

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
SEPTEMBER 6, 2016 AGENDA**

Subject:	Type:	Submitted By:
AMEND CITY CODE — STREET RIGHT-OF-WAY; PERMITTED OBSTRUCTIONS	RESOLUTION ◆ ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

A public hearing has been scheduled and an ordinance prepared to amend Chapter 93, Public Ways and Property, of the City Code in order to allow for certain obstructions to be permitted in the right-of-way.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approve.

BACKGROUND

Within Chapter 93, Public Ways and Property, of the City Code, the City adopted regulations which prohibited obstructions in the street right-of-way. The city code also listed specific exceptions to this rule for obstructions such as sidewalks, grass, and other landscaping installed prior to 2001 if the subject of a permit prior to the end of 2003. Staff is proposing an amendment to allow for obstructions if approved through the issuance of a right-of-way permit.

ORDINANCE NO. _____

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 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 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 ____ DAY OF _____, 2016.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

EXHIBIT A

STATEMENT OF POLICY AND STANDARD SPECIFICATIONS FOR PRIVATE FACILITIES ON CITY PROPERTY (MINOR USES NOT USED TO GENERATE REVENUES FOR APPLICANT) (Revised June, 2016)

As used in this document, "Permittee" includes the permittee issued a permit to which a statement of policy and specifications set forth in this document are applicable, as well as any successor in interest and/or assignee of such permittee.

SECTION A — PERMIT REQUIRED

No person shall use any space above, on, or beneath the surface of any street, alley, sidewalk or other public ground within the City of La Vista for the installation, operation and maintenance of any private facilities, unless such person has received a permit therefor, as provided herein. This policy and these specifications shall not apply to any private facilities which are installed for the purpose of generating revenue or profit for the Permittee. Private facilities installed for the purpose of revenue or profit will require a franchise or other agreement approved by the City Council or its designee.

SECTION B — APPLICATION FOR PERMIT

- (1) Application for such permit shall be made to the Permits and Inspection Division of the Community Development Department of the City, and such application shall be in writing, stating specifically the space desired, its length, breadth and depth, the streets, alleys, sidewalks or other public spaces intended to be used, the use intended to be made thereof, and a description of the user(s) and proposed, private facilities. The Permits and Inspection Division shall forward the application to the Public Works Department for review and comment. The Permits and Inspection Division and/or the Public Works Department may request such additional information as they deem appropriate for their determination.
- (2) Following initial application and discussions with the Permits and Inspection Division and/or the Public Works Department concerning the placement of private facilities, the applicant shall supply accurate drawings under seal of a Nebraska-licensed professional engineer produced to a scale as specified by the City representatives during discussion and review of the initial application. Such plans must show the proposed location of the private facilities, right of way lines and pavement lines, and typical sections for pavement cuts and crossings, if any, with specific details for any conflicts with other existing improvements.
- (3) Within thirty days after completion of the construction and installation work, the Permittee shall provide as-built construction drawings, signed and certified by a Nebraska-licensed professional engineer, to the Public Works Department. In that connection, one set of paper prints shall be provided, along with a digital copy on

electronic storage media and with each sheet being a .pdf file. Updated as-built construction drawings must be provided to the Public Works Department whenever a location or other change is made to the approved private facilities allowed under this permit. Any such change requires prior approval of the Permits and Inspection Division, Public Works Department, or City Engineer

SECTION C — CONSTRUCTION SPECIFICATIONS

- (1) The work shall be constructed in accordance with plans and specifications approved by the Public Works Department, which approval shall be granted in a competitively neutral and non-discriminatory manner. All excavations and pavement replacements in public streets shall comply with Chapter 93 of the La Vista Municipal Code. In no instances shall private, underground facilities be buried to a depth of less than twenty-four inches unless specifically allowed by the permit. Items shallower than the depth above specified shall be clearly shown on the completed plans and as-built construction drawings covering the installation work.
- (2) All land surfaces, landscaping, and all pavement shall be restored to the same or similar conditions existing prior to Permittee's construction. All established lawns which have been disturbed by the installation shall be re-sodded and all other earthen surfaces shall be seeded or landscaped as approved by the City Engineer unless otherwise specified in the permit.
- (3) All pavement cuts must be completed in accord with current City ordinances and specifications.

SECTION D — BOND, INSURANCE AND PUBLIC LIABILITY

Prior to commencing any construction or installation activity under a permit, Permittee shall file with the City Engineer a continuing performance bond guaranteeing Permittee's performance in compliance with the conditions of the permit. Such bond shall be in the sum of Ten Thousand Dollars (\$10,000.00), or such greater sum as may be specified by the Public Works Director or City Engineer and reasonably proportionate to the size and scope of the work to be performed within the City's rights-of-way and the potential loss(es) or damage(s) the City may sustain if Permittee fails to perform the agreement and comply with the conditions of the agreement and of the permit. Such bond shall be conditioned that Permittee:

- (A) shall faithfully perform all conditions of the permit;
- (B) shall save and keep the City free and harmless from any and all loss, liability and damage, and claims for damages, arising from or out of the use of the space subject to the permit or arising from or out of Permittee's activities and operations under the permit, except such claims as may arise based solely upon the City's own gross negligence or intentional misconduct;
- (C) shall conduct operations and activities under the permit such that the street(s), alley(s), sidewalk(s) and other public ground(s) affected by Permittee's operations under the permit shall at all times after the completion of such operations be safe for public use;

- (D) shall save and keep the City free and harmless from any and all loss, liability or damages, and claims for damages, arising from or growing out of the granting of such permit, except such claims as may arise based solely upon the City's own gross negligence or intentional misconduct;
- (E) will remove any private facilities installed by Permittee, at the conclusion of the term or to the extent the Permittee no longer utilizes the private facilities in public right of way and such removal is requested by the City, at the sole expense of Permittee or its successors or assigns, and after such removal restore all land surfaces and all pavement as specified more fully in SECTION C(2), above;
- (F) shall faithfully comply with and observe all of the terms and conditions of this statement of policy and of these specifications, and of the conditions and provisions of the La Vista Municipal Code; and
- (G) shall promptly and fully pay, when due, any amounts coming due to the City or others under the permit.

Such bond by its terms shall remain in effect until the City allows the Permittee to discontinue the bond in writing. The bond shall be written by a surety company or companies authorized to transact a surety business in Nebraska, and the bond and surety(ies) must be approved by the City Engineer before the permit shall become effective. The Permittee and the owners (from time to time) of the permitted facility shall be jointly and severally liable to the City for the performance of all of the conditions of the bond. Whenever the City Engineer shall be of the opinion that the sum or the surety on the bond given in connection with the permit has become insufficient and shall so declare in writing sent by regular U.S. Mail to Permittee or his, her or its successor or assign, a new bond for such permit shall thereupon be filed with a new surety to be approved by the City Engineer.

- (2) The Permittee, or his, her or its successor or assign, shall at all times have in full force and effect, and provide to the City Engineer, certificates of insurance demonstrating insurance coverages having limits of liability of not less than the following amounts:
 - (A) Comprehensive General Liability Insurance: Limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. The City of La Vista shall be named as an Additional Insured on such coverages on a primary and on-contributory basis.
 - (B) Automobile Liability Insurance: Limits of not less than \$2,000,000 Combined Single Limit (CSL) per accident, with coverage applying to and regarding all Owned, Hired, and Non-Owned motor vehicles.
 - (C) Workers' Compensation Insurance: Limits: Statutory coverage for each State in which the work and any portion of the work is located or performed.

(D) Employer's Liability Insurance: Limits: \$100,000 each Accident; \$100,000 Disease (per person); \$500,000 Disease (policy limit).

The Comprehensive General Liability Insurance coverage described in Section D(2)(A) above and the Automotive Liability Insurance coverage described in Section D(2)(B) above may each be provided by one or more policies of insurance, including umbrella

liability policies, which in combination are sufficient to provide the minimum limit of liability coverage specified.

All such policies and certificates of insurance shall be issued by companies authorized to issue such policies in the State of Nebraska, shall be subject to approval by the City Engineer prior to the commencement of any construction or installation activity under a permit, and shall provide that the policy shall not be cancelled or terminated except upon filing by the insurer with the City Engineer a written notice of cancellation or termination at least thirty (30) days prior to the effective date of such cancellation or termination. Any cancellation, termination, or lapse of a required insurance coverage shall automatically revoke any permit issued, but the Director of Public Works may reinstate such permit if satisfactory certificate(s) of insurance is/are provided within thirty days.

SECTION E — INTERFERENCE WITH OTHER PUBLIC FACILITIES, RELOCATION, IDENTIFICATION OF PRIVATE FACILITIES

- (1) No person, whether permitted under this document or otherwise, shall ever use the space above, on or beneath any street, alley, sidewalk or public ground of the City in such manner as to interfere with any traffic control or energy cable, sewer, gas or water installation, or any other public facility or utility lawfully located above, on, or beneath such street, alley, sidewalk or other public space, except upon consent of the City specifically granted in the permit. Whenever any applicant or Permittee is given permission to relocate any existing public facility, such relocation shall be entirely at the cost and expense of the applicant or Permittee. All such relocation work shall be subject to the approval of the City of La Vista or other public entity controlling such public facility or utility, and all such work shall be done promptly in accordance with the directions of the Public Works Department so as to minimize the interruption of the public's use of such facilities.
- (2) All work undertaken by the applicant or Permittee that requires inspection by the City, as specified by law or ordinance or in the permit or agreement, shall be performed subject to the requirement that the City be fully reimbursed for its reasonable and documented inspection costs, whether the same are incurred during the initial installation, during the relocation of Permittee's facilities or facilities belonging to the City or any other utility service, or during maintenance or repair work by Permittee.
- (3) All permits governed by these specifications are granted subject to the express requirement and condition that whenever the City of La Vista, the State of Nebraska, the County of Sarpy, any other public body, Omaha Public Power District, Metropolitan Utilities District, any other publicly-owned entity, Black Hills Energy, or any holder of any franchise from the City, needs or desires to perform work in proximity to the facilities of Permittee, Permittee shall relocate or otherwise safeguard its facilities within a reasonable time, not to exceed sixty (60) days, after written request for the same, in order to reasonably accommodate such work. If Permittee fails to relocate or safeguard same within a reasonable time following such request, then the City of La Vista shall

have the right to relocate or allow relocation of Permittee's facility(ies) and to assess and collect from Permittee the reasonable and documented cost of such relocation.

- (4) At its own cost, Permittee shall appoint a local agent, who shall be available on a twenty-four hours per day, seven days per week basis, to provide to the City, any public entity, or any other person permitted to do work in a City right-of-way, detailed and accurate information concerning the location (whether in plan, section or profile, or any combination of the same) of the Permittee's underground, private facilities. This requirement may be satisfied by the Permittee's utilization of a local utility locating service maintained by a third party or any other local agency able to provide such information. Permittee shall be a member of the Underground Digger's Hotline system. With permission from the City, the Permittee may be excused in certain instances from being a member of the Underground Digger's Hotline system. In those instances, the Permittee shall post small, permanent signs satisfactory to the City which identify the existence of the encroachment and its location.
- (5) Permittee shall at all times be solely responsible for injuries and damage to its private facilities, caused by any party due to any inaccuracy in the information provided by Permittee or its agent(s) with respect to the location of such private facilities. The City of La Vista and other parties working on public property shall be responsible for damage to the Permittee's private facilities only if and to the extent that such damage results from intentional damage or willful disregard of the private facilities of the Permittee.

SECTION F — REVOCATION OF PERMIT; REMOVAL OF FACILITIES

- (1) If Permittee fails or neglects to comply with any material provision of this statement of policy, these specifications, the permit, or any other provision of the La Vista Municipal Code applicable to the permit or use and occupancy of City right-of-way, and if Permittee fails to cure such breach within thirty (30) days after the City Engineer has mailed written notice of such breach to Permittee, then the City Permits and Inspection Division may revoke the permit issued to Permittee.
- (2) The permit, subject to earlier revocation, expiration or termination, will end upon expiration of the term specified in the permit. If no term is specified, the term shall be ten (10) years and automatically renew for successive additional terms, provided the Permits and Inspection Division, Public Works Director, or City Engineer does not provide Permittee notice of nonrenewal at least thirty (30) days before the end of the initial or any renewal term and the Permittee continues to utilize the private facilities in public right of way. Upon revocation, expiration or termination of the permit, Permittee shall forthwith either remove or abandon in place, as directed by the City Engineer, the private facilities, and/or appurtenances for which the permit was granted. If pursuant to the foregoing, the City Engineer directs Permittee to remove Permittee's private facilities and/or appurtenances, then within a reasonable time and at its own cost, Permittee shall remove as directed any such private facilities and/or appurtenances, including without limitation, any cable, lines, facilities, and/or appurtenances buried or installed by Permittee, and after such removal Permittee shall restore all land surfaces and all pavement as specified more fully in SECTION C(2) above. The performance bond shall not be released until such removal has been completed to the satisfaction of the City Engineer. Private

facilities that are not removed, with the permission of or at the direction of the City Engineer, shall become the property of the City upon the City Engineer's certification that the Permittee has complied with all of the City Engineer's directives concerning removal or abandonment in place of the specific private improvements. If Permittee fails or refuses to conclude removal or abandonment in place as directed by the City, and restoration as specified more fully in SECTION C(2), within six (6) months after the end of the permit, then the City may cause such work to be performed and the cost of such work shall be paid by Permittee to the City on demand, and until paid such cost shall be a lien against and upon all the private improvements and other property of the Permittee located within the corporate limits of the City.

- (3) If the City Council determines that right-of-way or other public ground space for which the permit was granted is needed for other public use and that no relocation within the specific right-of-way or public ground is available as a reasonably feasible alternative space, then Permittee's rights under the permit may be transferred, by co-operation between the City and the Permittee, and to the extent reasonably possible, to another specific nearby right-of-way. Such relocation work shall be accomplished by the permit holder at its own cost within the time frame specified in Section E(3), above.