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CHAPTER V PUBLIC WAYS AND PROPERTY

ARTICLE I - PUBLIC PROPERTY REGULATIONS

SECTION 5-101: 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, in good repair and free from nuisances.

Source: Neb. Rev. Stat. §17-567

SECTION 5-102: OBSTRUCTIONS

Trees and shrubs growing upon or near the lot line or upon public ground and interfering with the use or construction of any public improvements shall be deemed an obstruction under this article. The roots of said trees and shrubs may be removed by the street commissioner at the expense of the owner of the property upon which the trees and shrubs are located, should the owner fail or neglect to do so after notice. It shall be unlawful for any person, persons, firm or corporation to obstruct or encumber any of the streets, alleys or sidewalks by fences, gates, buildings, structures or otherwise.

SECTION 5-103: PERMITTED OBSTRUCTIONS

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 person shall make written application to do so; provided, no permit shall be granted for the occupancy of the sidewalk space or 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; 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 Village Board.

SECTION 5-104: REAL PROPERTY; SALE AND CONVEYANCE

1. Except as provided in 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:

- A. Such property is being sold in compliance with the requirements of federal or state grants or programs;
- B. Such property is being conveyed to another public agency; or
- C. Such property consists of streets and alleys.

2. 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.

3. After the passage of the resolution directing the sale, notice of all proposed sales of real property described above 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 legal electors thereof equal in number to 30% of the electors of the Village voting at the last regular municipal 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; and provided further that real estate now owned or hereafter owned by the Village may be conveyed without consideration to the State of Nebraska or to the Nebraska Armory Board for state armory sites, or, if acquired for state armory sites, such property shall be conveyed strictly in accordance with the conditions of Sections 18-1001 to 18-1006 R.S. Neb.

4. Following (A) passage of the resolution directing a sale, (B) publishing of the notice of the proposed sale, and (C) 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. The village clerk shall, upon passage of such ordinance, certify the name of the purchaser to the register of deeds of the county in which the property is located.

SECTION 5-105: REAL PROPERTY; ACQUISITION; NOTICE; APPRAISAL

1. 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.

2. 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.

Source: Neb. Rev. Stat. §13-403, 18-1755

SECTION 5-105: SALE OF PERSONAL PROPERTY

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 five thousand dollars, 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 (1) sold in compliance with the requirements of federal or state grants or programs or (2) conveyed to another public agency, the notice procedure set forth above may be dispensed with.

(10/11/07, Ord. No. 508)

ARTICLE II - STREETS

SECTION 5-201: NAMES AND NUMBERS

The Village Board may at any time, by ordinance, rename any street or provide a name for a new street. Buildings used for residence or business purposes located along such streets shall retain their previously assigned numbers, and the street commissioner shall give notice to the owners or occupants of any buildings located along such named or renamed streets. The Village Board must approve any address changes or assignments. (Amended 4/10/08, Ord. No. 512)

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 Village Board on such application.

SECTION 5-203: 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 Village Board authorizing such excavation.

SECTION 5-204: CUTTING OF PAVEMENT

It is hereby determined to 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 clerk. Before any person shall obtain a permit, he/she shall inform the village clerk of the place where such cutting is to be done. Before any permit is issued by the village clerk, the applicant for such permit shall deposit with the village treasurer a sum set by resolution of the Village Board for all paving, curbs or sidewalks 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, curbs or sidewalks in the event the work is done by the Village. In the event the Village elects to require the applicant to replace the paving, curbs or sidewalks, the deposit shall be retained by the Village until the work is completed to the satisfaction of the street commissioner or of the committee of the Village Board on streets and alleys. In addition to making the deposit set forth above, 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 said board, to guarantee faithful performance of the

work.

It shall be the street commissioner's duty to inspect the place of entry into the paving, sidewalk or curb before the same is cut. When cutting into any paving, it shall be the duty of the applicant to do so 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/she shall inform the street commissioner, 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 street commissioner, 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 applicant. The Village Board may consent to the work of cutting and closing the paving to be done by the party holding the permit.

SECTION 5-205: FIRE ON SIDEWALK OR PAVEMENT; SCATTERING COMBUSTIBLE MATERIAL THEREON; PROHIBITED

It shall be unlawful for any person to burn any material on any concrete or asphalt pavement, or to scatter any combustible material of any kind on the streets, alleys or public ground in this village.

SECTION 5-206: DRIVING STAKES

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

SECTION 5-207: MIXING CONCRETE

It shall be unlawful for any person to mix any concrete or plastering material directly on the street pavement for any reason whatsoever and to use said pavement as a mixing board for said material.

SECTION 5-208: HARMFUL LIQUIDS

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

SECTION 5-209: EAVE AND GUTTER SPOUTS

It is hereby declared unlawful for any person to erect or maintain any dwelling house or business building within the limits of the Village where the said dwelling or building abuts on any sidewalk or street without providing proper guttering and eave spouts (continued next page)

to receive the waste waters that collect on the said sidewalks and streets. All eave spouts erected on any dwelling house or business building shall be constructed to drain into the alleys, or shall be buried beneath the sidewalks and drain into the streets where it is found to be impossible to drain said eave spouts into the alley.

SECTION 5-210: HEAVY EQUIPMENT

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 curb, gutter, bridge, culvert, sidewalk, crosswalk or crossing 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; provided, 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; and provided, school buses and emergency vehicles shall be permitted to use metal or metal-type studs the year around; it shall be permissible to use farm machinery with tires having protuberances which will not injure the streets; and it shall be permissible 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.

Source: Neb. Sec. 39-6.131 R.R.S. 1943

SECTION 5-211: 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 and 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.

Source: Neb. Sec. 17-558, 17-559, 76-407 through 76-724 R.R.S. 1943

SECTION 5-212: UTILITY LINES, WIRES, ETC.

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 village clerk in writing and permission in writing shall have been given by the Village 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, when requested by the Village Board, 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 the Village Board.

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 Village Board to request such relocation for the public safety and convenience, the Village Board 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 poles, wires, gas mains, pipe lines or other appurtenances to be removed. The Village Board shall designate another location, as close as possible, where said poles, wires, gas mains, pipe lines or other appurtenances may be reset or placed. All poles, wires, gas mains, pipe lines or other 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 or buildings constructed or hereafter to be constructed. Whenever possible, all poles, wires, gas mains, pipe lines or appurtenances shall be confined to the alleys of the Village.

SECTION 5-213: DRIVEWAY APPROACHES

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.

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.

Source: Neb. Sec. 18-1748 R.S.

SECTION 5-214: PETITION FOR IMPROVEMENTS

Whenever a petition signed by the owners of record title representing more than 60% of the front footage of the property directing 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 therefore, 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, and shall contract therefor and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley or alleys, especially benefited thereby in such district in proportion to such benefits 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 Village Board should deny a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties.

Source: Neb. Sec. 17-510 R.S.

SECTION 5-215: VACATING PUBLIC WAYS; DEFINITIONS AND ASCERTAINING DAMAGES

"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 vacating such street, avenue, alley, lane or similar public ways. "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 Village or the public at large, even though those losses or damages or injuries suffered by the property owner are greater in degree than the rest of the Village or public at large.

The chairman shall appoint three or 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 vacating such street, avenue, alley, lane or similar public way. The appointees of the special commission shall be approved by the Board of Trustees. Only special damages, as herein defined, shall be awarded to the abutting property owners.

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.

Source: Neb. Sec. 17-558, 17-559 R.S.

SECTION 5-216: VACATING PUBLIC WAYS; PROCEDURE

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 Village Board shall comply with the following procedure:

A. Title. 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.

B. 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.

C. 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 Village Board and waive their right of access. The signing of such form has no effect on claims for special damages, as defined in Section 5-215, 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 Sections 17-558 and 17-559 R.S. Neb.

D. Ordinance. The Village Board shall pass an ordinance that shall state essentially the following.

1. A declaration that the action is expedient for the public good or in the best interests of the Village.

2. A statement that the Village shall have an easement for maintaining all utilities.

3. A method or procedure for ascertaining special damages to abutting property owners.

E. Filing. The clerk shall file a copy of the ordinance within 30 days 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.

(Amended December 6, 2001, Ord. No. 462; January 12, 2006, Ord. No. 499)

ARTICLE III - SIDEWALKS

SECTION 5-301: DUTY TO REPAIR; LIABILITY

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, and the chairman and Board of Trustees shall have power to cause such sidewalks to be repaired and assess the costs thereof against such property.

Source: Neb. Rev. Stat. §17-557

SECTION 5-302: NEW SIDEWALK; NOTICE

Whenever the Village Board shall deem it necessary that a new sidewalk should be constructed in front of any lot or piece of ground in the Village in a place where there is no sidewalk, it shall so order and the street commissioner shall thereupon notify the owner of such lot or piece of ground or his/her agent of the work or improvement to be done, and such owner or person so notified shall be allowed 30 days from the date of said notice in which to construct the same.

SECTION 5-303: REPAIRING SIDEWALK; NOTICE

Whenever the street commissioner shall deem it necessary that any sidewalk shall be repaired or it shall be required by the Village Board, committee on streets and walks or the street commissioner, the owner of the lot or piece of land along and contiguous to which such sidewalk is situated shall be notified to repair the same within 24 hours from and after the giving of such 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 24 hours shall begin to run from the leaving or posting of such notice, as the case may be.

SECTION 5-304: RECONSTRUCTING SIDEWALK; NOTICE

Whenever the Board shall deem it necessary that an old sidewalk shall 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 5-303 of this article, to replace or reconstruct the same within 30 days from and after such notice.

SECTION 5-305: 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 walks, the street commissioner or other officer empowered herein to act shall proceed at once without further notice to such owner or person to have such sidewalks 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 5-306: 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 5-307: FAILURE TO REBUILD

In case the owner of property in front of which any unlawful sidewalk is constructed refuses or neglects to rebuild or relocate the same within five days after notice to do so, then the Board may order the same rebuilt or relocated and assess the costs thereof upon the abutting property upon the same notice and in the same manner provided by law for the construction of and assessment for new sidewalks.

SECTION 5-308: DUTY TO REMOVE SNOW, SLEET AND ICE; PENALTY

It shall be the duty of the occupant of each lot or parcel of land in said village to remove all snow, sleet and ice from the sidewalks adjacent thereto within five hours after the same has accumulated thereon; and if snow, sleet or ice shall remain on any sidewalk for more than five hours, it shall be the duty of the street commissioner to remove the same and the expense of such removal shall be charged to and collected from the occupant or owner of such property. Any such occupant or owner who fails to remove the snow, sleet or ice accumulated on the adjacent sidewalks within the time aforesaid, upon conviction shall be fined not more than \$10.00 and shall pay the costs of prosecution and the cost of the removal of such snow, sleet or ice.

Source: Neb. Rev. Stat. §17-557

SECTION 5-309: DUTY TO REMOVE BRANCHES AND SHRUBBERY; PENALTY

It shall be the duty of the occupant of each lot or parcel of ground in said village to keep the sidewalks adjacent thereto free from overhanging branches and

limbs to a height of eight feet and to keep such sidewalks free from encroaching hedges or shrubbery, and no tree, shrubbery or hedge shall be permitted closer than 18 inches to the sidewalk. It shall be the duty of the occupant of each lot or parcel of ground abutting on any intersection to trim and or remove any shrubbery or other obstacle which obstructs the view for a distance of 25 feet from such intersection. Any such occupant or owner who fails to remove the overhanging branches and limbs or other encroachments within five days after receiving written notice to do so, upon conviction shall be fined not more than \$10.00 and shall pay the costs of prosecution and the costs of the removal of such encroachments.

Source: Neb. Rev. Stat. §17-557.01

SECTION 5-310: CONSTRUCTION BY PETITION OR AGREEMENT

If 60% of the record resident front footage owners of property subject to assessment for sidewalk improvements petition the Board of Trustees to construct the same, the Board of Trustees shall proceed in all things as though such construction had been ordered by it.

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 will pay the engineering service fee and the cost of the construction of the sidewalk, and that such costs of construction, until paid, shall be a perpetual lien upon the real estate abutting the sidewalk to be constructed. The owner grants the Village the right to assess and levy the costs of such construction against his/her 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.

Source: Neb. Rev. Stat. §17-510 Supp. 1979

ARTICLE IV - 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. Such application shall be acted upon by the Village Board at a special or regular meeting as determined by the Board.

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:

1. The addition, block and lot which the driveway is to serve;
2. The location of the proposed driveway with reference to adjacent lot lines;
3. The width of the driveway and type of street surface to which the driveway will connect.

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 V - PENAL PROVISIONS

SECTION 5-501: VIOLATION; PENALTY

Any and all persons violating any of the provisions of the several articles of this chapter for which a penalty is not therein provided shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in an amount not more than \$500.00, and each day that maintenance of the same continues shall constitute a separate offense.