

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 3, 2024 AGENDA**

Subject:	Type:	Submitted By:
AMEND MUNICIPAL CODE – ETJ RIGHT OF WAY PERMITTING CHAPTERS 92-94	RESOLUTION ◆ ORDINANCE RECEIVE/FILE	PAT DOWSE CITY ENGINEER

SYNOPSIS

An ordinance has been prepared to amend several sections in Chapters 92, 93, and 94 of the La Vista Municipal Code to clarify that requirements of the code pertaining to street right of way or public property shall also apply to right of way and public property in the City’s extraterritorial zoning jurisdiction (ETJ). This will expressly authorize the city to perform permit review and regulation for utility installation requests for communications facilities in the right of way in the ETJ.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval.

BACKGROUND

The City has received several requests from utility providers and sanitary improvement districts within the City’s ETJ to review utility installation permit requests for construction activity in the right of way of sanitary improvement districts located within the City’s 2-mile extraterritorial zoning jurisdiction. To ensure that this construction activity adheres to the right of way requirements, construction standards, and procedures of the City, as these areas may one day be annexed and maintained by the City of La Vista, staff are proposing these amendments to the Municipal Code to clarify and authorize this permitting activity.

Following these municipal code amendments will be interlocal agreements with several sanitary improvement districts that will authorize the City to perform the permitting duties for construction activity in the right of way relating to communications facilities, and to receive revenues in connection with the private uses of street right of way or public property of the SID.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND SECTIONS 92.15, 93.001, 93.002, 93.003, 93.004, 93.005, 93.006, 93.007, 93.024, 93.045, 93.046 AND 93.047 OF THE LA VISTA MUNICIPAL CODE REGARDING WORK IN OR AFFECTING STREET RIGHT OF WAY; AND TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES PREVIOUSLY ENACTED, SEVERABILITY AND THE EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AS FOLLOWS:

Section 1. Amendment of Section 92.15. Section 92.15 of the La Vista Municipal Code is hereby amended to read as follows:

“§ 92.15 DEFINITION.

(A) *General definition.* A nuisance consists in doing any unlawful act, omitting to perform a duty or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health or safety of others;
- (2) Offends decency;
- (3) Is offensive to the senses;
- (4) Unlawfully interferes with, obstructs, tends to obstruct or renders dangerous for passage any stream, public park, parkway, square, street or highway in the city or in the city’s extraterritorial zoning jurisdiction;
- (5) In any way renders other persons insecure in life or the use of property; or
- (6) Essentially interferes with the comfortable enjoyment of life and property or tends to depreciate the value of the property of others. ('79 Code, § 4-301)

(B) *Specific definition.* The maintaining, using, placing, depositing, leaving or permitting of any of the following specific acts, omissions, places, conditions and things are hereby declared to be nuisances:

- (1) Any odorous, putrid, unsound or unwholesome grain, meat, hides, skins, feathers, vegetable matter or the whole or any part of any dead animal, fish or fowl;
- (2) Privies, vaults, cesspools, dumps, pits or like places which are not securely protected from flies or rats, or which are foul or malodorous;
- (3) Filthy, littered or trash-covered cellars, houseyards, barnyards, stableyards, factory- yards, mill yards, vacant areas in rear of stores, granaries, vacant lots, houses, buildings or premises;
- (4) Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any ordinance of the city;
- (5) Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish or any waste vegetable or animal matter in any quantity, provided that nothing herein contained shall prevent the temporary retention of waste in receptacles in a manner provided by the health officer of the city, nor the dumping of non-putrefying waste in a place and manner approved by the health officer;
- (6) Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a- brac, broken stone or cement, broken crockery, broken glass, broken plaster and all trash or abandoned material, unless the same be kept in covered bins or galvanized iron receptacles;

(7) Trash, litter, rags, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, old automobiles or parts thereof, or any other waste materials when any of the articles or materials create a condition or harborage in which flies, rats, or rodents may breed or multiply, or which may be a fire danger or which are so unsightly as to depreciate property values in the vicinity thereof;

(8) Any unsafe or unsightly building, billboard or other structure, any old, abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished, which buildings, billboards or other structures are either a fire hazard, a menace to the public health or safety or are so unsightly as to depreciate the value of property in the vicinity thereof;

(9) All places used or maintained as junk yards, dumping grounds or for the wrecking and disassembling of automobiles, trucks, tractors or machinery of any kind, or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, tractors or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof;

(10) Stagnant water permitted or maintained on any lot or piece of ground. Stagnant water is defined as water which stands upon premises in such a manner, and over such a period of time, that it is likely to become a breeding place for mosquitoes;

(11) Stockyards, granaries, mills, pig pens, cattle pens, chicken pens or any other place, building or enclosure in which animals or fowls of any kind are confined or on which are stored tankage or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when the places in which the animals are confined, or the premises on which the vegetable or animal matter is located are maintained and kept in such a manner that foul and noxious odors are permitted to emanate therefrom to the annoyance of inhabitants of the city or are maintained and kept in such a manner as to be injurious to the public health; or

(12) All other things specifically designated as nuisances elsewhere in this code or applicable state law;

(13) Storage, accumulation, keeping, placing or allowing to remain of trash, garbage, scrap and wrecked, worn-out, broken or inoperative or partially destroyed or disassembled personal or real property of any kind, including any motor vehicles, tractors, trailers, machinery and equipment;

(14) Any lots or pieces of ground within the city or within the city's extraterritorial zoning jurisdiction that have (or have on adjoining streets or alleys) any growth in excess of 12 inches of weeds, grasses or other worthless vegetation or nuisance thereon, excluding city approved plantings, structures, devices or facilities for purposes of weed or erosion control, neighborhood enhancement and/or wildlife promotion or storm water quality, detention, management or control. Without limiting the foregoing provisions of this division (14), it shall be the duty of any person owning, leasing, occupying, or controlling any lot or piece of ground in the jurisdiction to prevent the growth of noxious weeds or other worthless vegetation thereon, including without limitation, cockleburrs, thistles, ragweed, burdock, and wild lettuce thereon. ('79 Code, § 4-301.01) (Ord. 646, passed 5-7-96; Am. Ord. 1257, passed 7-7-15; Am. Ord. 1352, passed 7-2-19)

Statutory reference: Authority to regulate and abate nuisances, see Neb. RS 18-1720

Cross reference: Stagnant waters, weeds and litter, see § 133.01

Section 2. Amendment of Section 93.001. Section 93.001 of the La Vista Municipal Code is hereby amended to read as follows:

“§ 93.001 DEFINITIONS.

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

BUILDING INSPECTOR. Unless otherwise required by applicable state statute, the chief building official, city engineer or any other city official or employee who from time to time is assigned or undertakes any responsibility or action to carry out this chapter 93 or any part thereof on behalf of the city.

CODE. The La Vista Municipal Code.

CORNER. The point of intersection of the lines of two street curb faces extended into the street intersection.

CURB PARKING SPACE. A length of curb equal to 20 feet where an automobile or other vehicle can park.

CURB RETURN. The portion of the curb next to a driveway approach which included the radius of curvature, or the ramp-type lug on commercial or industrial-type pavements and which connects the driveway approach to the street curb.

DRIVEWAY. A place on private property for the operation of automobiles or other vehicles.

DRIVEWAY APPROACH. An area, construction, or facility between the roadway of public streets and private property intended to provide access for vehicles from the roadway of a public street to private property. For clarification, a DRIVEWAY APPROACH must provide access to something definite on private property such as a parking area, a driveway, or a door at least seven feet wide, intended and used for the entrance of vehicles.

OBSTRUCTION. Any use, construction, or placement in the street right-of-way other than public infrastructure.

OCCUPANT. The person or persons actually occupying the lot, land, or real estate, whether he or she be tenant, lessee, or owner.

OUTSIDE SIDEWALK LINE. A line parallel to the property line lying along the edge of the sidewalk nearest the street, roadway, or curb; or where no sidewalk exists, a line in the street right-of-way parallel to and four feet from the property line.

OWNER. The person or persons holding the legal title of record to the lot, land, or real estate.

PERMIT. Any written permission of the city from time to time allowing particular uses, facilities, improvements or obstructions of or within street right-of-way of the city or its extraterritorial zoning jurisdiction, including without limitation any permit, license, agreement or franchise issued, entered or approved by the City Council, Building Inspector, City Engineer, or other representative of the city, upon submission of such application, plans, specifications, other information and security as the Public Works Director or his or her designee requires and payment of applicable fees, and containing such terms and conditions as satisfactory to such City Council, Building Inspector, City Engineer, or other representative. An application for a permit shall not be construed to vest any rights in the applicant or limit the right of the City Council, Building Inspector, City Engineer, or any other representative of the city to deny a permit that would adversely affect or jeopardize the street right-of-way, create a traffic hazard or endanger public safety or welfare, or to refuse or terminate a permit for failure to comply with applicable requirements or conditions.

PERMITTED OBSTRUCTIONS. Uses permitted by § 93.002 to the extent specifically permitted.

PERSON. Any individual, corporation, partnership, joint venture, joint stock company, association, firm, company, or entity of any kind or nature.

PUBLIC INFRASTRUCTURE. Streets, sanitary sewers, storm drainage, and other items of infrastructure owned and maintained by the city for the benefit of the public.

ROADWAY. That portion of a street or highway improved, designed, or ordinarily used for vehicular travel. In the event a highway includes two or more separate roadways, the term ROADWAY as used herein shall refer to any such ROADWAY separately but not to all such ROADWAYS collectively.

SIDEWALK SPACE. That portion of the street right-of-way between the curb line and adjacent property line.

STREET. A public way for the purpose of vehicular and pedestrian travel in the city or in the city's extraterritorial zoning jurisdiction.

STREET RIGHT-OF-WAY. The entire right-of-way of dedicated streets of the city or the city's extraterritorial zoning jurisdiction, including but not limited to parkings, sidewalks, paved portions of streets, and areas between sidewalks and paved portions of the streets."

Section 3. Amendment of Section 93.002. Section 93.002 of the La Vista Municipal Code is hereby amended to read as follows

"§ 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 division (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 division (D)(1) 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 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:

(1) 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

(2) 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, construction or repair of any pavement, utility or other work or improvement, or any other use, within or adjacent to 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 or any other part of this chapter, unless otherwise specified, must submit a written application and required documentation to the Building Inspector on forms provided by the city, and pay the applicable fees. Permits shall not be granted for more than obstruction of the sidewalk space and one-third of the roadway of the street right-of-way upon which utilities or improvements will be constructed or work will be performed, or of the street right-of-way adjacent to the premises on which a building or pavement is to be constructed, reconstructed, demolished, 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 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, 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:

(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.

(`79 Code, § 8-102) (Am. Ord. 849, passed 11-20-01; Am. Ord. 1294, passed 9-6-16)

Statutory reference:

Municipal authority, see Neb. RS 16-207 and 16-210

Authority to regulate and abate nuisances, see Neb. RS 18-1720

Cross-reference:

Tree management, see Chapter 94"

Section 4. Amendment of Section 93.003. Section 93.003 of the La Vista Municipal Code is hereby amended to read as follows

“§ 93.003 EXCEPTIONS; ADDITIONAL CONDITIONS; REMOVAL; PROCEDURE.

(A) Permitted obstructions on, in, over, under, or across the street right-of-way pursuant to § 93.002 are further subject all of the following divisions (B) through (I) of this section.

(B) Any exception listed in divisions (B) through (I) of this section shall constitute an obstruction, though permitted to the extent specified. Any person who obtains a permit for, places, installs, locates, maintains, or uses any obstruction on, in, across, over, or under said right-of-way, shall maintain it in good, orderly and working condition and repair so as not to interfere with public use of the street rights-of-way, public improvements, utilities or other permitted uses, and in accordance with all applicable provisions of the code. Further, said person shall be solely liable and responsible for all claims, losses, liabilities, costs, and expenses whatsoever, arising out of or resulting from the obstruction, including but not limited to property damage, installation, maintenance, repair, replacement, reinstallation, removal, personal injury, and death. Utilities described in § 93.002(H) or other obstructions that are allowed within the street rights-of-way shall be maintained by and be the responsibility and liability of the person placing them in the right-of-way or obtaining a permit, license, or agreement with the city. The city shall have no obligation or liability whatsoever with respect to any obstruction placed in the street right-of-way pursuant to this chapter or its damage or removal.

(C) Any obstructions placed or allowed to continue in the street right-of-way pursuant to this chapter in connection with a property fronting on such street right-of-way shall be maintained in a neat and orderly appearance and in good repair and condition by the owner or occupant of the property fronting on that portion of the street right-of-way on which the obstruction is located. The Building Inspector is hereby authorized to include in any permit issued pursuant to this chapter such terms and conditions as he or she determines necessary or advisable, including but not limited to specifications and/or requirements regarding maintenance, repair, and removal, so long as not in conflict with any express provision of this chapter or other provision of the code. Notwithstanding any other provision of this chapter to the contrary with the exception of division (F) below, the Building Inspector shall be authorized to revoke any permit issued under this chapter for failure to comply with any term or condition of the permit upon ten days advance written notice to the permittee, in which case, the obstruction shall be unpermitted, prohibited, and subject to removal under this chapter.

(D) (1) The city retains sole, full, and absolute right and authority to regulate and use (and authorize the use of) street rights-of-way, and nothing in this subchapter or in any permit or agreement issued or entered into by the city shall constitute or be interpreted as:

(a) Creating any license, right, or interest whatsoever in any person to any street right-of-way;

(b) Abrogating or limiting the right of the city, its licensees, or designees to perform any public works or public improvements at any time;

(c) A waiver of any other applicable code, ordinance, or regulation of the city or of the city's right to require any permit thereunder;

(d) A waiver or release of any rights of the city in or to the street rights-of-way; or

(e) Limiting the city's rights or authority with respect to said street rights-of-way.

(2) Any permission granted pursuant to this subchapter to place any obstruction in any right-of-way or allow it to remain shall be subject to all other laws, ordinances, rules, and regulations of the city and may be entirely or partially revoked or revised at any time by the City Council.

(E) Any dead or diseased tree in the street right-of-way, or any obstruction that is not permitted or is in violation of this subchapter shall be deemed to be a nuisance and subject to removal. The city may at any time remove or direct the removal of any obstruction:

(1) That is deemed to be a nuisance hereunder;

(2) That in the sole determination of the city interferes with use of the street rights-of-way by the city or its designees, franchisees or licensees, creates or increases risk of death, injury, or property damage, or is damaged, deteriorated, or in disrepair; or

(3) As is necessary for the city, its designee, franchisee, or licensee to perform any public work or improvement.

(F) In addition to any other authority of the city with respect to street rights-of-way under the code, state statute, or other applicable law, the Building Inspector or his or her designee shall be authorized to remove, without any prior notice, any obstruction described in division (E) of this section and not planted or installed below grade in the street right-of-way, or in the event of an emergency or when immediate removal is required in the interests of public health, safety, or welfare. In either case and in addition to other available remedies, the Building Inspector or his or her designee shall be authorized to, upon 30 days advance written notice, levy and assess all or any portion of the cost and expense of the work to the persons placing the obstruction in the street right-of-way, or to the property owners, occupants and lots or pieces of ground fronting on that portion of the street right-of-way on which the work is done if such obstructions is connected with such lots or pieces of ground.

(G) In all cases other than described in division (F) of this section, notice shall be given prior to removal of an obstruction from the street right-of-way. In the case of any dead or diseased trees, notice must be given describing the nuisance, to abate and remove the trees, and of the right and manner to request a hearing. In all other cases, the notice shall describe the reason that removal is required and direct such removal. All notices shall also state that the obstruction must be removed by the owner or occupant, at his or her sole cost and expense (or at the expense of the person placing the obstruction in the right-of-way), by the specified date, and if not removed by that date, the city shall have the option to remove it or have it removed at the owner's or occupant's sole cost and expense (or at the expense of the person placing the obstruction in the right-of-way). Notices hereunder shall be given personally or by certified mail to each owner, or his or her duly authorized agent, and to the occupant, if any, of the lots or pieces of ground fronting on the portion of the street right-of-way on which the obstruction is located if such obstruction is connected with such lots or pieces of ground. In the event a property owner is not a resident of the county in which the lot or piece of ground is located, the notice shall be sent to the address listed on the tax rolls at the time the notice is first given.

(H) Removal of any obstruction pursuant to divisions (E) through (G) shall be at the sole cost and expense of the person placing the obstruction in the right-of-way, or of the property owners or occupants of the lots or pieces of ground fronting on that portion of the street right-of-way on which the work is done if such obstructions is connected with such lots or pieces of ground. If within 30 days after notice of removal in division (G) of this section is given, neither the owner nor the occupant complies with the order to abate and remove the obstruction (and in the case of dead or diseased trees, neither the owner nor the occupant requests a hearing), the City Building Inspector or his or her designee may do the work or have it done at the sole cost and expense of the persons placing the obstruction in the street right-of-way, or of the owners or occupants of the lots or pieces of ground fronting thereon if such obstructions is connected with such lots or pieces of ground. Any amount that is not paid shall be levied and assessed upon any lots or grounds specially benefitted from the work as special assessment.

(I) A permit to place, maintain, or continue any obstruction in the right-of-way pursuant to this chapter shall be subject to all provisions of this chapter, which provisions shall be deemed part of and incorporated into each such permit as if set forth therein and shall be enforceable against permittee and permittee's successors and assigns, including without limitation all successors in interest to lots or ground fronting on that portion of street right-of-way on which the obstruction is located with respect to obstructions connected with such lots or pieces of ground.

(`79 Code, § 8-103) (Am. Ord. 849, passed 11-20-01; Am. Ord. 1275, passed 4-5-16)

Statutory reference:

Municipal authority, see Neb. RS 16-207 and 16-210

Authority to regulate and abate nuisances, see Neb. RS 18-1720

Cross-reference:

Tree management, see Chapter 94"

Section 5. Amendment of Section 93.004. Section 93.004 of the La Vista Municipal Code is hereby amended to read as follows

“§ 93.004 WORK IN OR AFFECTING STREET RIGHT OF WAY; REQUIREMENTS.

Any work, improvements or obstructions that the city permits within or affecting street right-of-way shall commence and be carried out and completed as expeditiously and efficiently as possible pursuant to such plans, specifications, conditions and schedule as specified in the application or permit approved or issued by the Building Inspector, in accordance with applicable laws, rules and regulations, including without limitation the One-Call Notification System Act found in Neb. Rev. Stat. Section 76-2301 through 76-2334 (“Act”), and without unnecessary delay, interruption, boring, excavation, debris, materials or equipment, or interference with or impact on such street right-of-way or other property, or use thereof. The Building Inspector shall be authorized to limit the scope and duration of any permit to work and improvements that the Building Inspector determines can be completed within a time period specified by the Building Inspector.

Obstructions, progress and completion of work or improvements, and restoration of street right-of-way or other property upon completion of any work or improvements, shall be subject to such reviews, approvals and conditions to the satisfaction of the Building Inspector as the Building Inspector specifies from time to time in connection with an application or permit. Not in limitation of the immediately preceding sentence, temporary obstructions shall be removed and all street right-of-way or other property shall be restored to the condition existing before any work or improvements. A permit automatically shall terminate and all obstructions, work and improvements within street right of way shall cease without any notice or action required of any party if the Building Inspector determines that commencement, progress or completion of work, or any material part thereof, is delayed more than 30 days, or that any obstruction, work, or improvement negatively affects or jeopardizes public safety or welfare or any other property. Upon any such termination, obstructions of or within street right-of-way in connection with work or improvements shall be removed and all street right-of-way or other property shall be restored to the condition existing before such work or improvement, and a new application and permit shall be required before commencing or resuming any excavation, work or improvements within or affecting street right-of-way, together with payment of all applicable fees, costs and expenses of the city, including without limitation costs or expenses of the city to identify and mark any underground facilities that previously were identified and marked in connection with a permit that terminated. Provided, however, the Building Inspector shall be authorized to extend a permit for such period of time as the Building Inspector determines necessary or appropriate if the person requesting the extension demonstrates to the satisfaction of the Building Inspector good cause for the delay, meaning the delay was caused by factors beyond the reasonable control of permit holder that were not reasonably foreseeable. To be considered, a request for extension must be submitted 15 or more days prior to the expiration of the permit. Any extension that is granted shall be subject to prior payment of all applicable fees, costs and expenses of the city, including without limitation all costs or expenses of the city to identify and mark underground facilities that were previously identified or marked, as determined by the Building Inspector.

Except as otherwise expressly provided to the contrary, provisions and powers under chapter 93 shall be cumulative and independent, and additional and supplemental to all other provisions and powers under applicable law, provisions and grants of power, authority, rights, or discretion to the city or its designees under chapter 93 shall be liberally construed, and all incidental powers necessary to carry the provisions of chapter 93 into effect are hereby expressly authorized.

Statutory references: Neb. RS 16-207, 16-240, 16-246, 16-609 , 16-901 through 16-905, 18-1720, and 76-2301 through 76-2334”

Section 6. Amendment of Section 93.005. Section 93.005 of the La Vista Municipal Code is hereby amended to read as follows

“§ 93.005 SCOPE; EXTRATERRITORIAL ZONING JURISDICTION.

Requirements of chapter 93 applicable to street right-of-way or other public property of the city also shall apply with respect to street right-of-way and other public property within the city’s extraterritorial zoning jurisdiction, as such extraterritorial zoning jurisdiction is established or modified from time to time, to be enforced and carried out as the Building

Inspector in his or her discretion from time to time determines necessary or appropriate. To clarify and not limit the previous sentence, references to “street”, “street right-of-way” or “right-of-way” in chapter 93 shall be deemed to include streets, street right of way and right of way within the city or within the city’s extraterritorial zoning jurisdiction, and written permission of the city in an agreement or permit in form and content satisfactory to the Building Inspector shall be required in connection with any application or proposed use, facilities, work, improvements or obstructions of or within street right-of-way of the city or its extraterritorial zoning jurisdiction. Any such use, facilities, work, improvements or obstructions shall be subject to such laws, rules or regulations as the city adopts or approves from time to time, and such policies, procedures, agreements, permits, terms, conditions, requirements or approvals as the mayor, city council or city administrator, or any designee of the mayor, city council or city administrator, specifies, determines, approves or requires from time to time.

Statutory references: Neb. RS 16-207, 16-240, 16-246, 16-609 , 16-901 through 16-905, 18-1720”

Section 7. Amendment of Section 93.006. Section 93.006 of the La Vista Municipal Code is hereby amended to read as follows

“§ 93.006 WEEDS, GARBAGE, INOPERABLE VEHICLES.

Refer to § 133.01 of this code. (’79 Code, § 8-104) (Am. Ord. 849, passed 11-20-01)”

Section 8. Amendment of Section 93.007. Section 93.007 of the La Vista Municipal Code is hereby amended to read as follows

“§ 93.007 ACQUISITION OF REAL PROPERTY.

The city, when acquiring an interest in real property by purchase or eminent domain, shall do so:

(A) Only after the City Council has authorized the acquisition by action taken in a public meeting after notice and public hearing; and (Neb. RS 18-1755)

(B) Pursuant to Neb. RS 25-2501 to 25-2506, except that the requirements of those sections shall not apply to:

(1) Water transmission and distribution pipelines and their appurtenances, and common carrier pipelines and their appurtenances; or

(2) Acquisition of property for a proposed project involving the acquisition of rights or interests in ten or fewer separately owned tracts, or when the acquisition is within the corporate limits of the city; or

(3) Municipalities which acquire property through the process of platting or subdivision or for street or highway construction or improvements. (’79 Code, § 8-105) (Ord. 633, passed 9-19-95; Am. Ord. 849, passed 11-20-01)”

Section 9. Amendment of Section 93.024. Section 93.024 of the La Vista Municipal Code is hereby amended to read as follows

“§ 93.024 SPECIFICATIONS, FEES, PERMITS.

(A) All concrete sidewalks hereafter laid, constructed, or reconstructed along any street or avenue in the city or in the city’s extraterritorial zoning jurisdiction shall be four inches in depth in, on, or abutting any area, tract, or lot zoned any residential classification; shall be six inches in depth in, on, or abutting any area, tract, or lot zoned any commercial or industrial classification; and shall be built in conformity with such other specifications as may be prepared by the Mayor and City Council, the City Engineer, or the Building Inspector.

(B) Any person desiring to construct or to cause to be constructed any sidewalk on any street or avenue abutting his or her property in the city shall obtain a permit as hereinafter provided, and it shall be unlawful for any person to construct any sidewalk without first having obtained a permit. Application for the permit shall be made in writing to and filed in the office of the City Clerk. The application shall in each case be accompanied by a permit fee in an amount which shall be set from time to time by the Mayor and City Council, a current record of which shall be maintained by the City Clerk and shall give a description of the lot or piece of land along which it is desired to construct the sidewalk. The City Clerk shall issue the permit unless good cause shall appear why the permit should be denied; provided, that if it is desired to construct a sidewalk other than at the regularly prescribed location, grade or elevation, the City Clerk shall submit the application to the Mayor

and City Council, who shall determine whether the permit shall be granted or denied. When a permit is issued for the construction of a sidewalk, the Building Inspector, or other person appointed by the City Council, shall approve the location, grade and elevation of the sidewalk, and it shall be unlawful for any person to construct, or cause to be constructed, such sidewalk at any other location, grade or elevation than that so approved.

(‘79 Code, § 8-310) (Ord. 96, passed - -) Penalty, see § 93.999”

Section 10. Amendment of Section 93.045. Section 93.045 of the La Vista Municipal Code is hereby amended to read as follows

“§ 93.045 EXCAVATION. It shall be unlawful for any person to use, obstruct or make any excavation or improvement within any street, or streets, or street right-of-way for any purpose whatsoever unless a written permit is issued by the Public Works Director or his or her designee authorizing such use, obstruction, excavations or improvement, upon submission of such application, plans, specifications, other information and security as the Public Works Director or his or her designee specifies from time to time and payment of applicable fees, and containing such terms and conditions as satisfactory to such Public Works Director or his or her designee.

(‘79 Code, § 8-406) Penalty, see § 93.999

Statutory reference:

Municipal authority, see Neb. RS 16-609”

Section 11. Amendment of Section 94.06. Section 94.06 of the La Vista Municipal Code is hereby amended to read as follows

“§ 94.06 OBSTRUCTION, PRUNING, REMOVAL.

(A) All trees, shrubs and bushes within the city or city’s extraterritorial zoning jurisdiction shall be pruned or caused to be pruned by the owner or occupant to prevent such trees or shrubs from obstructing the light from any street lamp, the visibility of any traffic control device or sign, the passage of pedestrians on sidewalks or the view of any street or alley intersection. The minimum clearance of any overhanging branches or limbs should be 15 feet above all streets and eight feet above sidewalks.

(B) All shrubs and hedges defined as street trees in § 94.01 shall be kept trimmed by the abutting property owner at least two feet back from all curbs, sidewalks, driveways or alleys; and the same shall at all times be kept trimmed to a height not greater than 30 inches above the top of the curb, unless the city shall have, upon written application of the owner or occupant, determined that a greater height would not constitute a hazard to pedestrians or vehicular traffic.

(‘79 Code, § 8-606) Penalty, see § 94.99”

Section 12. Amendment of Section 94.07. Section 94.07 of the La Vista Municipal Code is hereby amended to read as follows

“§ 94.07 DEAD OR DISEASED TREES. All trees and shrubs within the city or the city’s extraterritorial zoning jurisdiction shall be pruned or removed when such trees or shrubs constitute a hazard to life or property or harbor insects or disease which constitute a threat to other trees or shrubs.

(‘79 Code, § 8-607) Penalty, see § 94.99 Cross reference: Dead or diseased trees, § 92.21”

Section 13. Repeal. Sections 92.15, 93.001, 93.002, 93.003, 93.004, 93.005, 93.006, 93.007, 93.024, 93.045, 93.046 and 93.047 and all other ordinances and any parts of ordinances as previously enacted that are in conflict with this ordinance or any part hereof are hereby repealed.

Section 14. Severability Clause. 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 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 15. Effective Date. This ordinance shall be in full force and effect from and after passage, approval and publication in book or pamphlet form or as otherwise provided by law.

PASSED AND APPROVED THIS 3RD DAY OF DECEMBER 2024.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, MMC
City Clerk