In order to sell personal property owned by the City, the City Council shall adopt a resolution directing the sale and the manner and terms of the sale. Following pas-

sage of a resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the City for a period of not less than seven days prior to the sale of the property. If the fair market value of the property is greater than \$5,000.00, notice of the sale shall also be published once in a legal newspaper in or of general circulation in such city at least seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of the sale. When such personal property is being sold in compliance with the requirements of federal or state grants or programs or conveyed to another public agency, the notice procedure set forth above may be dispensed with. (Neb. Rev. Stat. §17-503.02)



## Article 2 – Streets

### SECTION 6-201: NAMES AND NUMBERS

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

### SECTION 6-202: WIDENING OR OPENING

The City Council shall have the power to open or widen any street, alley, or lane within the limits of the City; to create, open, and improve any new street, alley, or lane; provided, all damages sustained shall be ascertained in such manner as shall be provided by ordinance. (Neb. Rev. Stat. §17-558, 17-559, 76-704 thru 76-724)

### SECTION 6-203: EXCAVATION

It shall be unlawful for any person to make an excavation in any street for any purpose whatsoever unless a written permit is issued by the utilities superintendent authorizing such excavations. (Neb. Rev. Stat. §17-567)

### SECTION 6-204: 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 utilities superintendent.

### SECTION 6-205: 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 6-206: 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 6-207: CONSTRUCTION NOTICE

The City Council 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 6-208: UTILITY LINES, WIRES, ETC.**

A. Poles, wires, gas mains, pipe lines, and other appurtenances of public service companies shall be located or erected over, upon, or under the streets, alleys, and common grounds after a proper application shall have been made to the city clerk in writing and permission in writing shall have been given by the City Council. Public service companies heretofore or hereafter granted right-of-way for the erection and maintenance of poles, conduits, gas mains, pipe lines, and wires for the purpose of transacting their business upon, under, or over the streets, alleys, and public grounds shall at all times, when requested by the council, erect, locate, or relocate their said appurtenances to such places and in such manner as shall be designated by the council. Such appurtenances shall be removed or relocated by said companies at their own expense when requested to do so by the council.

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

#### **SECTION 6-209: CONSTRUCTION ASSESSMENT**

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 council, sitting as the Board of Equalization, shall review all such improvements in accordance with the procedure provided by law. All special assessments shall be

made by the 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. Such assessments shall be certified to the county clerk by the city clerk forthwith after the date of levy for collection by the county treasurer unless otherwise specified. After it shall become delinquent, said assessment shall draw interest at the legal interest rate per annum. 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, which shall be that address listed on the current tax rolls at the time such required notice was first published.

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

#### **SECTION 6-210: CUTTING CURB; PERMIT; DEPOSIT; BOND**

A. It shall be unlawful for any person to cut into any paving, curb, or sidewalk for the purpose of constructing a driveway or any other purpose whatsoever without first having obtained a written permit from the City Council therefor. Before any person shall obtain a permit, he shall inform the city clerk of the place where such cutting is to be done and it shall be the chief street official's duty to inspect the place of entry into the paving, sidewalk, or curb, before the same is cut.

B. Before any permit is issued, the applicant for such permit shall deposit with the city treasurer a sum set by resolution for all paving, curb, or sidewalk to be cut. Such sum shall be set on a per-square-foot cost of construction basis. The deposit shall be retained by the City for the purpose of replacing the paving, curb, or sidewalk, in the event the work is done by the City. In the event the City elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the City until the work is completed to the satisfaction of the utilities superintendent or of the committee of the City Council on streets and alleys. In addition to making the deposit above set forth, the applicant shall, before any permit is issued, execute a bond to the City with a good and sufficient surety or sureties to be approved by the council in a sum set by resolution.

C. It shall be the duty of the applicant to cut the paving under such rules and regulations as may be prescribed by the City Council or the city engineer. When the applicant is ready to close the opening made, he shall inform the chief street official, who shall supervise and inspect the materials used and the work done in closing the

opening. It shall be discretionary with the council to order the chief street official, under the supervision and inspection of the city engineer or the committee of the City Council on the streets and alleys, to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit. The council may consent to the work of cutting and closing the paving to be done by the party holding such permit.

(Neb. Rev. Stat. §17-567)

#### **SECTION 6-211: VACATING STREETS OR ALLEYS; DEFINITIONS; ASCERTAINING DAMAGES**

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/her property and which result from the City Council's vacation of 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 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 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 council and waive their right of access. The signing of such form shall have no effect on claims for special damages by the abutting property owners but shall create the presumption that the council's action was proper. If the abutting property owners do not sign the consent/waiver form, the City Council may still proceed with vacating the street, avenue, alley, lane, or similar public way under the authority granted by Neb. Rev. Stat. §17-558 and 17-559.
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 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's vacation of the street, avenue, alley, lane, or similar public way. The appointees of the special commission shall be approved by the 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.*

E. The clerk shall file a copy of the ordinance with the county register of deeds to ensure that abutting property owners can gain title to their share of the vacated street, avenue, alley, lane, or similar public way, and so that such land will be drawn to the attention of the county assessor.

(Neb. Rev. Stat §17-558, 17-559)

#### **SECTION 6-212: 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 3 – Sidewalks

### SECTION 6-301: DUTY TO KEEP CLEAN

It shall be unlawful for the occupant of any lot or lots or the owner of any vacant lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substance to accumulate on the sidewalks or to permit any snow, sleet, ice, mud, or other substance to remain upon said sidewalk. All sidewalks within the business district shall be cleaned within two 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 10:00 A.M. the following day. (Neb. Rev. Stat. §17-557)

### SECTION 6-302: WEEDS

A. It is hereby the duty of the utilities superintendent or his duly authorized agent to view and inspect the sidewalk space within the corporate limits for growing weeds during the growing season and if rank and noxious weeds are found growing thereon, he 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 12 inches shall be considered a violation of this section.

B. In the event that the owner of any lot or parcel of land within the City is a nonresident 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 there can be found no one within the City to whom notice can be given, it shall be the duty of the utilities superintendent or his agent to post a copy of the notice on the premises and then to cut or cause the weeds thereon to be cut as therein provided and report the cost in writing to the City Council. The cost shall then be audited and paid by the City and the amount shall be assessed against the lot or parcel of land as a special tax thereon, collected as are other taxes of the City, or it 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 nonresident property owner, which shall be that address listed on the current tax rolls at the time such required notice was first published.

### SECTION 6-303: REPAIR

The City Council 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 said owners to make arrangements to have the sidewalk repaired within 48 hours from issuance of notice. Said repairs shall be completed within 30 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. In the event that such owner fails to make repairs, 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, which shall be that address listed on the current tax rolls at the time such required notice was first published.

#### **SECTION 6-304: CONSTRUCTION BY OWNER; PERMIT**

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

B. Said owner shall make application in writing for a permit and file such application in the office of the city clerk. The permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed. The utilities 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 superintendent shall submit the application to the City Council, which shall determine whether the permit should be granted or denied. It shall be unlawful for any person to construct or cause to be constructed said sidewalk at any other location, grade, or elevation than so designated by the City.

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

A. The City Council may, by resolution, order the construction of a sidewalk on any lot or piece of ground within the City. Notice of the council's intention to construct said sidewalk shall be given by the city clerk by publication of notice one time in a legal newspaper of general circulation in the City.

B. A copy of said notice shall be personally served upon the occupant in possession of such property or, when personal service is not possible, said notice shall be posted upon such premises ten days prior to the commencement of construction. The notice 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 to construct or cause to be constructed a sidewalk within 30 days after the date of publication and further, that if he fails to construct the sidewalk or cause the same to be done within the time allowed, the City will cause the sidewalk to be constructed and the cost thereof shall be levied and assessed as a special



tax against the premises; provided, the notice shall contain the official estimate of the cost of said construction and no special assessment in excess of this estimate shall be assessed against the property.

D. In the event the property owner is a 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, which shall be that address listed on the current tax rolls at the time such required notice was first published.

(Neb. Rev. Stat. §17-522, 17-523)

### **SECTION 6-306: 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, which 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 by the city clerk entitling him 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. All such 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.

(Neb. Rev. Stat. §17-522)

## Article 4 – Parks and Swimming Pool

### SECTION 6-401: PARKS; OPERATION AND FUNDING

The City owns and operates the city parks and other recreational areas through the City Council. The council, for the purpose of defraying the cost of the care, management, and maintenance of the city parks, may each year levy a tax not exceeding the maximum limit prescribed by state law on the actual valuation of all real estate and personal property within the corporate limits that is subject to taxation. The revenue from the said tax shall be known as the Park Fund and shall remain in the custody of the city treasurer. The City Council shall have the authority to adopt rules and regulations for the efficient management of the city parks and other recreational areas of the City. (Neb. Rev. Stat. §17-948 thru 17-952)

### SECTION 6-402: PARKS; INJURY TO PROPERTY; LITTERING PROHIBITED

It shall be unlawful for any person to maliciously or willfully cut down, injure, or destroy any tree, plant, or shrub. It shall be unlawful for any person to injure or destroy any sodded or planted area or injure or destroy any building, structure, equipment, fence, bench, table, or any other property of the city parks and recreational areas. No person shall commit any waste on or litter the city parks or other public grounds.

### SECTION 6-403: SWIMMING POOL; OPERATION AND FUNDING

The City owns and manages the city swimming pool. The City Council, for the purpose of defraying the cost of the management, maintenance, and improvements of the swimming pool, may each year levy a tax not exceeding the maximum limit prescribed by state law on the actual valuation of all real estate and personal property within the City that is subject to taxation. The revenue from the said tax shall be known as the Swimming Pool Fund and shall include all gifts, grants, deeds of conveyance, bequests, or other valuable income-producing personal property and real estate from any source for the purpose of endowing the swimming pool. The Swimming Pool Fund shall at all times be in the custody of the city treasurer. The City Council shall manage the swimming pool and shall have the power and authority to hire and supervise the swimming pool manager and such employees as may be deemed necessary. The council shall pass such rules and regulations for the operation of the swimming pool as may be proper for its efficient operation. (Neb. Rev. Stat. §17-948, 17-951, 17-952)

### SECTION 6-404: SWIMMING POOL; ADMISSION CHARGE

The City Council may make a reasonable admission charge for the use by any person of the city swimming pool for the purpose of defraying the expenses involved in maintaining, improving, managing, and beautifying the pool. The said charges shall be on file at the office of the city clerk for public inspection and shall also be posted in a conspicuous place at the pool. Such rates may be structured for classes of persons

in a reasonable manner; provided, nothing herein shall be construed to permit or allow discrimination on the basis of race, creed, color, or national origin in the classification of persons for admission charges. (Neb. Rev. Stat. §17-949)

**SECTION 6-405: SWIMMING POOL; RENTALS**

The City Council shall have the authority to rent the swimming pool to organizations and other persons. The Council shall prescribe rules and regulations for such rentals and shall require an appropriate number of qualified lifeguards to be in attendance during the rental period. Such fees and other costs shall be on file at the office of the city clerk for public inspection and posted in a conspicuous place at the swimming pool. (Neb. Rev. Stat. §17-949)

## Article 5 – Cemetery

### SECTION 6-501: OPERATION AND FUNDING

A. The City owns and manages the city cemetery. The mayor and City Council, for the purpose of defraying the cost of the care, management, improvement, beautifying, and welfare of the cemetery, may each year levy a tax not exceeding five and two-tenths cents on each \$100.00 upon the taxable value of all the taxable property in the City subject to taxation for general purposes. The tax shall be collected and paid to the City as taxes for general purposes are collected and paid to the City. All taxes collected for this purpose shall constitute and be known as the Cemetery Fund and shall be used for the general care, management, improvement, beautifying, and welfare of such cemetery. Warrants upon this fund shall be drawn by the City Council and shall be paid by the city treasurer.

B. The mayor and City Council may set aside the proceeds of the sale of lots as a perpetual fund to be invested as provided by ordinance. The income from the fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery. The principal of the perpetual fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as long as no more than 20% of the principal is so used in any fiscal year and no more than 40% of the principal is so used in any period of ten consecutive fiscal years. The principal of the perpetual fund may also be used for the purchase and development of additional land to be used for cemetery purposes as long as no more than 25% of the principal is so used in any fiscal year and no more than 35% of the principal is so used in any period of ten consecutive fiscal years.

C. The City Council may receive money by donation, bequest, or otherwise for credit to the perpetual fund to be invested as provided by ordinance or as conditioned by the donor. The income therefrom may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as the donor may designate. The principal therefrom may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as the donor may designate as long as no more than 20% of the principal is so used in any fiscal year and no more than 40% of the principal is so used in any period of ten consecutive fiscal years. The principal therefrom may also be used for the purchase and development of additional land to be used for cemetery purposes as the donor may designate as long as no more than 25% of the principal is so used in any fiscal year and no more than 35% of the principal is so used in any period of ten consecutive fiscal years.

D. This section does not limit the use of any money that comes to the City by donation, bequest, or otherwise that is not designated to be credited to the perpetual fund or that allows greater use for purchase or development of additional land to be used for cemetery purposes.

(Neb. Rev. Stat. §12-301 thru 12-403)

**SECTION 6-502: FUNERALS GENERALLY**

All funerals within the cemetery of the City of Indianola shall be under the direction of the City in regard to location of burial space. (Ord. No. 365, 10/7/91)

**SECTION 6-503: SALE OF LOTS**

The City Council may sell cemetery burial spaces by certificate, signed by the mayor and countersigned by the city clerk under the city seal, specifying that the person to whom the same is issued is the owner of the burial space(s) described therein. Sale of burial spaces shall be limited to two per household. Any waiver of said limit shall be by sanction of the council only. (Am. by Ord. No. 365, 10/7/91)

**SECTION 6-504: PURCHASE PRICES**

The City Council shall set the purchase prices of burial spaces from time to time by resolution. Said amounts shall be on file in the office of the city clerk for public inspection. There shall be differing prices for residents of the City and for non-residents. For purposes of this section, "resident" shall be defined as any person who at the time of death was residing within the corporate city limits, except in hospitals, nursing homes, hotels or motels. (Ord. No. 365, 10/7/91)

**SECTION 6-505: FORFEITURE OF LOTS**

If, for three consecutive years, all charges and liens are not paid by the holders of lot certificates, the said certificates shall be declared forfeited and subject to resale. All certificates sold shall contain a forfeiture clause to the effect that if no interment is made on the said lot and all liens paid, the certificate and the rights under the same may, at the option of the Cemetery Board, with the sanction of the City Council, be declared null and void and the lot shall be subject to resale. (Neb. Rev. Stat. §17-938)

**SECTION 6-506: LOT TRANSFERS**

The City will not be a party to any lot transfers after a person purchases a lot and has been issued a certificate evidencing the lot purchased. The person may make arrangements to transfer lots with other individual lot owners without the necessity of getting the permission from the City to transfer said lots. (Am. by Ord. No. 365, 10/7/91)

**SECTION 6-507: INTERMENT AND DISINTERMENT PREREQUISITES**

No interment shall take place until a burial permit has been obtained from the city clerk and all laws, ordinances, rules and regulations relative to burials have been complied with. No grave space shall be opened unless the space has been paid for or unless the undertaker assumes the responsibility for paying for such space. The interment of any deceased person shall be performed under the direct supervision of

a licensed funeral director. Said burial permit shall contain the name of the deceased, date of birth, date of death, date of burial, block, lot and space numbers, nearest of kin and the name of the mortuary. Said burial permit must be filed at the office of the city clerk prior to burial. No disinterment of any body of any deceased person shall take place until all laws of the State of Nebraska have been complied with and the office of the city clerk has been so notified. (Ord. No. 365, 10/7/91)

#### **SECTION 6-508: INTERMENT**

All interments shall utilize at least a concrete liner or vault of such nature as to prevent cave-in or sinking of the grave site. The City shall not be held responsible for errors in location of graves on lots arising from improper instructions of lot owners. Orders from funeral directors shall be deemed to be orders from lot owners. Under no circumstances shall the City assume any responsibility for errors in locating burial spaces when instructions of the lot owner are received over the telephone. (Am. by Ord. Nos. 365, 10/7/91; 366, 12/2/91)

#### **SECTION 6-509: PAUPERS' BURIAL**

A section of burial spaces in the city cemetery has been designated for paupers' burial. Said burial spaces will be used only for persons residing within the corporate city limits. Only this section of burial spaces will be exempt from concrete liner or vault requirements. (Am. by Ord. Nos. 365, 10/7/91; 366, 12/2/91)

#### **SECTION 6-510: DESTRUCTION OF PROPERTY**

Any person who shall willfully destroy, mutilate, deface, injure, or remove any tomb, monument, or gravestone placed in the cemetery or any fence, railing, or other work for the protection or ornamentation of the cemetery or who shall willfully destroy, cut, break, or injure any tree, shrub, or plant shall be deemed to be guilty of a misdemeanor. (Neb. Rev. Stat. §28-512)

#### **SECTION 6-511: IMPROVEMENTS BY CITY**

No person, other than the City, shall plant or cause to grow any tree, shrub or plant nor place any fence, railing or other work within the cemeteries of any permanence in nature. (Ord. No. 365, 10/7/91)

#### **SECTION 6-512: PLACEMENT OF MONUMENT/MARKER**

No monument or marker of any nature shall be set in the cemetery without first obtaining a permit which shall show the location of the grave site. The fee for said permit shall be set by the City Council and filed in the office of the city clerk. City personnel will locate and guide the monument company to the grave site. The City shall not assume responsibility of a wrong location when all information has not been given in writing by the monument company. If the monument is deemed to be in a wrong location, the monument company shall be responsible for removal of the monu-

ment/marker and proper replacement. Upright monuments or markers may be placed only at the head of the burial lot and must be placed 5 inches inside the lot line. None of the four lot corner stones shall be covered or removed. The only other monument/marker allowed will be at the foot and shall be flat so that a mower can pass over without hitting the monument/marker. The City will not be responsible for damage to a monument or marker if not placed at ground level.  
(Ord. No. 365, 10/7/91) (Am. by Ord. No. 477, 5/3/10)

## Article 6 – Penal Provisions

### SECTION 6-601: 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.