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## **CHAPTER 5 – PUBLIC WAYS AND PROPERTY**

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

#### **SECTION 5-101: DEFINITION**

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

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

#### **SECTION 5-102: MAINTENANCE AND CONTROL**

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

#### **SECTION 5-103: OBSTRUCTIONS; TREES AND SHRUBS**

A. Trees and shrubs growing upon or near the lot line or upon public ground and interfering with the use or construction of any public improvements shall be deemed an obstruction under this article. Said trees, shrubs and their roots may be removed by the street commissioner at the expense of the owner of the property upon which the tree is located should the owner fail, or neglect, after notice, to do so. It shall be unlawful for any person, persons, firm, or corporation to obstruct, or encumber, by fences, gates, buildings, structures, or otherwise, any of the streets, alleys, or sidewalks. It shall be the duty of owners and occupants to at all times keep trimmed and pruned all such similar growth.

B. Whenever any such growth is allowed to grow within two feet of the lot line contrary to the provisions of this article, the Village Board may pass a resolution ordering the owner or occupant to remove such obstructions within three days after having been served with a copy of said resolution by the street commissioner stating that the Village will do so and will charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided, or shall collect the same by civil suit brought in the name of the Village against the said owner or occupant. It shall be the duty of an owner or occupant engaged in construction of any building or improvement upon or near the public ways and property to have all excavations or exposures of any kind protected and guarded by suitable guards or barricades by day and by warning lights at night.

C. In the event of failure, neglect, or refusal to comply with the provisions of this article, it shall be the duty of the street commissioner or any policeman to stop all work upon said buildings and improvements until suitable guards are erected and kept in

the manner aforesaid. Trees and shrubs growing upon the lot line partially on public ground and partially upon the abutting property, or wholly upon the abutting property, but so close to the lot line as to interfere with the making of any public improvement or so that the roots thereof interfere with any utility wires or pipe shall be deemed an obstruction and such trees, shrubs, and roots may be removed by the street commissioner pursuant to the procedure prescribed above. (Neb. Rev. Stat. §17-557.01)

#### **SECTION 5-104: OBSTRUCTIONS; PERMIT REQUIRED**

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

#### **SECTION 5-105: 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 8 feet above the surface of said walk. Whenever the limbs or branches of any tree or trees extend over sidewalks contrary to the provisions herein so as to interfere with the light from street lights or with the convenience of the public using said sidewalk, the Village Board at any regular or special meeting shall pass a resolution ordering the owner or occupant to cut or remove said obstructions within five days after having received a copy thereof from the street commissioner stating that the Village 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. (Neb. Rev. Stat. §17-557.01)

#### **SECTION 5-106: BARRICADES AND LIGHTS**

Whenever any excavation on any public property, including without limitation, parkings, sidewalks, curbs and streets, occurs within the zoning jurisdiction of the Village, the party responsible for the excavation shall provide adequate barricades around the excavation and shall install sufficient warning lights and signs around the excavation to protect the public.

#### **SECTION 5-107: EAVE AND GUTTER SPOUTS**

It is hereby declared unlawful for any person to erect or maintain any dwelling or business building within the limits of the Village where the said dwelling or building abuts on any sidewalk or street without providing proper guttering and eave spouts to receive the waste waters that collect on the said sidewalk or street. Any eave spout erected on any dwelling or business building shall be constructed to drain into the alley or, where it is found to be impossible to drain into an alley, shall be buried beneath the sidewalk and drain into the street.

#### **SECTION 5-108: DAMAGE**

It shall be unlawful for any person to willfully, maliciously, or carelessly injure, change, deface, or destroy any street, sidewalk, building, ditch, drain, or grade within the corporate limits. No person shall cause or permit any offensive or corrosive material to be discharged or thrown out upon any street, sidewalk, alley, or public ground.

#### **SECTION 5-109: CUTTING CURB; PERMIT, DEPOSIT AND BOND REQUIRED**

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 Village Board therefor. (See Article 4 for construction of driveways). Before any person shall obtain a permit, he shall inform the village 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. Before any permit is issued, the applicant shall deposit with the village treasurer a sum set by resolution of the Village Board 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 Village for the purpose of replacing the paving, curb, or sidewalk, in the event the work is done by the Village. In the event the Village elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the Village until the work is completed to the satisfaction of the chief street official or of the committee of the Village Board 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 Village with a good and sufficient surety or sureties to be approved by the Village Board in a sum set by resolution of the Village Board.

B. When cutting into any paving, it shall be the duty of the party to cut the paving under such rules and regulations as may be prescribed by the Village Board or the village 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 Village Board to order the chief street official, under the supervision and inspection of the village engineer or the committee of the Village Board on streets and alleys, to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit. The Village Board may consent to the work of cutting and closing the paving to be done by the party holding such permit.

## **SECTION 5-110: HEAVY EQUIPMENT**

1. 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.

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

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

(Neb. Rev. Stat. §60-6,250)

## **SECTION 5-111: REAL PROPERTY; ACQUISITION; AUTHORIZATION**

When acquiring an interest in real property by purchase or eminent domain, the Village shall do so only after the Village Board has authorized the acquisition by action taken in a public meeting after notice and public hearing. (Neb. Rev. Stat. Sec. 18-1755)

## **SECTION 5-112: REAL PROPERTY; ACQUISITION; APPRAISAL**

The Village 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 5-113: REAL PROPERTY; ACQUISITION; CONSTRUCTION; ELECTIONS, WHEN REQUIRED**

A. The Village 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, village building or community house and maintain, manage and operate the same for the benefit of the inhabitants of the Village.

B. Except as provided below, before any such purchase can be made or any building erected, the question shall be submitted to the electors of the Village at a general election or at an election duly called for that purpose or as set forth in Neb.

Rev. Stat. §17-954 and be adopted by a majority of the electors voting on such question.

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

1. Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the Village and no election shall be required to approve the purchase or construction unless within 30 days after the publication of the notice, a remonstrance against the purchase or construction is signed by registered voters of the Village equal in number to 15% of the registered voters of the Village voting at the last regular election held therein and filed with the Village Board. If the date for filing the remonstrance falls upon a Saturday, Sunday or legal holiday, the signatures shall be considered timely if filed or postmarked on or before the next business day. If a remonstrance with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the Village at a general 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 Village Board may proceed without providing the notice and right of remonstrance required in subsection (1) of this subsection if the property can be purchased below the fair market value as determined by an appraisal, there is a willing seller, and the purchase price is less than \$25,000.00. The purchase shall be approved by the Village Board after notice and public hearing as provided in Neb. Rev. Stat. §18-1755.

(Neb. Rev. Stat. §17-953, 17-953.01)

#### **SECTION 5-114: REAL PROPERTY; SALE AND CONVEYANCE**

A. Except as provided in subsection (D) of this section, the power of the Village 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 Village Board 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 all proposed sales 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 Village; provided, if a remonstrance against such sale, signed by registered voters thereof equal in number to 30% of the registered voters of the Village voting at the last regular Village election held therein, be filed with the Village Board within 30 days after the third publication of the notice, such property shall not then nor within one year thereafter be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday or legal holiday, the signatures shall be collected within the 30-day period but the filing shall be considered timely if filed or postmarked on or before the next business day. Real estate now owned or hereafter owned by the Village may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, such property shall be conveyed strictly in accordance with the conditions of Neb. Rev. Stat. §18-1001 to 18-1006.

D. Following passage of the resolution directing a sale, publishing of the notice of the proposed sale, and passing of the 30-day right of remonstrance period, the property shall then be sold. Such sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. Upon passage of such ordinance, the village clerk shall certify the name of the purchaser to the register of deeds of the county in which the property is located. (Neb. Rev. Stat. §17-503)

E. Subsections (A) through (D) above shall not apply to the sale of real property if the authorizing resolution directs the sale 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 Village for a period of not less than seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required. (Neb. Rev. Stat. §17-503.01)

## **SECTION 5-115: PERSONAL PROPERTY; SALE AND CONVEYANCE**

In order to sell personal property owned by the Village, the Village Board shall adopt a resolution directing the sale and the manner and terms of the sale. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the Village 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 village at least seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. When such personal property is being sold in compliance with the requirements of federal or state grants or programs or conveyed to another public agency, the notice procedure set forth above may be dispensed with. (Neb. Rev. Stat. 17-503.02)

## **SECTION 5-116: SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND**



## **CREATION PROCEDURE**

A. The Village Board may, by ordinance, create a special improvement district for the purpose of replacing, reconstructing, or repairing an existing water line, sewer line, or any other such improvement.

B. Except as provided in Neb. Rev. Stat. §19-2428 to §19-2431, the Village Board shall have power to assess, to the extent of such benefits, the costs of such improvements upon the properties found especially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the Village Board shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law. (Neb. Rev. Stat. §18-1751)

## **SECTION 5-117: DEFERRAL FROM SPECIAL ASSESSMENTS**

A. Whenever the Village Board of a Village creates an improvement district as specified in Section 5-116 which includes land adjacent to the Village that is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments. For purposes of this section, the terms “agricultural use” and “agricultural use zone” shall have the meaning specified in Neb. Rev. Stat. §77-1343.

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

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

1. Notification by the owner of record title to the Village Board to remove such deferral;
2. Sale or transfer to a new owner who does not make a new application within 60 days of the sale or transfer, except as provided in subsection (3) of this section.
3. Transfer by reason of death of a former owner to a new owner who does not make application within 125 days of the transfer;
4. The land is no longer being used as agricultural land; or

5. Change of zoning to other than an agricultural zone.

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

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

E. In cases where the deferral provided by this section is terminated as a result of a sale or transfer described in subsection (B) or (C) of this section the lien for assessments and interest shall attach as of the day preceding such sale or transfer.  
(Neb. Rev. Stat. §19-2428 thru 19-2431)

## **Article 2 – Streets**

### **SECTION 5-201: NAMES AND NUMBERS**

The Village Board 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 Village Board may require. It shall be the duty of the street commissioner, upon the erection of any new building or buildings, to assign the proper numbers to said building or buildings and give notice to the owner or owners and occupant or occupants of the same.

### **SECTION 5-202: CROSSINGS**

The Village Board may order and cause street, avenue and alley crossings to be constructed under the supervision of the street commissioner, and the same shall be constructed of such materials as the Village Board shall deem necessary. When a petition for the construction of any such crossing is filed by an interested resident in the office of the village clerk, he/she shall refer such application to the street commissioner, who shall investigate and recommend to the Village Board allowance or rejection as final action by the Board on such application.

### **SECTION 5-203: WIDENING OR OPENING**

The Village Board shall have the power to open or widen any street, alley, or lane within the limits of the Village; 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 5-204: EXCAVATION**

It shall be unlawful for any person to make an excavation in any street for any purpose without authorization from the street commissioner.

### **SECTION 5-205: HARMFUL LIQUIDS**

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

### **SECTION 5-206: DRIVEWAY APPROACHES**

A. The street commissioner 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 village clerk shall give the property owner notice by registered letter or certified mail, directed to the last-known address of such owner or the agent of such owner, directing the repair or replacement of such driveway approach. If within 30 days of mailing such notice the property owner fails or neglects to cause such repairs or replacements to be made, the street commissioner may cause such work to be done and assess the cost upon the property served by such approach.  
(Neb. Rev. Stat. §18-1748)

#### **SECTION 5-207: UTILITY LINES, WIRES, ETC.**

1. Poles, wires, gas mains, pipe lines and other appurtenances of public service companies shall be located or erected over, upon or under the streets, alleys and common grounds after a proper written application shall have been made to the village clerk and permission in writing shall have been given by the Village Board. When requested by the Board, public service companies heretofore or hereafter granted right of way for the erection and maintenance of poles, conduits, gas mains, pipe lines and wires for the purpose of transacting their business upon, under or over the streets, alleys and public grounds shall at all times erect, locate or relocate their poles, wires, gas mains, pipe lines and other appurtenances to such places and in such manner as shall be designated by said Board.

2. Such poles, wires, gas mains, pipe lines and other appurtenances shall be removed or relocated by said companies at their own expense when requested to do so by the Village Board. Whenever it becomes necessary for the Board to request such relocation for public safety and convenience, it shall order said relocation by resolution and the village clerk shall notify any company or companies affected. Said companies shall, within 24 hours after receiving notice, at their own expense, cause the said appurtenances to be removed or relocated. The Village Board shall designate another location where said appurtenances may be reset or placed. All appurtenances shall be reset, placed or erected in such manner that they will not interfere with the water system, sewer system or poles, wires or mains of any public utility located on the same street or alley or with travel or buildings constructed or hereafter to be constructed. Whenever possible, all said appurtenances shall be confined to the alleys of the Village.

#### **SECTION 5-208: CONSTRUCTION ASSESSMENT**

A. To defray the costs and expenses of street improvements as may be authorized by law, the Village Board 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 Village Board, sitting as the Board of Equalization, shall review all such improvements in accordance with the procedure provided by law.

B. All special assessments shall be made by the Village Board 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 Village 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.

C. 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 village taxes and shall be certified to the county clerk by the village 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.

(Neb. Rev. Stat. §17-511, 17-524)

#### **SECTION 5-209: IMPROVEMENT OF STREETS; PETITION; OBJECTIONS**

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

B. Whenever a petition signed by the owners of record title representing more than 60% of the front footage of the property directly abutting upon the street, streets, alley, alleys, public way, or the public grounds proposed to be improved shall be presented and filed with the village clerk, petitioning therefor, the Village Board shall by ordinance create a paving, graveling, or other improvement district or districts and shall cause such work to be done or such improvement to be made, contracting therefor and levying assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley, or alleys, especially benefited thereby in such district in proportion to such benefits to pay the cost of such improvement. The Village Board shall have the discretion to deny the formation of the proposed district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the Board should deny a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties. (Neb. Rev. Stat. §17-510)

C. Whenever the Village Board shall deem it necessary to make any improvements allowed by statute, it shall by ordinance create a paving, graveling, or other improvement district or districts, and after the passage, approval, and publication or posting of such ordinance, shall publish notice of the creation of any such district or

districts for six days in a legal newspaper of the Village, if a daily newspaper, or for two consecutive weeks, if the same be a weekly newspaper. If the owners of the record title representing more than 50% of the front footage of the property directly abutting on the street, streets, alley, or alleys to be improved shall file with the village clerk within 20 days after the first publication of said notice written objections to the creation of such district or districts, said improvements shall not be made as provided in said ordinance, but said ordinance shall be repealed. If said objections are not filed against the district in the time and manner aforesaid, the Village Board shall forthwith cause such work to be done or such improvement to be made and shall contract therefor, levying assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley or alleys especially benefited thereby in such district in proportion to such benefits to pay the cost of such improvement. (Neb. Rev. Stat. §17-511)

### **SECTION 5-210: VACATING PUBLIC WAYS; DEFINITIONS; ASCERTAINING DAMAGES; PROCEDURES**

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 Village Board's vacation of such street, avenue, alley, lane or similar public way.

B. "Special damages" shall not mean those losses, damages or injuries that a property owner suffers that are in common with the rest of the Village 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 Village or public at large.

C. The chairperson shall appoint three, five, or seven disinterested residents of the Village 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 Village Board's vacation of such street, avenue, alley, lane or similar public way. The appointees of the special commission shall be approved by the Board. Only special damages, as herein defined, 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 aforementioned commission shall use the following rule:

*The abutting property owner is entitled to recover as compensation the difference between the value of such property immediately before and immediately after the vacating of such street, avenue, alley, lane or similar public way. However, if no difference in value exists the abutting property owner is entitled to no compensation.* (Neb. Rev. Stat. §17-558, 17-559)

E. Whenever the Village Board decides that it would be in the best interests of the Village to vacate a street, avenue, alley, lane or similar public way, the following procedure shall be complied with:

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 Village. The content of the notice will advise the abutting property owners that the Village Board will consider vacating such street, avenue, alley, lane or similar public way at their 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 Village Board may have all the abutting property owners sign a form stating that they consent to the action being taken by the Board and waive their right of access. The signing of such form has no effect on claims for special damages, as defined in this section, by the abutting property owners, but does create the presumption that the Village Board's action was proper. However, if all the abutting property owners do not sign the consent/waiver form, the Village Board may still proceed with vacating such street, avenue, alley, lane or similar public way under the authority granted them by Neb. Rev. Stat. §17-558 and §17-559.
3. *Ordinance.* The Village Board shall pass an ordinance that shall state essentially the following: (a) a declaration that the action is expedient for the public good or in the best interests of the Village; (b) a statement that the Village shall have an easement for maintaining all utilities; and (c) a method or procedure for ascertaining special damages to abutting property owners.
4. *Filing.* 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 5-211: VACATING PUBLIC WAYS; TITLE**

1. Upon the vacation of any street or alley or any part thereof by the Village, 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 Village may reserve title to such property in the ordinance vacating such street or alley. If title is retained by the Village, such property may be sold, conveyed, exchanged or leased upon such terms and conditions as shall be deemed in the best interest of the Village.

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

- A. There is reserved to the Village 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 Village, 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 5-301: DUTY TO KEEP CLEAR; SNOW REMOVAL**

A. It shall be unlawful for the occupant of any lot or lots or the owner of any vacant lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substance to accumulate on the sidewalks or to permit any snow, sleet, ice, mud, or other substance to remain upon said sidewalk.

B. All sidewalks within the downtown business district (Nemaha between 3rd and 4th Streets, and 3rd Street between Main and Nemaha Street) 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 6:30 a.m. the following day if snow is deposited in the street for village maintenance to clean away. If snow is not deposited in the street, sidewalks must be cleaned by 8:00 a.m. Sidewalks within the residential areas of the Village shall be cleaned within 12 hours after the cessation of the storm.

C. It shall be unlawful for any person to push, move or deposit snow from private property onto or upon any public sidewalk, street, avenue, alley or other city-owned property.

D. It shall be unlawful for anyone except village maintenance personnel to plow village streets unless contracted by the Village Board.

E. In no event shall any resident deposit snow in road ditches in such a manner as to block any culvert to the extent that drainage water through said culvert is diverted or impeded. The depositing of snow within 5 feet of the opening of a culvert shall be considered a violation of this section without further proof that said culvert has been blocked to an extent whereby water is diverted or impeded.  
(Neb. Rev. Stat. §17-557) (Am. Ord. No. 07-2021-3, 7/6/21)

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### **SECTION 5-302: MAINTENANCE**

Every owner of any lot, lots, or piece of land within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to said lot, lots, or pieces of land, as the case may be, in good and proper repair, and in a condition reasonably safe for travel for all travelers thereon. In the event that the owner or owners of any lot, lots, or lands, abutting on any street, avenue; or part thereof shall fail to construct or repair any sidewalk in front of his, her, or their lot, lots, or lands, within the time and in the manner as directed and required herein after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the Village Board shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property. (Neb. Rev. Stat. §17-557.01)

### **SECTION 5-303: 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 village clerk. The permit shall give a description of the lot, or piece of land along which the sidewalk is to be constructed. The official in charge of sidewalks shall issue the desired permit unless good cause shall appear why said permit should be denied. 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 village official in charge of sidewalks.

#### **SECTION 5-304: CONSTRUCTION BY VILLAGE; NOTICE**

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

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 required in this section shall be prepared by the village 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 Village 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. (Neb. Rev. Stat. §17-522, 17-523)

#### **SECTION 5-305: DUTY TO REPAIR; LIABILITY; NOTICE**

A. Every owner of any lot or piece of land within the limits of this Village shall at all times keep and maintain the sidewalks along and contiguous to said lots or pieces of land in good and proper repair and in a condition reasonably safe for all travelers thereon. In case the owner or owners of any lot or land abutting on any street or avenue or part thereof shall fail to repair any sidewalk in front of his/her/their lots or land within the time and in the manner as directed and required by this article after having received due notice to do so, they shall be liable for all damages and injury occasioned by reason of the defective or dangerous condition of any sidewalk. The chairman and Board of Trustees shall have power to cause such sidewalks to be repaired and assess the costs thereof against such property. (Neb. Rev. Stat. §17-557, 17-557.01)

B. Whenever the Village Board, committee on streets and walks or the street commissioner shall deem it necessary that a sidewalk is in need of repair, the owner

of the lot or piece of land along and contiguous to which such sidewalk is situated shall be notified to make arrangements within 48 hours to repair the same. Said repairs shall be completed within 21 days after issuance of said notice. Oral notice to the owner shall be deemed sufficient. If the owner is not found by the street commissioner, then a written notice left in the house situated on such lot or piece of ground or posted upon said premises shall be sufficient, and the 48 hours shall begin to run from the leaving or posting of such notice, as the case may be.

#### **SECTION 5-306: RECONSTRUCTING SIDEWALK; NOTICE**

Whenever the Board shall deem it necessary that an old sidewalk be replaced or reconstructed, it shall order the same to be done and the street commissioner shall give notice, in the manner and form provided in Section 5-306 herein, to replace or reconstruct the same within 21 days from and after such notice.

#### **SECTION 5-307: FAILURE TO CONSTRUCT, RECONSTRUCT OR REPAIR**

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

#### **SECTION 5-308: MANNER OF CONSTRUCTION**

All sidewalk construction shall be done strictly in accordance with and pursuant to the instruction and direction of the street superintendent for the Village.

#### **SECTION 5-309: CONSTRUCTION BY PETITION OR AGREEMENT**

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

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

B. Upon the petition of an abutting owner in fee simple of property subject to assessment for sidewalk improvements, the Board of Trustees may order permanent sidewalks built in accordance with this article upon the making, executing and delivering to the Village an agreement by the owner that he/she (A) will pay the engineering service fees and the cost of the construction of the sidewalk; (B) grants the Village the right to assess and levy the costs of such construction against his/her real estate abutting the sidewalk improvement; and (C) promises to pay such costs with interest; and (D) agrees that such costs of construction, until paid, shall be a perpetual lien upon the real estate abutting the sidewalk to be constructed. The total cost of such improvement shall be levied, allocated, financed and specially assessed as provided by law.

(Neb. Rev. Stat. §17-510)

## **Article 4 – Construction of Private Drives**

### **SECTION 5-401: APPLICATION**

Before any person, firm or corporation constructs a private drive onto any public street or alley, an application shall first be made to the Village Board for a permit for such construction as provided in Section 5-109. Such application shall be acted upon by the Board at a special or regular meeting.

### **SECTION 5-402: PRIVATE DRIVE SPECIFICATIONS**

Private drives shall not exceed 24 feet in width and shall not be constructed within ten feet of adjacent lot lines unless such adjacent lots are owned by the applicant.

### **SECTION 5-403: APPLICATION REQUIREMENTS**

All driveway applications shall contain the following information:

- A. The addition, block and lot which the driveway is to serve;
- B. The location of the proposed driveway with reference to adjacent lot lines;
- C. The width of the driveway and type of street surface to which the driveway will connect.

### **SECTION 5-404: APPROVAL OF BOARD**

In the event that the Village Board determines that such application is in due and proper form and that the same complies with this article, it shall approve construction of such requested driveway and note such approval in its official minutes.





## **Article 5 – Culverts**

(Ord. No. 10-2011, 10/4/11)

### **SECTION 5-501: PLACEMENT ACROSS STORMWATER DRAINAGE DITCHES**

Any property owner within the zoning jurisdiction of the Village who places, has placed, or whose predecessor in title placed a culvert across any stormwater drain-age ditch shall comply with the standards hereafter set forth. Any existing culvert obstructing the free flow of stormwater in said drainage ditches shall be removed and replaced in accordance with this section and the owner of property adjacent to said ditch shall pay the cost thereof.

### **SECTION 5-502: PERMIT REQUIRED; FEE; INSPECTION**

A. Any person who shall install, repair or replace a culvert shall obtain a permit from the village clerk and pay a fee which shall be set by the Village Board and filed in the office of the clerk for public inspection during office hours. Said permit shall not be issued until the village maintenance superintendent certifies to the clerk that the culvert used to repair or replace an existing culvert complies with the culvert standards set forth herein. The certificate of the maintenance personnel shall not represent nor shall it be construed or interpreted to mean that the proposed level and location of said culvert will not obstruct the stormwater ditch.

B. Any person who shall install a culvert without such a permit shall be required to uncover the same for an inspection by said superintendent at the expense of the landowner adjoining said culvert and shall pay the fee as set forth above.

### **SECTION 5-503: PLACEMENT DEPTH; FREE FLOW OF STORMWATER**

Any culvert placed across a stormwater drainage ditch shall be placed at such a level that stormwater may freely flow through it. The proper placement level shall be determined by the owner of land adjoining said drainage ditch.

### **SECTION 5-504: STANDARDS DEFINED; COMPLIANCE**

Any culvert that shall be installed, removed, repaired or replaced shall have a minimum inside diameter of 12 inches round or elliptical and shall be constructed of either corrugated steel, corrugated plastic, concrete or plastic well casing. Aluminum culverts of any shape shall not be permitted.

### **SECTION 5-505: STORMWATER DRAINAGE DITCH OBSTRUCTION; DEFINED**

Any culvert placed across a stormwater drainage ditch that due to its level of placement or its physical condition prevents rainwater from flowing freely along said drainage ditch

shall be deemed a "stormwater drainage ditch obstruction."

**SECTION 5-506: STORMWATER DRAINAGE DITCH OBSTRUCTION DEEMED A HEALTH AND SAFETY HAZARD; NOTICE TO REMOVE**

If, upon examination by agents or employees of the Village, a stormwater drainage ditch is found to be obstructed by the placement or condition of any culvert, written notice shall be given to the owner of land adjoining said obstruction to remove, repair or replace said culvert within 30 days from the receipt thereof at the owner's expense. The Village Board hereby determines that standing water in stormwater drainage ditches contributes to the infestation of mosquitoes and represents a danger to children, who may drown. The placement of a culvert that creates standing water is determined to constitute a nuisance. Any culvert removed, repaired or replaced pursuant to this section shall comply with the culvert standards established herein.

**SECTION 5-507: FAILURE TO REMOVE OBSTRUCTION; REMOVAL BY VILLAGE; COST ASSESSED AGAINST PROPERTY**

In the event the owner of land adjacent to an established culvert fails to comply with the removal order set forth in Section 5-506, the Village may remove the obstruction. Any damage to sidewalks or driveways caused by such removal shall be the responsibility of the owner of land adjacent to said culvert and the Village shall not replace or repair such sidewalk or driveway. Any cost incurred by the Village in the removal of a culvert pursuant to this section shall be assessed against the owner of land adjacent to said culvert.

**SECTION 5-508: APPEAL; STAY OF ORDER TO REMOVE**

In the event any person feels aggrieved by an order issued pursuant to Section 5-506, such order may be appealed to the Village Board by filing a notice of intent to appeal within 15 days of receipt of said order. If such notice is filed, the Village shall take no action to remove said culvert until the appeal is heard by the Village Board of Trustees. At such a hearing, the Board shall hear testimony from its employee as to why the culvert is viewed as an obstruction. Thereafter, the party appealing the order may present evidence that the culvert does not obstruct the stormwater drainage ditch. At the close of evidence by the party appealing the order, village personnel shall be given an opportunity to rebut evidence presented by appealing party. Upon close of evidence, the Village Board shall consider the evidence and render a decision. If the order to remove is sustained, the appealing party shall have 30 days from the date the Board acted to remove said obstruction.

## **Article 6 – Penal Provision**

### **SECTION 5-601: VIOLATION; PENALTY**

Any person, firm, association or corporation violating any of the provisions of the chapter herein for which no other penalty is imposed shall, upon conviction, be deemed guilty of a misdemeanor and fined in an amount of not more than \$500.00. Each day's maintenance of a misdemeanor shall constitute a separate offense.