11-79 Introduce: 6-6-11

ORDINANCE NO. _____

AN ORDINANCE amending Chapter 14.80 of the Lincoln Municipal Code relating to Sidewalk Construction by amending Section 14.80.010 to add mailboxes and supporting structures as items that may be located in the space between curb and lot lines, and to delete decorative stones from such list as they are included within the term organic mulch; amending Section 14.80.020 to add mailboxes and supporting structures required by the United States Postal Service as items which may be placed in the space between curb and lot lines without a permit, to revise the organization of subparagraphs so that provisions related to the same subject appear together in the ordinance, to clarify that the City of Lincoln is released from liability for damage to all personal property of abutting landowners located between the curb and the lot line regardless of whether the use of such personal property in that area is permitted or unauthorized; and repealing Sections 14.80.010 and 14.80.020 of the Lincoln Municipal Code as hitherto existing.

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

Section 1. That Section 14.80.010 of the Lincoln Municipal Code be amended to read as follows:

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, ~~decorative stones,~~ <u>mailboxes and supporting structures,</u> and surfacing materials authorized pursuant to Section 14.80.020.

Section 2. That Section 14.80.020 of the Lincoln Municipal Code be amended to read as follows:

14.80.020 Sidewalk Space~~ Between Curb and Lot Line~~; Uses Allowed With or Without ~~Special~~ Permit.

(a) The owner of the abutting property may ~~place the following in~~ 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 ~~or decorative stones~~ 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 ~~Director of Public Works and Utilities may approve~~ Owner of abutting property may apply for a permit to use the sidewalk space for the placement of any of the following surfacing materials~~ in the sidewalk space~~:

(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 use(s) drawn to an accurate scale and showing all pertinent information, including the use 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 ~~allowed and~~ permitted ~~uses~~ 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 ~~uses allowed or permitted in this chapter~~ 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 ~~the~~ said owner's cost and expense. Surfacing ~~M~~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 ~~construction~~ placement of or maintenance of any of the ~~allowed or permitted items~~ 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) The City of Lincoln is released from any and all liability and responsibility for any damage to an allowed or permitted use 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. 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.~~

(~~6~~ 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.

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

(~~8~~ 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 ~~reserved~~ 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 ~~improvements~~ surfacing material at the owner's cost and expense. In the event that owner does not remove the ~~improvements~~ 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.

Section 3. That Sections 14.80.010 and 14.80.020 of the Lincoln Municipal Code as hitherto existing be and the same are hereby repealed.

Section 4. That this ordinance shall take effect and be in force from and after passage and publication in one issue of a daily or weekly newspaper of general circulation in the City, according to law.

Introduced by:

_____

Approved as to Form & Legality:

_____
City Attorney

Approved this ___ day of _____, 2011:

_____
Mayor