

# ORDINANCE RECORD

No. 728-REDFIELD & COMPANY INC., OMAHA

## ORDINANCE NO. 1294

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, TO AMEND LA VISTA MUNICIPAL CODE SECTION 93.002; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

**SECTION 1.** Section 93.002 of the La Vista Municipal Code is amended by deleting said section and replacing it in its entirety with the following:

### **§ 93.002 STREET RIGHT-OF-WAY; PERMITTED OBSTRUCTIONS.**

(A) *Obstructions prohibited.* It shall be unlawful for any person other than the city or its designee to obstruct, encumber, or encroach upon any street right-of-way, including but not limited to placing anything living or nonliving, in, on, over, across, or under the street right-of-way, or allowing it to remain, except for items of public infrastructure and those exceptions set forth in divisions (B) through (K), inclusive, of this section.

(B) *Exception; sidewalks and driveway approaches.* Paved sidewalks and driveway approaches in accordance with city specifications are permitted in the street rights-of-way.

(C) *Exception; sidewalk space; grass and appropriate substitutes.* Turf grass or an appropriate commercial grade landscaping substitute, such as decorative gravel, river rock, tree bark or mulch, bricks, or pavers, is permitted in the unpaved area of the sidewalk space. Such turf grass and appropriate substitutes must be maintained in a neat and orderly appearance. In no event shall grass be allowed to grow longer than 12 inches. Materials used in lieu of turf grass shall be of good quality, uniform and suitable for such use, taking into account the surrounding neighborhood. Gravel and river rock used generally must be three inches in diameter or less. Bricks and pavers must be installed and maintained at grade, without mortar, cement, or similar materials, and level with abutting pavement, including but not limited to curbs, sidewalks, and driveway approaches, in a manner that provides for stable footing and easy removal and access on, in, across, under, and over the street right-of-way.

(D) *Exception; sidewalk space; trees, shrubs, bushes, landscaping, and sprinkler systems; permit.*

(1) Trees, shrubs, bushes, landscaping, and lawn sprinkler systems placed in the street right-of-way after December 31, 2001 ("*Permit Date*") pursuant to a permit issued by the City Building Inspector to the owner of the lot or ground adjacent to the right-of-way are permitted. Any person desiring a permit under this subdivision (D)(1) must submit a written application to the Building Inspector on forms provided by the city. Permits for trees, shrubs, bushes, and landscaping after the permit date shall be subject to approval of the city and only may be granted for subdivision entrances in, on, or along boulevards or street medians or to provide a buffer between zoning districts. Only official trees, shrubs, and bushes pursuant to § 94.02 may be planted in the street right-of-way. Sprinkler systems in the street right-of-way shall have all lines installed below grade, and the systems shall be installed and maintained in accordance with specifications established by the Building Inspector. Sprinkler heads in the street right-of-way shall be positioned as close to the right-of-way boundary lines as possible, but shall not be closer than two feet to any curb, nor spray on, across, or over any sidewalk, street, or pavement in the street right-of-way.

(2) Trees, shrubs, and bushes growing and sprinkler systems installed in the street rights-of-way on or before the permit date shall be allowed to remain if the owner of the lot or ground adjacent to the right-of-way files a written application for a permit, along with payment of any applicable fee, with the City Building Inspector on forms provided by the city no later than December 31, 2003, and the Building Inspector issues a permit, provided, however, that no such tree, shrub, bush, or sprinkler system shall be replaced unless the requirements of subdivision (D)(1) of this section above are satisfied. No fee shall be charged to obtain a permit if the application is properly completed and filed on or before December 31, 2002. For applications filed between

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January 1, 2003, and December 31, 2003, the required fee shall be \$100 and must be paid when the application is filed with the city.

(E) *Exception; trees, bushes, and shrubs near street right-of-way; setback requirements.* Trees, bushes, and shrubs on any lot or piece of ground adjacent to the street right-of-way are an obstruction to the extent they are so close to the right-of-way as to interfere with utilities, use of the right-of-way, or public improvements thereon. In order to prevent such obstructions, reasonable setback requirements are necessary. Accordingly, trees, bushes, and shrubs on any piece of ground or lot adjacent to the street right-of-way are permitted so long as (i) trees are planted and growing no closer than two feet to the lot line adjacent to the street right-of-way, regardless of whether there is a sidewalk abutting the lot or piece of ground, and (ii) said trees, bushes, and shrubs do not interfere with use of the street right-of-way or any public work, improvement, utility lines, or equipment on, in, over, across, or under the street right-of-way or any work thereon. On and after the permit date, only species described in § 94.02 may be planted on lots or grounds along street right-of-way with respect to any tree, bush, or shrub, any part of which is in, on, over, across, or under said right-of-way.

(F) *Exception; trees, bushes, and shrubs in or near street right-of-way; clearance requirements.* The owner or occupant of any lot or piece of ground adjacent to any street right-of-way over which there extends the branches or limbs of any tree, bush, or shrub (regardless whether or not it is planted in the street right-of-way or adjacent lot or ground) shall at all times keep said branches and limbs trimmed to the height of at least eight feet above the surface of the sidewalk and at least 15 feet above the surface of the roadway. It shall be the duty of the owner or occupant of such premises to keep all such trees, bushes, and shrubs maintained, pruned, and trimmed at all times to comply with the requirements of this division (F), as well as divisions (D) and (E) of this section and Chapter 94 of this code.

(G) *Exception; temporary obstructions; permit.* Temporary obstruction of the street right-of-way is permitted for the erection, construction, reconstruction, wrecking, or repairing of any building or part thereof, or construction or repair of any pavement or utility within any street right-of-way, pursuant to and for the period of time allowed in a permit issued by the City Building Inspector. Any person desiring a permit under this division must submit a written application to the Building Inspector on forms provided by the city. Permits shall not be granted for more than obstruction of the sidewalk space and 1/3 of the roadway of the street right-of-way adjacent to the premises on which the building or pavement is to be constructed, erected, reconstructed, wrecked, or repaired or work performed. Permits shall be subject to the applicant maintaining a safe and suitable worksite and walkway within the street right-of-way, protected and lighted in the manner required by the Building Inspector. Any permit holder shall have the site, including but not limited to all excavations, work, equipment, and dangerous conditions, protected and guarded by suitable guards or barricades by day and barricades and warning lights at night; and the failure to do so shall result in the halting of work until compliance to the satisfaction of the Building Inspector and/or revocation of permit.

(H) *Exception; utilities.* Sewers, utilities, telecommunications and cable lines, and equipment in, on, across, over, or under the street right-of-way are permitted pursuant to a current permit, license, or agreement with the city.

(I) *Exception; mailboxes.* Standard mailboxes comprised of a single metal pole and box satisfying applicable standards and specifications of the United States Postal Service, as revised from time to time, are permitted in the sidewalk space. Mailboxes of other construction in the sidewalk space as of the permit date are permitted to remain so long as they are in conformity with applicable standards and specifications of the United States Postal Service, as revised from time to time, provided, however, that any such mailbox shall be replaced with a standard mailbox satisfying the requirements of the first sentence of this division (I) in the event the mailbox is removed, repaired, modified, or replaced or, in the determination of the City Building Inspector, is in need of replacement or substantial modification or repair.

(J) *Exception; fences and retaining walls.* Any fence or retaining wall, or any part thereof, installed or encroaching in, on, under, over, or across the street rights-of-way on or before the permit date shall be allowed to remain, if the owner of the lot or ground adjacent to the right-of-way files a written application with the City Building Inspector (on forms provided by the City) no later than December 31, 2003, and the Building Inspector issues a permit, provided, however, that, in the event that any such fence or retaining

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wall is removed, repaired, modified, or replaced or is in the determination of the Building Inspector in need of replacement or substantial modification or repair, it shall be moved, removed, or relocated so that it is no longer installed or encroaching in, on, under, over, or across the street right-of-way or any part thereof.

(K) *Exception; Areas Zoned Mixed Use City Centre District or C-3 Highway Commercial Office Park District.* So much of the street right-of-way in areas zoned Mixed-Use City Centre District or C-3 Highway Commercial Office Park District as may be subject to such uses or improvements designated or authorized in a permit issued by the Building Inspector in connection with the following:

(1) Improvements or property in, on, over or beneath the street right-of-way, of occupants or an owners association of property adjacent to such street right-of-way, including without limitation, landscaping, streetscaping, street furniture, or retaining walls.

(2) Improvements or property in the air space over any street right-of-way of buildings or other improvements adjacent to the street right-of-way, including without limitation, pedestrian overpasses, awnings, balconies or signs that project over such street right-of-way; or

(3) Improvements or property in, on, over, or beneath the sidewalk space of occupants of restaurants adjacent to such sidewalk space for dining;

subject to such conditions as specified in applicable laws, rules, or regulations, or in the permit or any agreement required by the Building Inspector in connection with said permit, provided, however, the proposed improvements or uses do not interfere with use by the general public of portions of the right-of-way designated in the permit, agreement, or otherwise by the Building Inspector for ordinary pedestrian purposes.

SECTION 2. Repeal of Conflicting Ordinances. All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

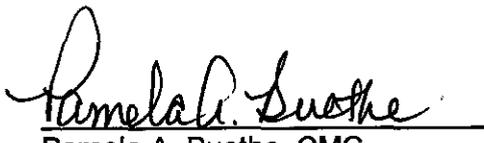
SECTION 4. Effective Date. This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 6TH DAY OF SEPTEMBER, 2016.

CITY OF LA VISTA

  
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Douglas Kindig, Mayor

ATTEST:

  
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Pamela A. Buethe, CMC  
City Clerk