

## Chapter 14.80

### SIDEWALK CONSTRUCTION

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#### **14.80.010 Space Between Curb and Lot Lines; Designation.**

The space between the lot line and existing or projected curb line on each side of every street in the city (hereafter known as the sidewalk space) shall be used only for the location of sidewalks, street trees and landscape plantings authorized pursuant to Section 12.20.021 of this code, and non-organic mulch, mailboxes and supporting structures, and surfacing materials authorized pursuant to Section 14.80.020. (Ord. 19562 §1; June 20, 2011: prior Ord. 18173 §1; May 12, 2003: Ord. 14524 §1; September 29, 1986; Ord. 12452 §1; December 18, 1978: Ord. 3189 § 39-101; July 6, 1936).

#### **14.80.020 Sidewalk Space; Uses Allowed With or Without Permit.**

(a) The owner of the abutting property may use the sidewalk space for placement of the following without a permit:

(1) non-organic mulch, including river rock, crushed rock, gravel, crushed brick, lava rock, or decorative stones no less than three-eighths inch in diameter but less than twelve inches in diameter, provided that such material must be securely placed so as not to be dislodged or displaced onto the adjoining sidewalk or street. The owner of the property abutting the sidewalk space shall be responsible for assuring that non-organic mulch does not become dislodged or displaced onto the adjoining sidewalk or street as per Section 14.92.040. Placement of non-organic mulch shall be subject to subsection (d) of this section;

(2) laid brick on sand;

(3) mailboxes and supporting structures, when required by the United States Postal Service.

(b) The Owner of abutting property may apply for a permit to use the sidewalk space for the placement of any of the following surfacing materials:

- (1) decorative concrete;
- (2) exposed aggregate in concrete;
- (3) asphalt;
- (4) terrazzo;
- (5) securely fastened artificial surface.

In no event shall said sidewalk space be used for the parking of a motor vehicle.

(c) Application procedure. A formal application shall be filed by the owner of the abutting property, which ownership may also consist of a long-term lease or other long-term interest in said property, with the Department of Public Works and Utilities on forms provided by said department for that purpose, together with four copies of a plot plan showing the sidewalk space and proposed uses drawn to an accurate scale and showing all pertinent information, including the use(s) of the abutting lot. A permit fee of fifty dollars shall accompany the application. Upon receipt of said application, the Department of Public Works and Utilities shall send copies of the application, together with the plot plan, to the Parks and Recreation Department, and the Department of Building and Safety for review and recommendation.

(d) Upon receipt of recommendation of approval from the reviewing departments, the Director of Public Works may grant a permit to use the sidewalk space for the placement of the requested surfacing material, conditioned upon the following:

(1) In the event that it becomes necessary to construct, replace, or repair any facilities within said sidewalk space, the removal and replacement of said permitted surfacing material shall be done at the expense of the abutting property owner, and by the abutting property owner within five days after written notice is given by the city, except for emergencies. Emergency is defined as any condition existing in said utilities necessitating immediate action.

(2) In the event that emergency maintenance or repairs must be made to any curb and gutter, street right-of-way, or public or quasi-public utilities, or property of franchisees, the appropriate city department or other utility or franchisee is authorized to remove, destroy, or otherwise deface those materials authorized to be located in the sidewalk space by permit, with no liability or responsibility for said removal, destruction, defacement, or replacement falling on the City of Lincoln, its agents, franchisees, or employees.

(3) The maintenance of the surfacing materials authorized to be located in the sidewalk space by permit shall solely and only be the responsibility of the abutting property owner and shall be performed at said owner's cost and expense. Surfacing material authorized to be located in the sidewalk space by permit shall at all times be maintained in good repair and in the form approved by the permit. Should any of the material authorized to be located in the sidewalk space by permit become loose, broken off, or in any way spread into the traveled portion of the public right-of-way, the city may give notice to the abutting property owner to either repair or remove the same at the property owner's expense. If an emergency exists, the city may, without notice, remove the surfacing material from the traveled portion of the public right-of-way and charge the cost of said removal to the abutting property owner.

(4) The abutting property owner shall hold the city harmless from any and all liability resulting from the placement of or maintenance of any of the surfacing material in said sidewalk space, except for the replacement of any permitted tree or sod, by the city or other governmental entity, public utility, or quasi-public utility performing work in said sidewalk space.

(5) No existing tree or shrub may be removed or damaged in order to lay the permitted surface materials, unless allowed as a condition of the granting of said permit. Permitted surface materials must be kept a minimum distance of four feet from trees with trunks up to six inches in diameter and at least six feet from trees with trunks that have a diameter greater than six inches.

(6) All terms and conditions of the permit shall be binding and obligatory on the abutting property owner and such owner's successors, personal representatives, heirs, and assigns.

(e) Revocation of permit. The Director of Public Works and Utilities, after thirty days notice, may revoke said permit for any of the following reasons:

(1) Any failure to maintain the surfacing material in the same form as specified in the permit.

(2) If the permitted surfacing material interferes with or causes a hazard to pedestrian movement on the sidewalk or with vehicular movement on the traveled portion of the public right-of-way, or hampers or impedes the maintenance or repair of curb and gutter, streets, or public or quasi-public utilities located under the sidewalk space.

(3) If the sidewalk space is or has been used as a parking space for motor vehicles.

(4) If the permitted surfacing material interferes with existing public or quasi-public utilities or would interfere with the proposed installation or maintenance of new public utilities or interferes with curb and gutter repair or street maintenance.

(5) Following revocation of said permit, the abutting property owner will have thirty days to remove the permitted surfacing material at the owner's cost and expense. In the event that owner does not remove the surfacing material, the city may remove the same and charge the cost of said removal to the owner. Any such revocation may be appealed to the city council by filing with the city clerk a notice of appeal within seven days of receipt of notice of such revocation.

(f) Release of Liability. The City of Lincoln is released from any and all liability and responsibility for any damage to any non-organic mulch, mailboxes and supporting structures, surfacing materials, and/or any item or material not authorized pursuant to this section, located in the sidewalk space by the abutting property owner which might occur during maintenance or repair work performed by the City of Lincoln, its departments or utilities, or another quasi-public utility, or franchisee of the City of Lincoln including, but not limited to, street maintenance and repair, snow removal, street widening, utility project, street cleaning, sign replacement, maintenance and repair, or any other maintenance, construction, or repair function of the City of Lincoln, its departments, utilities, or quasi-public utilities, or its franchisees, or its successors or assigns. The release from liability in this subparagraph shall apply regardless of whether such use of the sidewalk space by the abutting property owner is an allowed or permitted use or an unauthorized use of such space. In no event will compensation be provided for use of the right-of-way by the City. If the abutting property owner desires to salvage material, it must be done before the project begins and at owner's expense.

(g) All allowed and permitted improvements must conform to all applicable city codes and ordinances. (Ord. 19562 §2; June 6, 2011: prior 18173 §2; May 12, 2003: Ord. 16951 §132; March 11, 1996: P.C. §14.80.015; Ord. 15117 §1; March 6, 1989: Ord. 14837 §27 (part); February 29, 1988: Ord. 14662 §1; May 11, 1987: Ord. 14524 §2; September 29, 1986).

#### **14.80.030 Width of Sidewalks.**

All sidewalks on "M" Street from 9th to 15th Streets, on "N" Street from 9th to 16th Streets, on "O" Street from 8th to 21st Streets, on "P" Street from 8th to 16th Streets, and on "Q" Street from 8th to 14th Streets, on 9th, 10th, 11th, 12th, 13th, and 14th Streets from "M" to "Q" Streets, on 15th and 16th Streets from "N" to "P" Streets, and all sidewalks in front of and alongside of any building in any part of the city where areaways or cellars are in use under any sidewalk shall extend from the line of the abutting lot to the curb line; provided that the city council may by resolution create sidewalk districts and establish the width of sidewalks in such districts, including requiring the extension of sidewalks from the line of the abutting lot to the curb line in front of and alongside of any lot used for business or industrial purposes but in no case shall such width be less than four feet. All other sidewalks within the district bounded on the north by the north line of "S" Street, on the west by the west line of 9th Street, on the south by the south line of "A" Street, and on the east from "A" to "F" Streets by the west line of 20th Street, from 20th Street to 18th Street by the south line of "F" Street, and by the east line of 18th Street from "F" Street to "S" Street shall be at least five feet in width. All other sidewalks in the city shall be not less than four feet wide. (P.C. §14.80.020: Ord. 13391 §1; June 1, 1982; prior Ord. 3489 §39-102; July 6, 1936).

#### **14.80.040 Construction of Sidewalks; Insurance.**

The construction of all sidewalks shall be under the supervision of the Director of Public Works and Utilities; and no sidewalk shall be constructed, altered, or repaired until an application for a sidewalk construction permit has been filed with the Director of Public Works and Utilities, together with the appropriate permit fee, and a permit therefor has been issued by the Director. The amount of the permit fee shall be determined by reference to the schedule of costs approved by the resolution of the City Council, which schedule of costs shall be subject to annual review. Any contractor making application for a sidewalk construction permit shall, as a part of the application be required to:

(a) At all times maintain public liability insurance in the form of a commercial or comprehensive general liability policy, or an acceptable substitute policy form as permitted by the City Attorney, with a minimum combined single limit of \$500,000.00 aggregate for any one occurrence. The coverages required herein shall be subject to review and approval by the City Attorney for conformance with the provisions of this section;

(b) At all times keep on file with the City Clerk a current certificate of insurance signed by a qualified agent of an insurance company licensed to do business in the State of Nebraska and approved by the City Attorney for conformance with the provisions of this section evidencing the existence of valid and effective policies of insurance naming the city as an additional insured for the coverage required by subsection (a) of this section, the limits of each policy, the policy number, the name of the insurer, the effective date and expiration date of each policy, the deductibles or self-insurance retainers of each policy, and a copy of an endorsement placed on each policy requiring thirty day's notice by mail to the City Clerk before the insurer may cancel the policy for any reason, and upon request of the City Clerk or the City Attorney, a copy of any endorsements placed on such policies or the declarations page of such policies. Any termination, reduction or lapse of such insurance shall automatically revoke any permit issued hereunder.

Except as permitted under Section 14.80.020, all sidewalks shall be constructed of portland cement concrete, or other materials approved by the Director of Public Works and Utilities. The Department of Public Works and Utilities may reject the use of any materials that do not comply

with such requirements or specifications, or any material that is lacking in quality, and it shall be unlawful to construct any sidewalks from any material so rejected.

It shall be unlawful to relay any existing brick or concrete sidewalk without first obtaining a permit therefor in the same manner as provided herein for original construction. (Ord. 16951 §133; March 11, 1996: P.C. §14.80.030: Ord. 15654 §15; July 9, 1990: Ord. 15117 § 2; March 6, 1989: Ord. 14662 § 2; May 11, 1987: Ord. 13391 § 2; June 1, 1982: Ord. 3489 § 39-103, as amended by Ord. 3831; August 4, 1941).

#### **14.80.050 Locations of Sidewalks; Incline.**

Sidewalks, except those extending from the lot line to the curb line, or along a block face where the distance between the lot line and the sidewalk has previously been established, shall be three feet, neither more nor less, from the line of the adjacent lot.

All sidewalks extending from the line of the abutting lot to the curb line shall be constructed so that the outer edge of said walk shall rest flush with the top of the curb, and no part of said walk shall be taken for private use by lowering or cutting down the same next to the building; and said walk shall be built up to the building on a uniform grade.

All sidewalks shall be constructed so as to incline upwards from the street side edge of the sidewalk toward the boundary of the lot at a rate of not less than one-fourth inch nor more than one-half inch in one foot, except as otherwise authorized by the Director of Public Works and Utilities.

All sidewalks in each block shall be of uniform height above the curb; provided, that where such elevation does not allow uniformity of height above the curb, the Director of Public Works and Utilities may permit elevations other than herein fixed. In all cases, the end of the sidewalk at the curb shall be on the same level as the top of the curb and the approach from the curb shall incline upwards at a uniform grade until the established height of the walk is reached. (Ord. 16951 §134; March 11, 1996: prior Ord. 16029 §1; January 13, 1992: P.C. §14.80.040: Ord. 15117 §3; March 6, 1989: Ord. 3489 §39-104; July 6, 1936).

#### **14.80.060 Line and Grade of Sidewalks.**

The Department of Public Works and Utilities shall establish the line and grade of all sidewalks; and it shall be unlawful for any person, firm, or corporation to construct any sidewalk without first having secured the line and grade of the same from the Department of Public Works and Utilities and having obtained a permit as herein provided. In the event the line and grade are established by staking, it shall be unlawful for any person to remove any stakes so established. (Ord. 16951 §135; March 11, 1996: P.C. §14.80.050: Ord. 15117 §4; March 6, 1989: Ord. 3489 §39-105; July 6, 1936).

#### **14.80.070 Council May Order Construction.**

Whenever the construction of any sidewalk is necessary or advisable in the opinion of the City Council, other than construction as provided for in §14.80.075, the City Council shall pass a resolution ordering the owner or owners of the abutting lot or lots to construct said sidewalk. Notice of such resolution shall be served upon the owner or owners of the lot or lots along which the sidewalk is ordered constructed by mailing said notice to the owner or owners of the lots affected by U.S. mail, postage prepaid to the last known address of said owner as the same appears on the last equalized assessment roll of Lancaster county, Nebraska. In case such owner or owners of the lot or lots along which said sidewalk is ordered constructed refuses or neglects to comply with said order, or if such sidewalk is not constructed within forty-five days from the date of service of such

notice, the City Council may cause such sidewalk to be constructed and the costs thereof shall be assessed to the abutting lot or lots in the manner provided by law. (P.C. §14.80.060: Ord. 15117 §5; March 6, 1989: Ord. 3489 §39-106; July 6, 1936).

**14.80.075 Mayor Shall Order Construction; When.**

The Mayor, by executive order, shall cause sidewalks to be constructed without any other authorization by the City Council being necessary whenever there are existing sidewalks on one side of a street for more than two-thirds of the frontage between street intersections, and it is deemed necessary to have such sidewalks constructed. When sidewalks are ordered constructed as provided for in this section, notice of the Mayor's action shall be given to property owners in the manner prescribed in §14.80.070 of this title. (P.C. §14.80.065: Ord. 15117 §6; March 6, 1989).

**14.80.080 Sidewalk Inspector to Have General Control of Sidewalks.**

The Sidewalk Inspector shall have general control of all sidewalks and sidewalk space in the city; it shall be his duty to see that sidewalks and sidewalk space are not unlawfully occupied; and he shall report all obstructions thereon and unlawful use of the same to the appropriate department head.

Whenever he finds that any sidewalk needs repair, he shall immediately give notice as provided in section 14.80.070 hereof to the owner or owners of the abutting property to repair the same; and if such repairs are not made within forty-five days after service of such notice, then the Sidewalk Inspector shall report to the City Council the failure of the owner or owners to make the necessary repairs, together with the time and manner of the service of notice to make such repairs; and the City Council may cause such sidewalk to be repaired, and the cost and expense of such repairs to be assessed to the abutting property in the same manner as the cost of the construction of sidewalks is assessed. (P.C. §14.80.070: Ord. 15117 §7; March 6, 1989: Ord. 3489 §39-107; July 6, 1936).

**14.80.090 Openings or Gratings in Sidewalks.**

No openings or grates shall be allowed in any sidewalk unless such openings or grates are determined by the Sidewalk Inspector to be necessary to serve the space below the sidewalk. The owner of the underground property served by the opening or grate shall be responsible for the removal and reconstruction of the sidewalk if the Sidewalk Inspector determines that the opening or grate is no longer needed. Failure to comply with this section shall result in removal of the grate or opening by the city and the cost assessed against the owner of the underground property served by the opening or grate. (P.C. §14.80.100: Ord. 13391 §4; June 1, 1982: prior Ord. 3489 §39-110; July 6, 1936).

**14.80.100 Uncovered Opening or Defective Sidewalk; Emergency Repairs.**

It shall be unlawful for any person, firm, or corporation to leave uncovered any opening in any sidewalk or suffer the same to be left or kept open, or suffer any sidewalk in front of his or its premises to become or continue to be so broken or otherwise defective as to endanger life or limb. In such cases, the Sidewalk Inspector shall report to the Mayor the necessity for emergency repairs and the mayor may order the sidewalk repaired in an expedited manner. (P.C. §14.80.120: Ord. 15117 §8; March 6, 1989: prior Ord. 3489 §39-112; July 6, 1936).

#### **14.80.110 Snow and Ice Removal.**

Every owner or occupant of any house or other building, or the owner or proprietor, lessee, or person entitled to the possession of any vacant lot, and any person having charge of any church, jail, or public hall, or public building in the city shall, during the winter season and during the time snow shall continue on the ground, before 9:00 a.m. the morning subsequent to the cessation of any snow storm, clear the sidewalks in front of such lots from snow and ice and keep such sidewalks free from snow and ice during the day; provided, however, all owners or occupants of any properties within the area bounded by 7th Street on the west and 17th Street on the east and "K" Street on the south and "R" Street on the north shall before 9:00 a.m. every morning, clear the sidewalks in front of such lots from snow and ice and keep such sidewalks free from snow and ice throughout the day, or in case the snow and ice are so congealed that they cannot be removed without injury to the sidewalk, shall apply sand or approved de-icing agent in sufficient quantities to cause said walk to be safe for pedestrian traffic. Said owner shall also at all times keep such sidewalks clear and free from all dirt or filth, or other obstructions or encroachments so as to allow pedestrians to use said sidewalks with safety. Failure on the part of any person upon whom a duty is placed by the provisions of this section to perform such duty shall be deemed a misdemeanor and punishable as in this code provided.

In case of non-compliance with the provisions of this section, the Sidewalk Inspector may have the walks cleaned and report the cost thereof to the City Council who shall assess the cost thereof against the abutting real estate in the following manner:

The Sidewalk Inspector shall place a written notice on the front door or other conspicuous place on the property ordering the sidewalks along the same or any portion thereof to be cleared immediately and providing a deadline to complete the same of not less than twelve hours after posting the same. The Sidewalk Inspector shall, not later than May 1 of each year, report to the City Council the location of the sidewalks from which snow and ice has been removed after the required notice, together with the description of the real estate abutting upon such sidewalk, and the cost of the removal of such snow and ice. Whereupon the City Council shall at a regular council meeting, by resolution, assess such cost against such real estate; provided, that notice of the time of such meeting of the City Council for making such assessment and the purpose of such meeting shall be published once in a newspaper published and of general circulation in the city at least five days before said meeting of the council is held; in lieu thereof, notice may be given such owner by personal service thereof five days before such meeting. Such assessment when assessed as provided herein shall be certified by the City Clerk and delivered to the City Treasurer on or before October 1 and shall be collected in the manner provided by law for the collection of general real estate taxes. Such assessment shall be a lien upon such real estate as of October 1 following the date of assessment and shall become delinquent December 1 after the date of assessment, and shall draw interest at the rate of one percent per month from said date until paid. It shall be the duty of the City Treasurer to collect said tax in the same manner and at the same time as general taxes, and the items of said tax shall be receipted for on the same receipt blank as general real estate taxes. (Ord. 18295 §1; January 26, 2004: P.C. §14.80. 140: Ord. 15117 §9; March 6, 1989: Ord. 13391 §7; June 1, 1982: Ord. 3489 §39-113, as amended by Ord. 3644; April 24, 1939).

**Annot.:** Where the provisions of an ordinance impose upon property owners the performance of a part of the duty of the municipality to the public and are for the benefit of the municipality as an organized government, a breach of such ordinance is remedial only at the insistence of the municipality and no right of action accrues to an individual citizen especially injured thereby. *Stump v. Stransky*, 168 Neb. 414, 95 N.W.2d 691 (1959).

Requirement of notice contained in Article VIII, Section 19 of the Charter of the City of Lincoln and in Section 15-734 R.R.S. 1945 is a condition precedent to the operative effect of the duty of an owner of property under this ordinance. *Id.*

#### **14.80.120 Injury to Any Sidewalk Unlawful.**

It shall be unlawful for any person or persons to tear up, break, remove, destroy, or in any manner injure any sidewalk or street crossing in the city. (P.C. §14.80.150: Ord. 3489 §39-114; July 6, 1936).

#### **14.80.130 Driving Over Sidewalk.**

No person or persons shall push, draw, or back any vehicle or tractor, except a bicycle, over any sidewalk, or use, ride, or drive any vehicle or tractor, except a bicycle, thereon, unless it be in crossing the same to go to a store, house, yard, or lot where no other suitable crossing or means of access is provided, and then not until he shall have made a sufficient crossing to protect the sidewalk. (P.C. §14.80.160: Ord. 3489 §39-115, as amended by Ord. 3703, September 25, 1939).

#### **14.80.140 Penalty for Injuring Sidewalk or Driveway.**

Any person who shall break or otherwise injure any sidewalk or driveway shall within twenty-four hours thereafter cause the same to be well and sufficiently repaired and mended, or in the event of failure so to do shall be subject to a fine as hereinafter provided. (P.C. §14.80.170: Ord. 13391 §8; June 1, 1982: Ord. 3489 §39-116; July 6, 1936).

#### **14.80.150 Driving Over Sidewalk Without Protection.**

No owner or occupant of any store or house shall permit or suffer any vehicle or tractor to be driven or otherwise to pass, go over, or upon the sidewalk opposite to such house or store for the purpose of loading or unloading such vehicle, or for any purpose whatever, unless the driver in charge of such vehicle shall have first complied with Chapter 14.29 and section 14.80.130. (P.C. §14.80.180: Ord. 15117 §10; March 6, 1989: Ord. 13391 §9; June 1, 1981: Ord. 3489 §39-117; July 6, 1936).

#### **14.80.160 Records.**

The Sidewalk Inspector shall keep in a suitable book an accurate record of the following: The location of all sidewalks ordered built and the date so ordered; the name of the owner of the lot or parcel of ground abutting the sidewalk as appears of record at the time the assessment is made; the date of inspection and all acceptances of the work; all notices served by the Sidewalk Inspector, with the time and manner of such service; and all work done by the Sidewalk Inspector, with the cost or expense thereof. (P.C. §14.80.200: Ord. 13391 §11; June 1, 1982: Ord. 3489 §39-111; July 6, 1936).

**14.80.170 Specifications for Concrete Sidewalks.**

Sidewalk construction shall be in accordance with the city standard specifications for municipal construction established by the Director of Public Works and Utilities and adopted by the Mayor. (Ord. 16951 §136; March 11, 1996: P.C. §14.80.210: Ord. 15117 §11; March 6, 1989: Ord. 13391 §12; June 1, 1982: Ord. 3489 §39-120; July 6, 1936).