

**CITY OF LA VISTA**  
**MAYOR AND CITY COUNCIL REPORT**  
**APRIL 3, 2012 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
FIREWORKS DISPLAY- LA VISTA DAZE TEMPORARY USE OF HWY. 85 (84 <sup>TH</sup> ST) ACCEPTANCE OF DUTIES	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER/ASSISTANT PUBLIC WORKS DIRECTOR

**SYNOPSIS**

A resolution has been prepared which acknowledges that the City of La Vista accepts the duties set forth in LB 589 and agrees to hold the State of Nebraska harmless from claims in order to make temporary use of State Highway 85 (84<sup>th</sup> Street). This requirement is applicable to all events being held after July 10, 2011. This resolution pertains to closing 84<sup>th</sup> Street on the evening of Friday, May 25, 2012 from 9:00pm to 10:30pm for traffic control during the fireworks display.

**FISCAL IMPACT**

No impact.

**RECOMMENDATION**

Approval.

**BACKGROUND**

Section 39-1359 R.R.S. Neb. 2008 was amended on May 24, 2011, by Legislative Bill 589 to provide that a temporary use of a state highway system, including full and partial lane restrictions, can be made for a special event where the roadway is located in the corporate limits of a city, if such city through formal action of its governing body acknowledges and accepts the duties set forth in subsection (2) of Section 39-1359 and indemnifies and holds the State of Nebraska harmless against claims made arising out of the special event and provides thirty (30) days advance notice to the State of Nebraska.

**RESOLUTION NO.\_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA,  
NEBRASKA ACCEPTING DUTIES AND LIABILITIES FOR TEMPORARY USE OF STATE  
HIGHWAY 85**

WHEREAS, the City of La Vista desires to conduct a fireworks display on property adjacent to State Highway No. 85 in conjunction with the La Vista Daze celebration, and;

WHEREAS, the City of La Vista desires to make temporary use of State Highway No. 85 between Brentwood Drive and Harrison Street, and;

WHEREAS, the temporary use shall consist of the total closure of State Highway No. 85 to vehicular traffic, and;

WHEREAS, State Highway No. 85 between Brentwood Drive and Harrison Street is within the corporate limits of the City of La Vista, and;

WHEREAS, Section 39-1359 R.R.S. Neb. 2008 was amended on May 24, 2011, by Legislative Bill 589 to provide that a temporary use of a state highway system, including full and partial lane restrictions, can be made for a special event where the roadway is located in the corporate limits of a city, if such city through formal action of its governing body acknowledges and accepts the duties set forth in subsection (2) of Section 39-1359 and indemnifies and holds the State of Nebraska harmless against claims made arising out of the special event and provides thirty (30) days advance notice to the State of Nebraska.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of La Vista, that pursuant to Section 39-1359 R.R.S. Neb. 2008, as amended by Legislative Bill 589 on May 24, 2011, the City of La Vista officially designates the La Vista Daze Fireworks Display as a special event under LB 589 and hereby notifies the State of Nebraska that it accepts the duties imposed by such law, and, if a claim is made against the state, shall indemnify, defend, and hold harmless the State of Nebraska from all claims, demands, actions, damages, and liability, including reasonable attorney's fees, that may arise as a result of the special event and the temporary use of State Highway No. 85 (aka 84<sup>th</sup> Street) from Brentwood Drive to Harrison Street between the hours of 9:00 pm and 10:30 pm on May 25, 2012 for traffic control during the fireworks display.

PASSED AND APPROVED THIS 3RD DAY OF APRIL, 2012

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

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LEGISLATURE OF NEBRASKA  
ONE HUNDRED SECOND LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 589**

Final Reading

Introduced by Smith, 14; Cook, 13.

Read first time January 19, 2011

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to state highways; to amend sections 13-901,  
2 13-910, 39-1359, and 81-8,219, Reissue Revised Statutes  
3 of Nebraska; to allow for temporary use of the state  
4 highway system for special events held by a county, city,  
5 or village as prescribed; to provide liability and duties  
6 for the county, city, or village; to provide for  
7 applicability of the Political Subdivisions Tort Claims  
8 Act and the State Tort Claims Act; to harmonize  
9 provisions; to repeal the original sections; and to  
10 declare an emergency.

11 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 13-901, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   13-901 Sections 13-901 to 13-927 and section 3 of this  
4 act shall be known and may be cited as the Political Subdivisions  
5 Tort Claims Act.

6                   Sec. 2. Section 13-910, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8                   13-910 The Political Subdivisions Tort Claims Act and  
9 sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply  
10 to:

11                   (1) Any claim based upon an act or omission of an  
12 employee of a political subdivision, exercising due care, in the  
13 execution of a statute, ordinance, or officially adopted resolution,  
14 rule, or regulation, whether or not such statute, ordinance,  
15 resolution, rule, or regulation is valid;

16                   (2) Any claim based upon the exercise or performance of  
17 or the failure to exercise or perform a discretionary function or  
18 duty on the part of the political subdivision or an employee of the  
19 political subdivision, whether or not the discretion is abused;

20                   (3) Any claim based upon the failure to make an  
21 inspection or making an inadequate or negligent inspection of any  
22 property other than property owned by or leased to such political  
23 subdivision to determine whether the property complies with or  
24 violates any statute, ordinance, rule, or regulation or contains a  
25 hazard to public health or safety unless the political subdivision

1 had reasonable notice of such hazard or the failure to inspect or  
2 inadequate or negligent inspection constitutes a reckless disregard  
3 for public health or safety;

4 (4) Any claim based upon the issuance, denial,  
5 suspension, or revocation of or failure or refusal to issue, deny,  
6 suspend, or revoke any permit, license, certificate, or order.  
7 Nothing in this subdivision shall be construed to limit a political  
8 subdivision's liability for any claim based upon the negligent  
9 execution by an employee of the political subdivision in the issuance  
10 of a certificate of title under the Motor Vehicle Certificate of  
11 Title Act and the State Boat Act;

12 (5) Any claim arising with respect to the assessment or  
13 collection of any tax or fee or the detention of any goods or  
14 merchandise by any law enforcement officer;

15 (6) Any claim caused by the imposition or establishment  
16 of a quarantine by the state or a political subdivision, whether such  
17 quarantine relates to persons or property;

18 (7) Any claim arising out of assault, battery, false  
19 arrest, false imprisonment, malicious prosecution, abuse of process,  
20 libel, slander, misrepresentation, deceit, or interference with  
21 contract rights;

22 (8) Any claim by an employee of the political subdivision  
23 which is covered by the Nebraska Workers' Compensation Act;

24 (9) Any claim arising out of the malfunction,  
25 destruction, or unauthorized removal of any traffic or road sign,

1 signal, or warning device unless it is not corrected by the political  
2 subdivision responsible within a reasonable time after actual or  
3 constructive notice of such malfunction, destruction, or removal.  
4 Nothing in this subdivision shall give rise to liability arising from  
5 an act or omission of any political subdivision in placing or  
6 removing any traffic or road signs, signals, or warning devices when  
7 such placement or removal is the result of a discretionary act of the  
8 political subdivision;

9 (10) Any claim arising out of snow or ice conditions or  
10 other temporary conditions caused by nature on any highway as defined  
11 in section 60-624, bridge, public thoroughfare, or other public place  
12 due to weather conditions. Nothing in this subdivision shall be  
13 construed to limit a political subdivision's liability for any claim  
14 arising out of the operation of a motor vehicle by an employee of the  
15 political subdivision while acting within the course and scope of his  
16 or her employment by the political subdivision;

17 (11) Any claim arising out of the plan or design for the  
18 construction of or an improvement to any highway as defined in such  
19 section or bridge, either in original construction or any improvement  
20 thereto, if the plan or design is approved in advance of the  
21 construction or improvement by the governing body of the political  
22 subdivision or some other body or employee exercising discretionary  
23 authority to give such approval;

24 (12) Any claim arising out of the alleged insufficiency  
25 or want of repair of any highway as defined in such section, bridge,

1 or other public thoroughfare. Insufficiency or want of repair shall  
2 be construed to refer to the general or overall condition and shall  
3 not refer to a spot or localized defect. A political subdivision  
4 shall be deemed to waive its immunity for a claim due to a spot or  
5 localized defect only if (a) the political subdivision has had actual  
6 or constructive notice of the defect within a reasonable time to  
7 allow repair prior to the incident giving rise to the claim or (b)  
8 the claim arose during the time specified in a notice provided by the  
9 political subdivision pursuant to subsection (3) of section 39-1359  
10 and the state or political subdivision had actual or constructive  
11 notice; or

12 (13) (a) Any claim relating to recreational activities for  
13 which no fee is charged (i) resulting from the inherent risk of the  
14 recreational activity, (ii) arising out of a spot or localized defect  
15 of the premises unless the spot or localized defect is not corrected  
16 by the political subdivision leasing, owning, or in control of the  
17 premises within a reasonable time after actual or constructive notice  
18 of the spot or localized defect, or (iii) arising out of the design  
19 of a skatepark or bicycle motocross park constructed for purposes of  
20 skateboarding, inline skating, bicycling, or scootering that was  
21 constructed or reconstructed, reasonably and in good faith, in  
22 accordance with generally recognized engineering or safety standards  
23 or design theories in existence at the time of the construction or  
24 reconstruction. For purposes of this subdivision, a political  
25 subdivision shall be charged with constructive notice only when the

1 failure to discover the spot or localized defect of the premises is  
2 the result of gross negligence.

3 (b) For purposes of this subdivision:

4 (i) Recreational activities include, but are not limited  
5 to, whether as a participant or spectator: Hunting, fishing,  
6 swimming, boating, camping, picnicking, hiking, walking, running,  
7 horseback riding, use of trails, nature study, waterskiing, winter  
8 sports, use of playground equipment, biking, roller blading,  
9 skateboarding, golfing, athletic contests; visiting, viewing, or  
10 enjoying entertainment events, festivals, or historical,  
11 archaeological, scenic, or scientific sites; and similar leisure  
12 activities;

13 (ii) Inherent risk of recreational activities means those  
14 risks that are characteristic of, intrinsic to, or an integral part  
15 of the activity;

16 (iii) Gross negligence means the absence of even slight  
17 care in the performance of a duty involving an unreasonable risk of  
18 harm; and

19 (iv) Fee means a fee to participate in or be a spectator  
20 at a recreational activity. A fee shall include payment by the  
21 claimant to any person or organization other than the political  
22 subdivision only to the extent the political subdivision retains  
23 control over the premises or the activity. A fee shall not include  
24 payment of a fee or charge for parking or vehicle entry.

25 (c) This subdivision, and not subdivision (3) of this

1 section, shall apply to any claim arising from the inspection or  
2 failure to make an inspection or negligent inspection of premises  
3 owned or leased by the political subdivision and used for  
4 recreational activities.

5                   Sec. 3. The Political Subdivisions Tort Claims Act shall  
6 apply to any claim arising during the time specified in a notice  
7 provided by a political subdivision pursuant to subsection (3) of  
8 section 39-1359.

9                   Sec. 4. Section 39-1359, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11                   39-1359 (1) The rights-of-way acquired by the department  
12 shall be held inviolate for state highway and departmental purposes  
13 and no physical or functional encroachments, structures, or uses  
14 shall be permitted within such right-of-way limits, except by written  
15 consent of the department or as otherwise provided in subsections (2)  
16 and (3) of this section.

17                   (2) A temporary use of the state highway system, other  
18 than a freeway, by a county, city, or village, including full and  
19 partial lane closures, shall be allowed for special events, as  
20 designated by a county, city, or village, under the following  
21 conditions:

22                   (a) The roadway is located within the official corporate  
23 limits or zoning jurisdiction of the county, city, or village;

24                   (b) A county, city, or village making use of the state  
25 highway system for a special event shall have the legal duty to

1     protect the highway property from any damage that may occur arising  
2     out of the special event and the state shall not have any such duty  
3     during the time the county, city, or village is in control of the  
4     property as specified in the notice provided pursuant to subsection  
5     (3) of this section;

6             (c) Any existing statutory or common law duty of the  
7     state to protect the public from damage, injury, or death shall  
8     become the duty of the county, city, or village making use of the  
9     state highway system for the special event, and the state shall not  
10    have such statutory or common law duty during the time the county,  
11    city, or village is in control of the property as specified in the  
12    notice provided pursuant to subsection (3) of this section; and

13             (d) The county, city, or village using the state highway  
14    system for a special event shall formally, by official governing body  
15    action, acknowledge that it accepts the duties set out in this  
16    subsection and, if a claim is made against the state, shall  
17    indemnify, defend, and hold harmless the state from all claims,  
18    demands, actions, damages, and liability, including reasonable  
19    attorney's fees, that may arise as a result of the special event.

20             (3) If a county, city, or village has met the  
21    requirements of subsection (2) of this section for holding a special  
22    event and has provided thirty days' advance written notice of the  
23    special event to the department, the county, city, or village may  
24    proceed with its temporary use of the state highway system. The  
25    notice shall specify the date and time the county, city, or village

1     will assume control of the state highway property and relinquish  
2     control of such state highway property to the state.

3                 (4) The Political Subdivisions Tort Claims Act shall  
4     apply to any claim arising during the time specified in a notice  
5     provided by a political subdivision pursuant to subsection (3) of  
6     this section.

7                 Sec. 5. Section 81-8,219, Reissue Revised Statutes of  
8     Nebraska, is amended to read:

9                 81-8,219 The State Tort Claims Act shall not apply to:

10                 (1) Any claim based upon an act or omission of an  
11     employee of the state, exercising due care, in the execution of a  
12     statute, rule, or regulation, whether or not such statute, rule, or  
13     regulation is valid, or based upon the exercise or performance or the  
14     failure to exercise or perform a discretionary function or duty on  
15     the part of a state agency or an employee of the state, whether or  
16     not the discretion is abused;

17                 (2) Any claim arising with respect to the assessment or  
18     collection of any tax or fee, or the detention of any goods or  
19     merchandise by any law enforcement officer;

20                 (3) Any claim for damages caused by the imposition or  
21     establishment of a quarantine by the state whether such quarantine  
22     relates to persons or property;

23                 (4) Any claim arising out of assault, battery, false  
24     imprisonment, false arrest, malicious prosecution, abuse of process,  
25     libel, slander, misrepresentation, deceit, or interference with

1 contract rights;

2 (5) Any claim by an employee of the state which is  
3 covered by the Nebraska Workers' Compensation Act;

4 (6) Any claim based on activities of the Nebraska  
5 National Guard when such claim is cognizable under the Federal Tort  
6 Claims Act, 28 U.S.C. 2674, or the National Guard Tort Claims Act of  
7 the United States, 32 U.S.C. 715, or when such claim accrues as a  
8 result of active federal service or state service at the call of the  
9 Governor for quelling riots and civil disturbances;

10 (7) Any claim based upon the failure to make an  
11 inspection or making an inadequate or negligent inspection of any  
12 property other than property owned by or leased to the state to  
13 determine whether the property complies with or violates any statute,  
14 ordinance, rule, or regulation or contains a hazard to public health  
15 or safety unless the state had reasonable notice of such hazard or  
16 the failure to inspect or inadequate or negligent inspection  
17 constitutes a reckless disregard for public health or safety;

18 (8) Any claim based upon the issuance, denial,  
19 suspension, or revocation of or failure or refusal to issue, deny,  
20 suspend, or revoke any permit, license, certificate, or order. Such  
21 claim shall also not be filed against a state employee acting within  
22 the scope of his or her office. Nothing in this subdivision shall be  
23 construed to limit the state's liability for any claim based upon the  
24 negligent execution by a state employee in the issuance of a  
25 certificate of title under the Motor Vehicle Certificate of Title Act

1 and the State Boat Act;

2 (9) Any claim arising out of the malfunction,  
3 destruction, or unauthorized removal of any traffic or road sign,  
4 signal, or warning device unless it is not corrected by the  
5 governmental entity responsible within a reasonable time after actual  
6 or constructive notice of such malfunction, destruction, or removal.  
7 Nothing in this subdivision shall give rise to liability arising from  
8 an act or omission of any governmental entity in placing or removing  
9 any traffic or road signs, signals, or warning devices when such  
10 placement or removal is the result of a discretionary act of the  
11 governmental entity;

12 (10) Any claim arising out of snow or ice conditions or  
13 other temporary conditions caused by nature on any highway as defined  
14 in section 60-624, bridge, public thoroughfare, or other state-owned  
15 public place due to weather conditions. Nothing in this subdivision  
16 shall be construed to limit the state's liability for any claim  
17 arising out of the operation of a motor vehicle by an employee of the  
18 state while acting within the course and scope of his or her  
19 employment by the state;

20 (11) Any claim arising out of the plan or design for the  
21 construction of or an improvement to any highway as defined in such  
22 section or bridge, either in original construction or any improvement  
23 thereto, if the plan or design is approved in advance of the  
24 construction or improvement by the governing body of the governmental  
25 entity or some other body or employee exercising discretionary

1 authority to give such approval;

2 (12) Any claim arising out of the alleged insufficiency  
3 or want of repair of any highway as defined in such section, bridge,  
4 or other public thoroughfare. Insufficiency or want of repair shall  
5 be construed to refer to the general or overall condition and shall  
6 not refer to a spot or localized defect. The state shall be deemed to  
7 waive its immunity for a claim due to a spot or localized defect only  
8 if the state has had actual or constructive notice of the defect  
9 within a reasonable time to allow repair prior to the incident giving  
10 rise to the claim; or

11 (13) (a) Any claim relating to recreational activities on  
12 property leased, owned, or controlled by the state for which no fee  
13 is charged (i) resulting from the inherent risk of the recreational  
14 activity, (ii) arising out of a spot or localized defect of the  
15 premises unless the spot or localized defect is not corrected within  
16 a reasonable time after actual or constructive notice of the spot or  
17 localized defect, or (iii) arising out of the design of a skatepark  
18 or bicycle motocross park constructed for purposes of skateboarding,  
19 inline skating, bicycling, or scootering that was constructed or  
20 reconstructed, reasonably and in good faith, in accordance with  
21 generally recognized engineering or safety standards or design  
22 theories in existence at the time of the construction or  
23 reconstruction. For purposes of this subdivision, the state shall be  
24 charged with constructive notice only when the failure to discover  
25 the spot or localized defect of the premises is the result of gross

1 negligence.

2 (b) For purposes of this subdivision:

3 (i) Recreational activities include, but are not limited  
4 to, whether as a participant or spectator: Hunting, fishing,  
5 swimming, boating, camping, picnicking, hiking, walking, running,  
6 horseback riding, use of trails, nature study, waterskiing, winter  
7 sports, use of playground equipment, biking, roller blading,  
8 skateboarding, golfing, athletic contests; visiting, viewing, or  
9 enjoying entertainment events, festivals, or historical,  
10 archaeological, scenic, or scientific sites; and similar leisure  
11 activities;

12 (ii) Inherent risk of recreational activities means those  
13 risks that are characteristic of, intrinsic to, or an integral part  
14 of the activity;

15 (iii) Gross negligence means the absence of even slight  
16 care in the performance of a duty involving an unreasonable risk of  
17 harm; and

18 (iv) Fee means a fee to participate in or be a spectator  
19 at a recreational activity. A fee shall include payment by the  
20 claimant to any person or organization other than the state only to  
21 the extent the state retains control over the premises or the  
22 activity. A fee shall not include payment of a fee or charge for  
23 parking or vehicle entry.

24 (c) This subdivision, and not subdivision (7) of this  
25 section, shall apply to any claim arising from the inspection or

1 failure to make an inspection or negligent inspection of premises  
2 owned or leased by the state and used for recreational activities;  
3 or -

4                   (14) Any claim arising as a result of a special event  
5                   during a period of time specified in a notice provided by a political  
6                   subdivision pursuant to subsection (3) of section 39-1359.

7                   Sec. 6. Original sections 13-901, 13-910, 39-1359, and  
8 81-8,219, Reissue Revised Statutes of Nebraska, are repealed.

9                   Sec. 7. Since an emergency exists, this act takes effect  
10 when passed and approved according to law.