

ORDINANCE NO. _____

1 AN ORDINANCE amending Title 12 of the Lincoln Municipal Code relating to
 2 Parks by adding a new Chapter 12.22, Enhanced Median, Roundabout, and Cul-de-sac Center
 3 Island Landscaping, to provide conditions for the placement of enhanced landscaping in
 4 median, roundabout, and cul-de-sac center island areas by an abutting property owner.

5 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

6 Section 1. That Title 12 of the Lincoln Municipal Code be amended by adding
 7 a new section numbered 12.22.010 to read as follows:

8 **12.22.010 Purpose.**

9 The basic streetscape treatment of Lincoln rights-of-way includes landscaped medians
 10 within street rights-of-way planted with low maintenance, drought-tolerant turf accented with
 11 groupings of ornamental trees and/or ornamental grasses. The purpose of this ordinance is to
 12 allow and regulate the private placement of enhanced landscaping within medians,
 13 roundabouts, and cul-de-sac center islands within street rights-of-way beyond the basic
 14 streetscape treatment.

15 Section 2. That Title 12 of the Lincoln Municipal Code be amended by adding
 16 a new section numbered 12.22.020 to read as follows:

17 **12.22.020 Enhanced Median, Roundabout, and Cul-de-sac Center Island Landscaping;**
 18 **Permit Required.**

19 (a) The City Council by resolution may approve a permit for the placement of
 20 enhanced landscaping within medians, roundabouts, and cul-de-sac center islands within

1 streets by an abutting property owner or an approved association of property owners
2 responsible for such permanent and continuous maintenance.

3 (b) Application procedure. A formal application shall be filed by the owner of the
4 abutting property, which ownership may also consist of a long-term lease or other long-term
5 interest in said property, or association of property owners with the Parks and Recreation
6 Department on forms provided by said department for that purpose, together with four copies
7 of a landscape plan based upon the Director's list of recommended plant materials for
8 landscaping median, roundabout, and cul-de-sac center island areas showing the median,
9 roundabout, or cul-de-sac center island area and the proposed plantings drawn to an accurate
10 scale. The landscape plan shall include a program for maintenance, including the means by
11 which proper watering will be provided, and replacement of trees and plant materials. In
12 addition, if the applicant is an association of property owners, the application shall be
13 accompanied by a copy of the document or documents creating said permanent and
14 continuous association of property owners who would be responsible for the installation of
15 said enhanced landscaping and/or the permanent and continuous maintenance thereof. Upon
16 receipt of said application, the Parks and Recreation Department shall send copies of the
17 application, together with the landscape plan, to the Department of Public Works and Utilities
18 and the Department of Building and Safety for review and recommendation. Upon receipt of
19 said recommendations, the Parks and Recreation Department shall refer the application to the
20 City Council along with the Department of Parks and Recreation's recommendations based
21 upon the recommendations of the various departments and the Department's review of the
22 application.

1 (c) The City Council may, after public hearing, grant a permit for the placement of
2 the requested enhanced landscaping, conditioned upon the following:

3 (1) In the event the permittee is an association of property owners, the
4 document or documents creating said property owners association have been reviewed and
5 approved by the City Attorney and filed of record with the Register of Deeds.

6 (2) In the event installation of an underground irrigation system is to be the
7 means by which proper watering will be provided, any boring underneath the public street
8 must be approved by the Department of Public Works and Utilities and the installation shall
9 be subject to the requirements of Lincoln Municipal Code Section 24.10.815.

10 (3) The permittee shall obtain approved plant material from licensed
11 commercial nursery growers or retailers. Approved plant material shall be installed by
12 licensed nursery and/or landscape contractors in accordance with the City of Lincoln Design
13 Standards and subject to inspection and approval by the Director of Parks and Recreation. All
14 landscaping shall be installed within two planting seasons following approval of the permit.
15 Plant replacement shall be at permittee's expense. The spring planting season shall be from
16 March 1 to May 30 for all deciduous material and from March 1 to May 15 for all coniferous
17 material. The fall planting season shall be from October 1 to December 1 for deciduous
18 material and from September 15 to November 15 for coniferous material. Planting operations
19 shall be performed during these seasons only, except when prior written permission is
20 obtained from the Department of Parks and Recreation.

21 (4) The permittee shall:

1 (i) Perform all maintenance work in a professional and workmanlike
2 manner using quality equipment, methods, and materials. Maintenance of newly planted areas
3 shall begin immediately and shall continue on a permanent basis.

4 (ii) Provide all plantings with a thorough and proper watering
5 immediately after planting.

6 (iii) Maintain all areas free of persistent erosion. Anti-erosion measures
7 will be taken where potential problems exist. Any erosion that does happen will be cleaned
8 up and cuts will be filled in.

9 (iv) Protect and provide approved plants and plantings with adequate
10 growing care, conditions, and space.

11 (v) Remove all dead, diseased, and unsightly branches from the
12 shrubs and trees within the medians, and replace dead trees and other plantings with approved
13 plant materials.

14 (vi) Inspect and water all planting areas as needed to maintain the
15 plantings in a healthy condition.

16 (vii) Prune shrubs and perennials as needed to maintain an attractive,
17 uniform appearance, at a maximum height between twenty-four (24) and thirty (30) inches as
18 measured from the top of the curb.

19 (viii) Notify the Director of Parks and Recreation immediately of any
20 disease, pest, or unusual conditions that might develop in the plantings. Permittee shall be
21 responsible for diagnosis and treatment of insects or disease. Restricted use chemicals shall
22 only be applied by licensed certified pesticide applicators.

1 (ix) Employ only trained, qualified employees who shall be subject
2 to the direction of the permittee at all times.

3 (x) Furnish all equipment and supplies for the maintenance provided
4 under this agreement. Equipment and supplies used by the permittee may be subject to
5 approval by the City.

6 (xi) Dispose of all used chemicals, containers, and supplies in strict
7 accordance with all OSHA, EPA, and other applicable standards and requirements.

8 (xii) Perform maintenance work made necessary by weather
9 conditions, special events, accidents, vandalism, and similar occurrences.

10 (xiii) Comply with any restrictions on the use of water during the
11 existence of a water emergency as declared by the Mayor pursuant to Lincoln Municipal Code
12 Section 17.26.010.

13 (5) The planting and maintenance of the enhanced landscaping described
14 in subsections (3) and (4) above shall be at permittee's own cost and expense, except that the
15 City shall contribute to the cost of such landscaping an amount equal to the estimated cost the
16 City would have incurred to landscape the median, roundabout, and/or cul-de-sac center
17 island with the City's typical basic landscaping. The City shall also contribute to the
18 maintenance of such landscaping an amount equal to the estimated cost the City would have
19 incurred to maintain the area if landscaped with the City's typical basic landscaping materials.
20 The City shall make said contribution payment on an annual basis at the end of each permit
21 year.

1 (6) The City of Lincoln is released from any and all liability and re-
2 responsibility for any damage to the permitted landscaping which might occur during main-
3 tenance or repair work performed by the City of Lincoln, its departments or utilities, or another
4 quasi-public utility, or franchisee of the City of Lincoln including, but not limited to, street
5 maintenance and repair, snow removal, street cleaning, sign replacement, maintenance and
6 repair, or any other maintenance, construction, or repair function of the City of Lincoln, its
7 departments, utilities, or quasi-public utilities, or its franchisees, or its successors or assigns.

8 (7) All permitted improvements must conform to all applicable city codes
9 and ordinances.

10 (8) For purposes of this section, the term "permittee" shall include the
11 permittee, and permittee's heirs, successors, and assigns to the property abutting the median,
12 roundabout, or cul-de-sac center island for which the permit was issued and all terms and
13 conditions of the permit shall be binding and obligatory on the permittee and such heirs,
14 successors, and assigns.

15 Section 3. That Title 12 of the Lincoln Municipal Code be amended by adding
16 a new section numbered 12.22.030 to read as follows:

17 **12.22.030 Bond and Public Liability Insurance.**

18 Every applicant for such permit shall file with the application a continuing bond in the
19 sum of not less than \$5,000.00, but in the event that the City Council in the resolution
20 authorizing the permit shall waive or fix a different sum, then the bond filed with the
21 application may be released or a bond for such sum so fixed shall be substituted and filed with
22 the application. All bonds and sureties shall be approved by the City Attorney before such

1 permit becomes effective. All bonds shall be conditioned that the person to whom such
2 permit shall be issued and such person's heirs, successors, or assigns shall strictly comply with
3 all applicable laws and regulations and all conditions of the permit and which shall save and
4 keep the City free and harmless from any and all loss or damages or claims for damages arising
5 from or out of the use of the median, roundabout, or cul-de-sac center island therein
6 mentioned; for the full and complete protection of the City against any and all litigation
7 growing out of the granting of such permit or anything done under such permit and for the
8 removal of any landscaping and irrigation system permitted above or underneath the public
9 space by such permit at the sole expense of the permittee and the permittee's heirs,
10 successors, or assigns; for the faithful performance and observance of all the terms and
11 conditions of this chapter; and such bond shall also be conditioned for the prompt and full
12 payment of the compensation required by this chapter, or any other ordinance required to be
13 paid during the period said permit shall be outstanding. Following the issuance of such permit
14 and as long as the use continues above or underneath such public space, the owners of such
15 property from time to time shall also be responsible to the City for the performance of all of
16 the conditions of said bond above described.

17 Whenever the City Council shall be of the opinion that the surety on such bond given
18 such permit issued hereunder has become insufficient and shall so declare by resolution, a
19 new bond for such permit shall thereupon be filed with a new surety to be approved by the
20 City Attorney.

21 In addition to the bond, the applicant shall be required to:

1 (a) At all times maintain public liability insurance in the form of a commercial or
2 comprehensive general liability policy, or an acceptable substitute policy form as permitted
3 by the City Attorney, with a minimum combined single limit of \$1,000,000.00 aggregate for
4 any one occurrence. The coverages required herein shall be subject to review and approval
5 by the City Attorney for conformance with the provisions of this section;

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

18 Section 4. That Title 12 of the Lincoln Municipal Code be amended by adding
19 a new section numbered 12.22.040 to read as follows:

20 **12.22.040 Renewal and Termination of Permits.**

21 All permits shall expire one year following date of issuance. After the initial approval
22 of a permit by the City Council for enhanced landscaping at a specific location, an assignment

1 or an annual renewal of such permit may be administratively approved by the Director of
2 Parks and Recreation without further action by the City Council, provided that said assignment
3 or renewal are in conformance with the requirements of this chapter.

4 Section 5. That Title 12 of the Lincoln Municipal Code be amended by adding
5 a new section numbered 12.22.050 to read as follows:

6 **12.22.050 Revocation of Permit.**

7 A permit issued under this chapter may, after public hearing, be revoked by resolution
8 of the City Council upon a finding by them of such fact and the giving of five days written
9 notice to the permittee of the public hearing by the City Clerk for the following reasons:

10 (1) Any failure to maintain the landscaping in the same form as specified in
11 the permit.

12 (2) The permitted material interferes with or causes a hazard to vehicular
13 movement on the traveled portion of the public right-of-way, or hampers or impedes the
14 maintenance or repair of curb and gutter, streets, or public or quasi-public utilities located
15 under the median, roundabout, or cul-de-sac center island.

16 (3) The permitted landscaping and/or irrigation system interferes with
17 existing public or quasi-public utilities or would interfere with the proposed installation or
18 maintenance of new public utilities or interferes with curb and gutter repair or street mainte-
19 nance.

20 (4) Upon a determination by the City that the space for which the permit was
21 granted is needed for public use.

1 Upon revocation of said permit, the permittee shall remove the enhanced landscaping
2 within thirty days and, if the City shall so require, replant the median, roundabout, and/or
3 cul-de-sac center island as directed by the Director of Parks and Recreation with plantings and
4 materials approved by the Director that are typical to the City's standard landscaping for such
5 areas at the permittee's cost and expense. In the event that permittee fails to remove the
6 enhanced landscaping and replant the median, roundabout, or cul-de-sac center island with
7 such typical landscaping, the City may cause such removal and/or replanting to be done and
8 the cost of such work shall become a lien against the property of the permittee.

9 Section 6. That Title 12 of the Lincoln Municipal Code be amended by adding
10 a new section numbered 12.22.060 to read as follows:

11 **12.22.060 Release and Discharge of Permittee's Obligations.**

12 Permittee may terminate this permit and be relieved and discharged of permittee's
13 obligation under this ordinance upon removal of the enhanced landscaping and replanting the
14 median, roundabout, and/or cul-de-sac center island with plantings and materials approved
15 by the Director of Parks and Recreation that are typical to the City's standard basic landscaping
16 for medians.

17 Section 7. That Sections 1 through 6 hereof be codified in the Lincoln
18 Municipal Code as "Chapter 12.22 - Enhanced Median, Roundabout, and Cul-de-Sac Center
19 Island Landscaping."

1 Section 8. That this ordinance shall take effect and be in force from and after
2 its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

<p>Approved this ___ day of _____, 2004:</p> <hr/> <p>Mayor</p>
