

ORDINANCE NUMBER 23-23

An ordinance to add Article VIII and Sections 23-201 through 23-223, inclusive to Chapter 23 of the Beatrice City Code regarding driveway approaches and curbs; and to repeal conflicting ordinances or parts of ordinances; and to provide for publication in electronic form and for an effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEATRICE, NEBRASKA:

SECTION 1. That Article VIII, Section 23-201 of the Beatrice City Code be and is hereby added to read as follows:

“ARTICLE VIII. – DRIVEWAY STANDARDS AND PERMITS

Sec. 23-201. Definitions.

Alteration of a curb shall mean the cutting, breaking, lowering, or removing of any portion of curb in the public right-of-way.

City Engineer shall mean the City Engineer or his or her designee.

Driveway approach shall mean an area of the public right-of-way located between the roadway and property adjacent to the public right-of-way which is intended to provide access for vehicles from the roadway to the adjacent property.

Ordinary Repairs shall mean any alteration, construction, reconstruction, relocation, removal or other improvement of a driveway approach consisting of less than fifty percent (50%) of the square footage of the driveway approach located within the public right of way.

Person shall mean and include a person, a corporation, or any type of business or nonbusiness organization.

Regulations shall mean the City of Beatrice guidelines and regulations under the City of Beatrice Access Management Policy as approved and adopted by the City of Beatrice, City Council through resolution.

Roadway shall mean the portion of the public right-of-way which is improved or designed to accommodate through vehicular traffic or on which through vehicles ordinarily travel.”

SECTION 2. That Section 23-202 of the Beatrice City Code be and is hereby added to read as follows:

“Sec. 23-202. Policy.

It is the policy of the City of Beatrice to promote the maximum safe and efficient travel of persons on the public right-of-way and to preserve the maximum capacity of the roadway to accommodate such travel.

The issuance, denial, modification, and revocation of encroachment permits and the ordering of the removal, reconstruction, relocation, or alteration of any driveway approach may be used to implement this policy.”

SECTION 3. That Section 23-203 of the Beatrice City Code be and is hereby added to read as follows:

“Sec. 23-203. Unlawful to Alter Curb.

It shall be unlawful for any person, except an encroachment permit holder, to alter a curb in the public right-of way within the corporate limits of the City of Beatrice or within two (2) miles of the corporate limits thereof.

This section is not intended to apply to any alteration of curbs accomplished by employees of the City of Beatrice acting within the scope of their employment or persons authorized by the City of Beatrice through special contractual arrangements to alter curbs.”

SECTION 4. That Section 23-204 of the Beatrice City Code be and is hereby added to read as follows:

“Sec. 23-204. Encroachment Permit Required; Exceptions.

Except as otherwise provided in this Section, it shall be unlawful for any person to use, construct, reconstruct, relocate, or alter a driveway approach within the City or within two (2) miles of the corporate limits thereof without first having obtained an encroachment permit issued by the City.

An encroachment permit is required for all driveway approaches on all public rights-of-way, even if the roadway is uncurbed, unpaved, or unimproved.

Except as otherwise provided in this Section, curb alterations shall not be made unless and until an encroachment permit is properly obtained.

An encroachment permit is not required:

- (1) For ordinary repairs to the driveway approach;
- (2) For the continued use of a driveway approach which exists at the time of passage of this ordinance until such time as the driveway approach is proposed to be reconstructed, relocated, altered, or removed, either voluntarily or by order of the City Engineer;
- (3) For driveway approaches serving property used exclusively for farm or single-family residential purposes located outside the corporate limits of the City and consent from the official of Gage County responsible for public right-of-way in the county has been obtained for the driveway approach; or
- (4) For all driveway approaches on state highways outside of the corporate limits of the City and consent from the State of Nebraska has been obtained for the driveway approach."

SECTION 5. That Section 23-205 of the Beatrice City Code be and is hereby added to read as follows:

"Sec. 23-205. Permit Application Procedure.

The owner of the property to be served by the driveway approach or the owner's representative authorized to bind the owner as to decisions on the driveway approach shall make application for an encroachment permit in the office of the Community Development Department and at the time of application shall supply:

- (1) The legal description and street address of the property;
- (2) The name of the owner of the property;
- (3) The name of the person authorized by the owner to make decisions concerning the driveway approach binding on the owner;
- (4) The telephone number of the owner or owner's representative;
- (5) A site plan of the area of the property in such detail and quantity as the regulations require;
- (6) Other information required by the regulations or other information which the City Engineer shall deem reasonably necessary to determine compliance with the laws and standards governing driveway approaches; and
- (7) A non-refundable application fee established by resolution and adopted by the city council."

SECTION 6. That Section 23-206 of the Beatrice City Code be and is hereby added to read as follows:

“Sec. 23-206. City Engineer’s Powers as to Permit Applications.

The City Engineer, or his or her designee, shall review and may approve or deny all permit applications.

Before the denying a permit application, the City Engineer, or his or her designee, will indicate the standards or requirements that prevent approval of the permit application. If the applicant wants to continue with the current design, the permit applicant shall make a request for deviation and the City Engineer shall process deviation requests in accordance with this chapter and the Access Management Policy.”

SECTION 7. That Section 23-207 of the Beatrice City Code be and is hereby added to read as follows:

“Sec. 23-207. Requests for Deviation.

A request for a deviation shall be submitted by the applicant in writing to the City Engineer as provided in the Access Management Policy.”

SECTION 8. That Section 23-208 of the Beatrice City Code be and is hereby added to read as follows:

“Sec. 23-208. Appeal of City Engineers Decision for Deviation Request.

The decision of the City Engineer on a request for a deviation may be appealed by the permit applicant to the Board of Adjustment by filing a notice of appeal with the City Clerk within fourteen (14) calendar days following the date of the decision of the City Engineer. Requests for appeal hearings shall be accompanied by a filing fee in an amount established by resolution and adopted by the city council. Such requests that are not accompanied by the required filing fee or that are received after the expiration of the fourteen (14) calendar day period to make such a request shall be considered invalid. Upon receipt of a valid request for an appeal hearing and the filing fee, the Board of Adjustment shall hold an appeal hearing within thirty (30) calendar days from the date of receipt of the request to appeal. The Board of Adjustment may make such decision on the deviation request as ought to be made and either approve, approve with modification, or deny the deviation request. The decision regarding the deviation request will affect the permit application and the Board of Adjustment will, at the same hearing, make a determination on the encroachment permit and either deny the permit or approve the permit with the deviation request approved, with the deviation request approved as modified or with the deviation request denied. The decision by the Board of Adjustment on the encroachment permit is the final decision and may be appealed in accordance with state law.”

SECTION 9. That Section 23-209 of the Beatrice City Code be and is hereby added to read as follows:

“Sec. 23-209. Appeal of Encroachment permit on State or Federal Controlled Route.

Access on a state or federal controlled route requires the permit applicant to seek approval of the state or federal government pursuant to their permit application processes and seek approval of the City of Beatrice pursuant to this chapter and the policy. If the state or federal government denies the state or federal access permit, the City Engineer will deny the City of Beatrice Encroachment permit and such denial shall be a final decision and may be appealed to district court pursuant to state law. If the state or federal government approves the state or federal access permit, the City Engineer will either approve or deny the Encroachment permit. If denied, the denial may be appealed by the permit applicant to the Board of Adjustment in the same manner as provided in Section 23-208. The decision by the Board of Adjustment on the encroachment permit is the final decision and may be appealed in accordance with state law.”

SECTION 10. That Section 23-210 of the Beatrice City Code be and is hereby added to read as follows:

“Sec. 23-210. Criteria for Permit Approval.

The permit application shall be approved and a driveway approach permitted only when the driveway, storage, circulation patterns, and parking areas for vehicles on the property served, the application, and the driveway approach meet the requirements of the Beatrice Municipal Code and the regulations.”

SECTION 11. That Section 23-211 of the Beatrice City Code be and is hereby added to read as follows:

“Sec. 23-211. Expiration of Permit.

The permit shall expire and become null and void if the construction, reconstruction, relocation, or alteration of the driveway approach is not commenced within one hundred eighty (180) calendar days from the date of issuance of such permit, or if, after commencement, such work is suspended or abandoned at any time for a period of one hundred eighty (180) calendar days. Before such work can be recommenced, a new permit shall be first obtained to do so. No refunds or credits shall be given on permits which have expired.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit. The City Engineer, or his or her designee, may extend the time for action by the permittee for a period not exceeding one hundred eighty (180) calendar days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken."

SECTION 12. That Section 23-212 of the Beatrice City Code be and is hereby added to read as follows:

"Sec. 23-212. Limitations on Use of Driveway Approach.

It shall be unlawful for a person to use or the owner of the property served to permit the use of a driveway approach for which an encroachment permit is required before any of the following:

- (1) The encroachment permit has been granted;
- (2) The driveway approach has received final inspection approval from the City Engineer, or his or her designee;
- (3) The work on the driveway approach is completed in accordance with the permit terms."

SECTION 13. That Section 23-213 of the Beatrice City Code be and is hereby added to read as follows:

"Sec. 23-213. Terms of Permit; Unlawful to Violate.

The terms of the encroachment permit are the Beatrice Municipal Code, the regulations, the site plan and design approved by the City Engineer, or his or her designee, and such other terms which are placed in writing on the site plan or permit by the City Engineer, or his or her designee.

It shall be unlawful to use, construct, reconstruct, relocate, or alter a driveway approach in any manner not authorized by the permit terms."

SECTION 14. That Section 23-214 of the Beatrice City Code be and is hereby added to read as follows:

"Sec. 23-214. Driveway Approach Standards.

The following are permit terms and all driveway approaches which are required to have encroachment permits shall comply with these standards.

The driveway approaches shall be designed so that under the circumstances for the property:

- (1) Reasonable access from the roadway to the property is afforded;
- (2) The separation between the driveway approach and other driveway approaches and intersections is the maximum attainable;
- (3) The area and number of points where conflicts can occur between vehicles using the driveway approach and through vehicles on the roadway and pedestrians on the public right-of-way is kept to a minimum;
- (4) The differential in speeds between the vehicles using the driveway approach and through vehicles on the roadway is kept as low as practical;
- (5) The driver of a vehicle entering or leaving the roadway from a driveway has the maximum unobstructed view of other vehicles using the roadway;
- (6) The maximum safety and efficiency of right- and left-turning vehicles using the driveway is afforded;
- (7) The frequency of vehicles which must stop or substantially reduce their speed on the roadway because of the actions of vehicles entering or leaving the driveway approach is kept to a minimum;
- (8) The maximum safety, efficiency, and capacity of the roadway is promoted.
- (9) Designed as used in this section shall include, but is not limited to, the number, size, and location of the driveway approach.

In addition to the standards of this section, driveway approaches shall also comply with the driveway approach standards as set forth in the Access Management Policy and all other applicable rules, regulations, and requirements."

SECTION 15. That Section 23-215 of the Beatrice City Code be and is hereby added to read as follows:

"Sec. 23-215. Temporary Nature, Revocation, Modification of Permit.

An encroachment permit is temporary in nature, revocable, and modifiable by the City of Beatrice. Without the further approval of the City Engineer, or his or her designee, is authorized to revoke or modify the encroachment permit in the event that:

- (1) Continued use of the driveway approach constitutes an unreasonable danger to the safety and welfare of persons and property on the public right-of-way; or

- (2) Continued use of the driveway imposes an unreasonable burden on the free flow and movement of traffic; or
- (3) The roadway is proposed to be reconstructed, repaved, relocated, or redesigned; or
- (4) The driveway approach is either defective in construction, in a deteriorated condition, or deviates from the permit terms; or
- (5) There occurs or is proposed to occur on the property served by the driveway approach any of the following:
 - a. A change of use of the property from single-family or two-family residential to any other use;
 - b. The construction or addition of drive-in facilities which allows a driver of a vehicle to transact business while remaining in the vehicle;
 - c. Work on the property or a change in use of the property which will either substantially increase or decrease the parking area for vehicles, or substantially increase or decrease the number of vehicles entering or leaving the property, or substantially alter prior traffic circulation patterns on the property;
 - d. An addition, removal, or alteration of traffic circulation guide devices which substantially alters prior traffic circulation patterns;
 - e. Addition, removal, or relocation of fuel pumps or fuel pump islands;
 - f. A substantially more frequent use of a driveway approach by trucks (excluding passenger pickup trucks) or other vehicles of large size or other vehicles with slow acceleration or deceleration rates;
 - g. Elimination of a legal off-street parking area on the property so that access for vehicles is no longer needed;
 - h. Any act which causes the unobstructed sight distance for a driver of a vehicle exiting the property to be reduced below the minimum distance of the regulations;
 - i. Any act which causes the speed of vehicles entering or exiting the property to be reduced unreasonably;
 - j. Any act which causes through vehicles on the roadway to stop or reduce speed substantially because of the actions of vehicles using the driveway approach or the congestion of vehicles already on the property.
- (6) Vehicles using the driveway approach park either wholly or partially on public right-of-way due to the lack of a legal off-street parking area.

The permit may be revoked or modified by the City Engineer for any other reason at the discretion of the City Engineer, or his or her designee.

As a condition of the permit, the property owner or the property owner's representative served by the driveway approach at the time the permit is revoked or modified is obligated to remove, relocate, reconstruct, or alter the driveway approach as directed by

the City Engineer, or his or her designee, at no cost to the City of Beatrice. Public right-of-way shall be restored or altered to a condition acceptable to the City Engineer at no cost to the City."

SECTION 16. That Section 23-216 of the Beatrice City Code be and is hereby added to read as follows:

"Sec. 23-216. Relocation, Reconstruction, Alteration, or Removal of Driveways Existing Without a Permit.

- (1) A driveway approach in existence for which no permit has been issued may be ordered removed, relocated, reconstructed, or altered at the property owner's expense, upon the order of the City Engineer. The order may issue in the event that:
- a. The driveway approach is required to have an encroachment permit and no such permit has been issued for such driveway approach; or
 - b. Continued use of the driveway approach constitutes an unreasonable danger to the safety and welfare of persons and property on the public right-of-way; or
 - c. Continued use of the driveway imposes an unreasonable burden on the free flow and movement of traffic; or
 - d. The roadway is proposed to be reconstructed, repaved, relocated, or redesigned; or
 - e. The driveway approach is either defective in construction, in a deteriorated condition, or deviates from the permit terms; or
 - f. There occurs or is proposed to occur on the property served by the driveway approach any of the following:
 - i. A change of use of the property from single-family or two-family residential to any other use;
 - ii. The construction or addition of drive-in facilities which allows a driver of a vehicle to transact business while remaining in the vehicle;
 - iii. Work on the property or a change in use of the property which will either substantially increase or decrease the parking area for vehicles, or substantially increase or decrease the number of vehicles entering or leaving the property, or substantially alter prior traffic circulation patterns on the property;
 - iv. An addition, removal, or alteration of traffic circulation guide devices which substantially alters prior traffic circulation patterns;
 - v. Addition, removal, or relocation of fuel pumps or fuel pump islands;

- vi. A substantially more frequent use of a driveway approach by trucks (excluding pickup trucks) or other vehicles of large size or other vehicles with slow acceleration or deceleration rate;
- vii. Elimination of a legal off-street parking area on the property so that access for vehicles is no longer needed;
- viii. Any act which causes the unobstructed sight distance for a driver of a vehicle exiting the property to be reduced below the minimum distance of the regulations;
- ix. Any act which causes the speed of vehicles entering or exiting the property to be reduced unreasonably;
- x. Any act which causes through vehicles on the roadway to stop or reduce speed substantially because of the actions of vehicles using the driveway approach or the congestion of vehicles already on the property; or

g. Vehicles using the driveway approach park either wholly or partially on public right-of-way due to the lack of a legal off-street parking area.

(2) Failure of the owner to remove any driveway approach for which no permit has been issued within thirty (30) calendar days after an order from the City to remove the driveway approach has been issued shall constitute a criminal act subject to criminal penalties as set forth in this Article.

(3) The City Attorney is authorized to take civil action as may be necessary and appropriate to compel removal of a driveway approach for which no permit has been issued."

SECTION 17. That Section 23-217 of the Beatrice City Code be and is hereby added to read as follows:

"Sec. 23-217. Costs and Authority Over Work.

The owner of the property served by a driveway approach shall bear the entire cost of:

- (1) All labor, materials, and administration required to accomplish any work performed by the City or any of the City's contractors to facilitate the driveway approach;
- (2) Constructing, reconstructing, relocating, removing, or altering a driveway approach when such work is performed either voluntarily or upon order of the City Engineer, or his or her designee;
- (3) Bringing a driveway approach into compliance with the permit terms;

- (4) Altering, relocating, or removing any private or public improvements in the public right-of-way when such action is taken to facilitate a driveway approach;
- (5) Restoring the public right-of-way.

City Engineer shall have authority to determine the manner and materials used for and the qualifications required of persons performing any work within the public right-of-way. The owners or persons in charge of utilities and private improvements shall have primary authority over any work performed on utilities or private improvements to facilitate the driveway approach."

SECTION 18. That Section 23-218 of the Beatrice City Code be and is hereby added to read as follows:

"Sec. 23-218. Alteration of Public Improvements and Trees.

Before an encroachment permit may be granted and before any construction activity related to a driveway approach is commenced, the owner of the property served shall consent to any alteration of public improvements and trees deemed necessary by the City Engineer, or the Board of Public Works General Manager. Such officials shall determine the manner of alteration. Public improvements include, but are not limited to, manholes, inlets, sidewalks, curbs, curb returns, gutters, poles, roadway signs, hydrants, utilities, traffic-control devices, and bike paths."

SECTION 19. That Section 23-219 of the Beatrice City Code be and is hereby added to read as follows:

"Sec. 23-219. Construction Not Complying with Permit Terms.

Work not in compliance with the permit terms shall be corrected within the timeframe established by the City Engineer, or his or her designee, upon notice by the city, and at no cost to the city. Failure to correct the work within such timeframe shall allow the city to revoke the encroachment permit and prohibit the use of the driveway approach."

SECTION 20. That Section 23-220 of the Beatrice City Code be and is hereby added to read as follows:

"Sec. 23-220. Inspections.

- (1) All work which is performed pursuant to the permit or is performed to facilitate a driveway approach shall be subject to inspection by the City of Beatrice.

- (2) A required inspection shall be performed by the City Engineer, or his or her designee, at a time after the forms are set but before the concrete or other material is placed for the roadway, curb, gutter, and driveway approach.
- (3) All work shall be subject to special inspection pursuant to any inspection instructions deemed appropriate by the City Engineer, or his or her designee, and communicated to the property owner or the property owner's representative. Communication may be either oral or written. A final inspection shall be made by the City Engineer, or his or her designee.
- (4) It shall be the duty of the property owner or the property owner's representative to notify the City Engineer and request an inspection of the work at such a time as to give the official a reasonable amount of time to make the inspection. Any work not inspected by the official for which an inspection is required may be required to be removed at no cost to the city to enable the official to make the inspection.
- (5) The inspection shall be for the purpose of determining whether the work is in compliance with the permit terms, the actions of vehicles using the driveway approach, or the congestion of vehicles already on the property."

SECTION 21. That Section 23-221 of the Beatrice City Code be and is hereby added to read as follows:

"Sec. 23-221. Unlawful to Bridge Gutter or Curb.

Except in the manner as approved by the City Engineer, or his or her designee, it shall be unlawful for any person to place any material over any curb or in any roadway gutter for the purpose of bridging the same, such material to include but is not limited to earth, wood, planks, pipe, asphalt, concrete, or rock."

SECTION 22. That Section 23-222 of the Beatrice City Code be and is hereby added to read as follows:

"Sec. 23-222. Unlawful to Injure or Obstruct Gutter or Curb.

Unless otherwise approved by the City Engineer, it shall be unlawful for any person to damage or destroy any portion of curbing or gutter on a paved roadway or to obstruct the drainage within the gutter on a paved roadway. Obstruction of drainage shall include that caused by the construction of a driveway approach."

SECTION 23. That Section 23-223 of the Beatrice City Code be and is hereby added to read as follows:

"Sec. 23-223. Penalty.

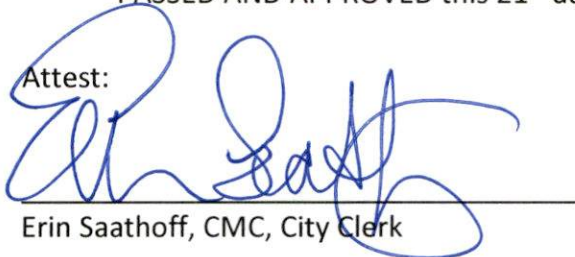
Any person whose act or omission is in violation of this Article shall be guilty of a Class IV misdemeanor. Each day that a violation of any of the provision of this Article continues shall constitute a distinct offense and shall be punishable as such."

SECTION 24. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 25. That this ordinance shall be in full force and effect from and after its passage, approval, and publication in electronic form as provided by law.

PASSED AND APPROVED this 21st day of August, 2023.

Attest:


Erin Saathoff, CMC, City Clerk


Robert Morgan, Mayor

