

# ORDINANCE RECORD

No. 728--REDFIELD & COMPANY INC., OMAHA

## ORDINANCE NO. 1275

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, TO AMEND THE LA VISTA MUNICIPAL CODE SECTION 93.003; 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 93.003 of the La Vista Municipal Code is 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. Except for utilities described in § 93.002(H), 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 so as not to interfere with public use of the street rights-of-way, public improvements, or utilities 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) 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 subchapter or its damage or removal.

(C) Any obstructions placed or allowed to continue in the street right-of-way pursuant to this subchapter 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 subchapter 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 subchapter or other provision of the code. Notwithstanding any other provision of this subchapter to the contrary, the Building Inspector shall be authorized to revoke any permit issued under this subchapter for failure to comply with any term or condition of the permit upon ten days advance written notice to the owner of the lot or ground adjacent to the street right-of-way on which the particular obstruction is located, in which case, the obstruction shall be unpermitted, prohibited, and subject to removal under this subchapter.

(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

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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 its 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, 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 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.

(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. 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 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. Any amount that is not paid shall be levied and assessed upon the 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 subchapter shall only be issued to the owner of the lot or ground fronting on that portion of the street right-of-way on which the obstruction is located and shall be subject to all of the provisions of this subchapter, which provisions shall be deemed part of and incorporated into each such permit as if set forth therein and shall be enforceable against the owner and all successors in interest to the lot or ground. Except as otherwise provided in § 93.002, no fee shall be charged to obtain a permit.

**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.

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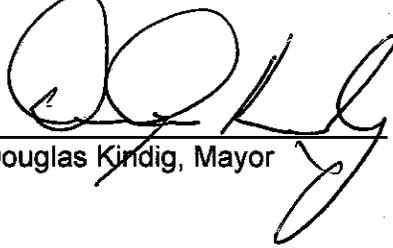
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**SECTION 3. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity or constitutionality 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.

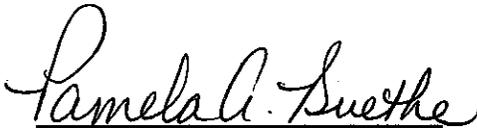
**SECTION 4. Effective Date.** This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 5TH DAY OF APRIL, 2016.

CITY OF LA VISTA

  
Douglas Kindig, Mayor

ATTEST:

  
Pamela A. Buethe, CMC  
City Clerk