

**CITY OF BROKEN BOW
ORDINANCE NO. 1205**

AN ORDINANCE OF THE CITY OF BROKEN BOW, CUSTER COUNTY, NEBRASKA, AMENDING SECTION 92.069: VACATING PUBLIC WAYS; PROCEDURE; REPEALING ALL ORDINANCES IN CONFLICT; AND PROVIDING A TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.

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

Section 1. That Section 92.069 of the Municipal Code be amended to read as follows:

§ 92.069 VACATING PUBLIC WAYS; PROCEDURE.

(A) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

SPECIAL DAMAGES. Only those losses or damages or injuries which a property owner suffers that are peculiar or special or unique to his or her property and which result from the City Council vacating a street, avenue, alley, lane or similar public way. ***SPECIAL DAMAGES*** shall not mean those losses or damages or injuries that a property owner suffers that are in common with the rest of the city or public at large, even though those losses or damage or injuries suffered by the property owner are greater in degree than the rest of the city or public at large.

(B) Whenever the City Council decides that it would be in the best interests of the city to vacate a street, avenue, alley, lane or similar public way, the City Council shall comply with the following procedure.

(1) *Notice.* Notice shall be given to all abutting property owners either by first-class mail to their last know addresses or, if there is no known address, then by publishing the notice in a newspaper that is of general circulation in the city. The content of the notice shall advise the abutting property owners that the City Council will consider vacating that street, avenue, alley, lane or similar public way at its next regular meeting, or if a special meeting is scheduled for the discussion, then the date, time and place of that meeting.

(2) *Consent; waiver.* The City Council may have all the abutting property owners sign a form stating that they consent to the action being taken by the City Council and waive their right of access. The signing of this form shall have no effect on claims for special damages by the abutting property owners, but shall create the presumption that the City Council's action was proper. If the abutting property owners do not sign the consent/waiver form, the City Council may still proceed with vacating the street, avenue, alley, lane or similar public way under the authority granted by Neb. RS 17-558 and 17-559.

(3) *Ordinance.* The City Council shall pass an ordinance that includes essentially the following provisions:

(a) A declaration that the action is expedient for the public good or in the best interests of the city;

and (b) A statement that the city will have an easement for maintain all utilities;

(c) A method or procedure for ascertaining special damages to abutting property owners.

(C) The Mayor shall appoint three or five or seven disinterested residents of the city to a special commission to ascertain the amount of special damages that the abutting property owners are entitled to receive and which resulted from the City Council vacating the street, avenue, alley, lane or similar public way. The appointees of the special commission shall be approved by the City Council. Only special damages shall be awarded to the abutting property owners.

(D) In determining the amount of compensation to award the abutting property owners as special damages, the commission shall use the following rule: an abutting property owner is entitles to recover as compensation the difference between the value of the property immediately before and immediately after the vacating of the street, avenue, alley, lane or similar public way. If no difference in value exists, the abutting property owner is entitled to no compensation.

Section 2. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. This ordinance shall take effect and be in full force and effect from and after its passage, approval and publication as provided by law.

Passed and approved this 11th day of June, 2019.

Jonathon Berghorst, Mayor

ATTEST:

Stephanie M. Wright, City Clerk