

Chapter 8

PUBLIC WAYS AND PROPERTY

Article 1. Municipal Property

§8-101 MUNICIPAL PROPERTY; DEFINITIONS. The following definitions shall be applied throughout this Chapter. When no definition is specified, the normal dictionary usage of the word shall apply.

SIDEWALK SPACE. The term "sidewalk space," as used herein, shall mean that portion of a street between curb lines and adjacent property lines.

§8-102 MUNICIPAL PROPERTY; MAINTENANCE AND CONTROL. The Governing Body shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the Municipality, and shall cause the same to be kept open and in repair, and free from nuisances. (*Ref. 17-567 RS Neb.*)

§8-103 MUNICIPAL PROPERTY; SALE AND CONVEYANCE OF REAL PROPERTY. (A) Except as provided in division (G) of this section, the power of the municipality to convey any real property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution, directing the sale at public auction or by sealed bid of that property and the manner and terms of such sales, except that the property shall not be sold at public auction or by sealed bid when:

(1) The property is being sold in compliance with the requirements of federal or state grants or programs;

(2) The property is being conveyed to another public agency; or

(3) The property consists of streets and alleys.

(B) The governing body may establish a minimum price for real property at which bidding shall begin or shall serve as a minimum for a sealed bid.

(C) After the passage of the resolution directing the sale, notice of all proposed sales of property described in division (A) of this section and the terms of such sales shall be published once each week for three (3) consecutive weeks in a legal newspaper published in or of general circulation in the municipality.

(D) (1) If within thirty (30) days after the third publication of the notice a remonstrance petition against the sale is signed by registered voters of the municipality equal in number to thirty percent (30%) of the registered voters of the municipality voting at the last regular municipality election held therein and is filed with the governing body, that property shall not then, nor within one year thereafter, be sold. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty (30)-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

(2) Upon the receipt of the remonstrance, the governing body, with the aid and assistance of the Election Commissioner or County Clerk, shall determine the validity and

sufficiency of signatures on the petition. The governing body shall deliver the petition to the Election Commissioner or County Clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested.

(3) Upon receipt of the petition, the Election Commissioner or County Clerk shall issue to the governing body a written receipt that the petition is in the custody of the Election Commissioner or County Clerk. The Election Commissioner or County Clerk shall compare the signature of each person signing the petition with the voter registration records to determine if each signer was a registered voter on or before the date on which the petition was filed with the governing body. The Election Commissioner or County Clerk shall also compare the signer's printed name, street and number or voting precinct, and municipality or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the Election Commissioner or County Clerk determines that the printed name, street and number or voting precinct, and municipality or post office address match the registration records and that the registration was received on or before the date on which the petition was filed with the governing body. The determinations of the Election Commissioner or County Clerk may be rebutted by any credible evidence which the governing body finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the petition, the sufficiency of the petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process.

(4) Upon completion of the comparison of names and addresses with the voter registration records, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the Election Commissioner or County Clerk shall set forth the reason for the invalidity of the signature. If the Election Commissioner or County Clerk determines that a signer has affixed his or her signature more than once to the remonstrance and that only one person is registered by that name, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature.

(5) The Election Commissioner or County Clerk shall certify to the governing body the number of valid signatures necessary to constitute a valid remonstrance. The Election Commissioner or County Clerk shall deliver the remonstrance and the certifications to the governing body within forty (40) days after the receipt of the remonstrance from the governing body. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than twenty (20) signatures on one (1) signature page shall be counted.

(6) The governing body shall, within thirty (30) days after the receipt of the remonstrance and certifications from the Election Commissioner or County Clerk, hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. The governing body shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

(E) Real estate now owned or hereafter owned by the municipality may be conveyed without consideration to the state for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of sections 18-1001 through 18-1006 RS Neb.

(F) Following passage of the resolution directing a sale, publishing of the notice of the proposed sale, and passing of the thirty (30)-day right-of-remonstrance period, the property shall then be sold. The sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. *(Ref. 17-503 RS Neb.)*

(G) Divisions (A) through (F) of this section shall not apply to the sale of real property if the authorizing resolution directs the sale of real property, the total fair market value of which is less than five thousand dollars (\$5,000). Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the municipality for a period of not less than seven (7) days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required. *(Ref. 17-503.01 RS Neb.) (Ord. No. 241, 4/5/83) (Amended by Ord. Nos. 387, 12/19/95; 462, 8/4/98; 637, 1/6/04; 989, 8/7/18)*

§8-103.01 MUNICIPAL PROPERTY; SALE AND CONVEYANCE OF PERSONAL PROPERTY. (A)

The power of the City to convey any personal property owned by it shall be exercised by resolution directing the sale and the manner and terms of the sale. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three (3) prominent places within the city for a period of not less than seven (7) days prior to the sale of the property. If the fair market value of the property is greater than five thousand dollars (\$5000.00), notice of the sale shall also be published once in a legal newspaper published in or of general circulation in the City at least seven (7) days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale.

(B) Personal property may be conveyed notwithstanding the procedure in subsection (A) of this section when:

(1) Such property is being sold in compliance with the requirements of federal or state grants or programs; and

(2) Such property is being conveyed to another public agency. *(Ref. 17-503.02 RS Neb.) (Ord. No. 637, 1/6/04)*

§8-104 MUNICIPAL PROPERTY; OBSTRUCTIONS. Trees and shrubs, growing upon, or near, the

lot line, or upon public ground and interfering with the use, or construction of any public improvements shall be deemed an obstruction under this Article. Said roots may be removed by the Municipality at the expense of the owner of the property upon which the tree or shrub is located should the owner fail, or neglect, after notice, to do so. It shall be unlawful for any person, persons, firm, or corporation to obstruct, or encumber, by fences, gates, buildings, structures, or otherwise, any of the streets, alleys, or sidewalks. *(Ref. 17-557.01 RS Neb.)*

§8-105 MUNICIPAL PROPERTY; PERMITTED OBSTRUCTIONS. Persons engaged in the erection, construction, reconstruction, wrecking, or repairing of any building, or the construction, or repair, of a sidewalk along any street, may occupy the public street space with such building material and equipment as long as is necessary if such persons shall make application to and receive a permit in writing from the Municipal official in charge of Municipal streets to do so; provided, no permit for the occupancy of the sidewalk space, and more than one-third (1/3) of the roadway of the public space adjacent to the real estate on which said building is to be constructed, erected, reconstructed, wrecked, or repaired shall be granted; and provided further, a suitable passageway for pedestrians shall be maintained within the public space included in the permit which shall be protected and lighted in the manner required by the official issuing the permit.

§8-106 MUNICIPAL PROPERTY; WEEDS. It is hereby the duty of the Street Superintendent or his duly authorized agent to view and inspect the sidewalk space within the corporate limits for growing weeds during the growing season, and if rank and noxious weeds are found growing thereon, the City Clerk shall notify the owner or occupant thereof, to cut down such weeds as close to the ground as can be practicably done and keep the weeds cut thereon in like manner during the growing season for weeds.

It shall be the duty of every owner of real estate in the Municipality to cut and clear the sidewalk space abutting the real estate of all weeds and worthless vegetation that are noxious, obstruct travel, or create a fire or health hazard. Such weeds and worthless vegetation shall be cut so as not to extend more than six (6) inches above the ground. Subsequent to the cutting all loose vegetation shall be immediately removed.

Upon failure of the owner, lessee, or occupant having control of any such real estate to cut and clear the said weeds and worthless vegetation as set forth hereinbefore, the City Clerk shall serve notice on the said owner, lessee, or occupant to do so. In the event that the weeds and vegetation have not been removed after a period of five (5) days from the date of the notice, the City Clerk shall order the same to be done, and the cost thereof shall be chargeable to the property owner. If the owner fails to reimburse the Municipality after being properly billed, the cost may be assessed against the real estate and the City Clerk shall certify the assessment to the County Clerk and the same shall be collected in the manner provided by law. In the event the property owner is a non-resident of the county in which the property lies, the City Clerk shall, before certifying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. *(Ord. No. 303, 10/4/88)*

§8-108 MUNICIPAL PROPERTY; ACQUISITION OF PROPERTY; CONSTRUCTION; ELECTIONS, WHEN REQUIRED. (1) The Municipality is authorized and empowered to (a) purchase, (b) accept by gift or devise, (c) purchase real estate upon which to erect, and (d) erect a building or buildings for an auditorium, fire station, Municipal building, or community house for housing Municipal enterprises and social and recreation purposes, and other public buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of the Municipality.

(2) Except as provided in subsection (3) of this section, before any such purchase can be made or building erected, the question shall be submitted to the electors of the Municipality at a general Municipal election or at an election duly called for that purpose, or as set forth in section 17-954 RS Neb., and be adopted by a majority of the electors voting on such question.

(3) If the funds to be used to finance the purchase or construction of a building pursuant to this section are available other than through a bond issue, then either:

(a) Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the Municipality and no election shall be required to approve the purchase or construction unless within thirty (30) days after the publication of the notice, a remonstrance against the purchase or construction is signed by registered voters of the Municipality equal in number to fifteen percent (15%) of the registered voters of the Municipality voting at the last regular Municipal election held therein and is filed with the Governing Body. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be considered timely if filed or postmarked on or before the next business day. If a remonstrance with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the Municipality at a general Municipal election or a special election duly called for that purpose. If the purchase or construction is not approved, the property involved shall not then, nor within one (1) year following the election, be purchased or constructed; or

(b) The Governing Body may proceed without providing the notice and right of remonstrance required in subdivision (a) of this subsection if the property can be purchased below the fair market value as determined by an appraisal, there is a willing seller, and the purchase price is less than twenty-five thousand dollars (\$25,000.00). The purchase shall be approved by the Governing Body after notice and public hearing as provided in section 18-1755 RS Neb. (*Ref. 17-953, 17-953.01 RS Neb.*) (*Ord. No. 242, 4/5/83*)(*Amended by Ord. No. 388, 12/19/95*)

§8-109 MUNICIPAL PROPERTY; ADVERTISING BENCHES. (1) General authorization. It is hereby made lawful for persons to install and maintain benches for the convenience of the public at places on public property and to place advertising matter and signs upon such benches, subject to the regulations, limitations and qualifications of this Article.

(2) Location restricted. Benches authorized by the provisions of this Article shall be located only where the distance from the face of the curb to the property line is eight feet (8') or more.

(3) Bench specifications. All benches installed by permission of this Article shall conform rigidly to the following specifications:

- A. The bench shall not be more than six feet (6') in length, not to exceed forty-two inches (42") in height and thirty inches (30") in depth.
- B. The benches must be of heavy construction to weigh not less than four hundred (400) pounds.
- C. The end-pieces and legs shall be constructed of concrete or solid metal.
- D. The back rests shall be constructed of hardwood or plywood not less than three-fourths inches (3/4") in thickness.

- E. The seats and backrests shall be constructed of hardwood or plywood not less than one and three-fourths inches (1 3/4") in thickness.
- F. The several parts of the bench shall be joined by bolts of one-half inch (1/2") or greater diameter.

(4) Advertising restricted. Only such advertising matter shall be placed on the benches installed under the provisions of this Article that is ordinarily displayed in other advertising mediums, except that no human figure or face shall be displayed.

(5) Permit required. No person shall install or maintain any bench under the provisions of this Article unless he or she shall first obtain a permit to do so from the City Council.

(6) Number of permits restricted. No more than one permittee shall be allowed a permit for any single intersection under the provisions of this division.

(7) Application for permit. Any person desiring a permit required by the provisions of this Article shall submit his or her written application therefor to the City Clerk, giving the location of the proposed bench or benches and such other information as the City Clerk may, in its discretion, require.

(8) Fee for permit. Each application for a permit hereunder shall be accompanied by a fee as set by the Governing Body. Permits expire annually.

(9) Investigation. All applications for a permit required by the provisions of this Article shall be referred for investigation to the Mayor or his designee, covering the following points and such others as may appear pertinent:

- A. Would the maintenance of a bench at the proposed location tend to obstruct passage along a public way or create a hazard to persons traveling thereon?
- B. Would the maintenance of a bench at the proposed location promote the convenience of the traveling public?
- C. Would the maintenance of a bench at the proposed location detrimentally affect the abutting property owner or tenant?

(10) Consideration by Council. Unless after an unfavorable report on a particular location the applicant for a permit required by the provisions of this division withdraws his or her application for that location, the Mayor or his designee shall forward a report to the City Council. Upon consideration of the report and such other evidence as may be offered, including evidence as to the reliability of the applicant and his or her ability to perform his or her undertakings under this Article, the City Council shall decide whether or not a permit shall issue.

(11) Priority of application. Priority of initial application for any location shall not cause any rights to vest in the applicant. A permittee who has performed his or her undertaking under this Article satisfactorily and applies for renewal before the expiration of an old permit shall be given priority over another applicant for a permit for the same location.

(12) Liability of permittee. A permittee under this Article shall defend, at his or her own expense, any litigation arising from the installation or maintenance of a bench for which he or she holds a permit.

(13) Bond; insurance. Before proceeding to install any bench under the provisions of this Article, the permittee shall file individual bond in the penal sum of ten thousand dollars (\$10,000,000) to save the City harmless from any damage or suit for damage alleged to arise from the installation or maintenance of any bench installed by him or her. Sureties on such

bond are not required but evidence of public liability insurance in the amounts hereinafter stated shall be filed, at or prior to the time of filing applications for such permit with the City Clerk. The public liability insurance shall be twenty-five thousand dollars (\$25,000.00) for the death or injury of one person, with a total limit of personal injury liability of fifty thousand dollars (\$50,000.00) and property damage of not less than one thousand dollars (\$1,000.00). One bond and one insurance policy may be filed to cover the maintenance of any number of benches.

(14) Conditions of permit. By the acceptance of a permit under the provisions of this Article, the permittee agrees to:

- A. Be bound by all of the provisions of this Article;
- B. Inspect each bench periodically;
- C. Maintain each bench in a clean, safe and sightly condition; and
- D. Post and maintain the indemnifying bond and public liability insurance required by this division.

(15) Revocation; removal of bench. If the permittee under the provisions of this Article shall fail to comply with any condition of his or her permit, the City Clerk shall give him or her thirty (30) days notice of such failure. If the permittee fails to correct the situation causing noncompliance with this Article within such time period, and after notice to and approval of the City Council, the City Council may revoke the permit and remove and store the proposed bench, charging the cost thereof against the permittee. The permittee may recover the bench if he or she pays such costs within sixty (60) days after such removal; otherwise title to the bench shall fully vest in the City.

(16) Expiration. Permits issued under the provisions of this division shall expire annually from the date of issuance. (*Ord. No. 307, 4/4/89*) (*Amended by Ord. No. 538, 2/19/02*)

§8-110 MUNICIPAL PROPERTY; ACQUISITION OF REAL PROPERTY; PUBLIC MEETING; ACCESS FOR RECREATIONAL USE. (1) The City shall acquire an interest in real property by purchase or eminent domain, the Municipality shall do so only after the Governing Body has authorized the acquisition by action taken in a public meeting after notice and public hearing.

(2) The City shall provide to the public a right of access for recreational use to real property acquired for public recreational purposes. Such access shall be at designated access points and shall be equal to the right of access for recreational use held by adjacent landowners. The right of access granted to the public for recreational use shall meet or exceed such right held by a private landowner adjacent to the real property. (*Ref. 18-1755 RS Neb.*) (*Ord. No. 371, 3/7/95*)

§8-111 MUNICIPAL PROPERTY; ACQUISITION OF PROPERTY; APPRAISAL. Notwithstanding any other provision of law, the Municipality shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value of one hundred thousand dollars (\$100,000.00) or more unless an appraisal of such property has been performed by a certified real property appraiser. (*Ref. 13-403 RS Neb.*) (*Ord. No. 372, 3/7/95*)

§8-112 MUNICIPAL PROPERTY; PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS. (A) (1) Except as otherwise provided in this section and

sections 81-3449 and 81-3453 RS Neb., the Municipality shall not engage in the construction of any public works involving architecture or engineering unless the plans, specifications, and estimates have been prepared and the construction has been observed by an architect, a professional engineer, or a person under the direct supervision of an architect, professional engineer, or those under the direct supervision of an architect or professional engineer.

(2) This division (A) shall not apply to any public work in which the contemplated expenditure for the complete project does not exceed one hundred thousand dollars (\$100,000.00) or the adjusted dollar amount set by the Board of Engineers and Architects. *(Ref. 81-3445 RS Neb.)*

(B) The provisions of division (A) of this section regulating the practice of architecture do not apply to the following activities or the other activities specified in section 81 -3449 RS Neb.:

(1) Any alteration, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building;

(2) A public service provider who employs a design professional performing professional services for itself;

(3) The practice of any other certified trade or legally recognized profession;

(4) Earthmoving and related work associated with soil and water conservation practices performed any land owned by the municipality that is not subject to a permit from the Department of Natural Resources; and

(5) The work of employees and agents of the Municipality performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land-use regulations and their customary duties in utility and public works construction, operation, and maintenance. *(Ref. 81-3449 RS Neb.)*

(C) The provisions of division (A) of this section regulating the practice of engineering do not apply to the following activities, the activities specified in division (B) of this section, or the other activities specified in section 81-3453 RS Neb.:

(1) Those services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, marine operating engineers, power plant operating engineers, or manufacturers who supervise the operation of or operate machinery or equipment or who supervise construction within their own plant; and

(2) The construction of water wells as defined in section 46-1212 RS Neb., the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells, unless such construction, installation, or decommissioning is required by the municipality to be designed or supervised by an engineer or unless legal requirements are imposed upon the municipality as a part of a public water supply; *(Ref. 81-3453 RS Neb.)*

(D) For the purpose of this section, the Municipality is considered a public service provider if it employs or appoints an architect or a professional engineer to be in responsible charge of the Municipality's architectural or engineering work. *(Ref. 81-3423RS Neb.) (Ord. No. 463, 8/4/98) (Amended by Ord. Nos. 497, 7/5/00; 658, 11/2/04; 819, 6/19/12; 920, 5/17/16)*

§8-113 MUNICIPAL PROPERTY; REGULATION OF SNOW, ICE AND OTHER ENCROACHMENTS.

(A) The Municipality shall have power to prevent and remove all encroachments, including

snow, ice, mud or other obstructions, into and upon all sidewalks, streets, avenues, alleys, and other municipal property. *(Ref. 17-557 RS Neb.)*

(B) If the abutting property owner refuses or neglects, after five (5) days' notice by publication or, in place thereof, personal service of such notice, to remove all encroachments from sidewalks, as provided in division (A), the Municipality through the proper officers may cause such encroachments to be removed, and the cost of removal shall be paid out of the Street Fund. The governing body shall assess the cost of the notice and removal of the encroachment against the abutting property as a special assessment. The special assessment shall be known as a special sidewalk assessment and, together with the cost of notice, shall be levied and collected as a special assessment in addition to the general revenue taxes and shall be subject to the same penalties as other special assessments and shall draw interest from the date of the assessment. Upon payment of the assessment, the assessment shall be credited to the street fund. *(Ref. 17-557.01 RS Neb.) (Ord. No. 917, 5/17/16)*

§8-114 MUNICIPAL PROPERTY; REGULATION OF OBSTRUCTIONS. (A) The Municipality shall have the power to remove all obstructions from the sidewalks, curbstones, gutters, and crosswalks at the expense of the person placing them there or at the expense of the Municipality and to require and regulate the planting and protection of shade trees in and along the streets and the trimming and removing of such trees.

(B) The Municipality shall have the power to regulate the building of bulkheads, cellar and basement ways, stairways, railways, windows, doorways, awnings, hitching posts and rails, lampposts, awning posts, all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks in the Municipality. *(Ref. 17-555 RS Neb.) (Ord. No. 919, 5/17/16)*

Article 2. Sidewalks

§8-201 MUNICIPAL PROPERTY; OVERHANGING BRANCHES. The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any sidewalk over which there extends the branches of trees shall at all times keep the branches or limbs thereof trimmed to the height of at least eight (8') feet above the surface of said walk. Whenever the limbs or branches of any tree or trees extend over sidewalks contrary to the provisions herein so as to interfere with the lighting of the street from street lights, or with the convenience of the public using said sidewalk, the Governing Body at any regular or special meeting may pass a resolution ordering the owner or occupant to cut or remove said obstructions within five (5) days after having received a copy thereof from the Street Superintendent stating that the Municipality will remove said branches and charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided, if said resolution is not complied with. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. *(Ref. 17-557.01 RS Neb.)*

§8-202 SIDEWALKS; KEPT CLEAN. It shall be unlawful for the occupant of any lot or lots or the owner of any vacant lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substance to accumulate on the sidewalks or to permit any snow, sleet, ice, mud, or other substance to remain upon said sidewalk. All sidewalks within the business district shall be cleaned within five (5) hours after the cessation of a storm, unless the storm or fall of snow shall have taken place during the night, in which case the sidewalk shall be cleaned before eight-thirty (8:30) o'clock A.M. the following day; provided, sidewalks within the residential areas of the Municipality shall be cleaned within twenty-four (24) hours after the cessation of the storm. *(Ref. 17-557 RS Neb.)*

§8-203 SIDEWALKS; MAINTENANCE. *(Repealed 2004) See § 8-204.*

§8-204 SIDEWALKS; CONSTRUCTION OR REPAIR.

(A) The Mayor and City Council may construct and repair sidewalks, or cause the construction and repair of sidewalks in such manner as the Mayor and City Council deems necessary and assess the expense thereof on the property in front of which the construction or repairs are made, after having given notice:

(1) By publication in one (1) issue of a legal newspaper of general circulation in the Municipality; and

(2) By either causing a written notice to be served upon the occupant in possession of the property involved or to be posted upon such premises ten (10) days prior to the commencement of such construction or repair. *(Ref. 17-522 RS Neb.)*

(B) The notice shall:

(1) State that the Governing Body has ordered repair of the sidewalk;

(2) Contain the Municipality's estimate of the cost of the repair;

(3) Notify the property owner that he or she may, within ten (10) days after the date of publication of the notice, notify the Municipality that he or she will repair the sidewalk within thirty (30) days after such date of publication;

(4) Notify the property owner that if he or she fails to so notify the Municipality within the ten (10) days or, having so notified the municipality, fails to repair the sidewalk within the thirty (30) days, the Municipality will cause the sidewalk to be repaired and the expense thereof to be assessed against the property.

(C) (1) Before the Municipality imposes any special assessments for sidewalk repair, a copy of the notice that is required to be published shall be mailed to the last-known address of all nonresident property owners as shown on the current tax rolls at the time such notice is first published. (*Ref. 13-310 RS Neb.*)

(2) The Municipal Clerk shall mail the notice by certified mail with return receipt requested. (*Ref. 13-312 RS Neb.*)

(3) For purposes of this division, nonresident property owner means any person or corporation whose residence and mailing address as shown on the current tax rolls is outside the boundaries of the county in which the property subject to assessment is located and who is a record owner of the property. (*Ref. 13-314 RS Neb.*)

(D) All sidewalks shall be repaired in conformity with such plans and specifications as may be approved by the Governing Body.

(E) Assessments made under this section shall be made and assessed in the manner provided in section 17-524 RS Neb.

§8-205 SIDEWALKS; CONSTRUCTION BY OWNER.

(1) Any person desiring to construct, or cause to be constructed, any sidewalk shall do so only as herein provided. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit.

(2) Said owner shall make application in writing for a permit and file such application in the office of the Municipal Clerk. The permit shall give a description of the lot, or piece of land along which the sidewalk is to be constructed. The official in charge of sidewalks shall issue the desired permit unless good cause shall appear why said permit should be denied; provided, if it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, or elevation, the Municipal official in charge of sidewalks shall submit the application to the Governing Body who shall determine whether the permit should be granted or denied. It shall be unlawful for any person to construct, or cause to be constructed said sidewalk at any other location, grade, or elevation than so designated by the Municipality. All sidewalks shall be built and constructed on the established grade, or elevation, and if there is no established grade, then on the grade or elevation indicated by the Municipal official in charge of sidewalks.

§8-206 SIDEWALKS; MUNICIPAL CONSTRUCTION.

(1) The Governing Body may, by resolution, order the construction of a sidewalk on any lot or piece of ground within the Municipality. Notice of the Governing Body's intention to construct said sidewalk shall be given by the Municipal Clerk by publication of notice one (1) time in a legal newspaper of general circulation in the Municipality.

(2) A copy of said notice shall be personally served upon the occupant in possession of such property, or, when personal service is not possible, said notice shall be posted upon such premise ten (10) days prior to the commencement of construction. The notice required in this section shall be prepared by the Municipal Attorney in accordance with the provisions of this section. Such service shall include a form of return evidencing personal service or posting as herein required.

(3) Said notice shall notify the owner of the premise of the passage of the resolution ordering him to construct or cause to be constructed a sidewalk within thirty (30) days after the date of publication and further that if he fails to construct the sidewalk or cause the same to be done within the time allowed, the Municipality will cause the sidewalk to be constructed and the cost thereof shall be levied and assessed as a special tax against the premise; provided, the notice shall contain the official estimate of the cost of said construction and no special assessment in excess of this estimate shall be assessed against the property. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (*Ref. 17-523 RS Neb.*)

§8-207 SIDEWALKS; CONSTRUCTION BY PETITION. If the owners of the record title representing more than sixty (60%) percent of the front footage of the directly abutting property, subject to assessment for sidewalk improvements, petition the Governing Body to make the same, the Governing Body shall proceed in all things as though such construction had been ordered by it. Upon the petition of any freeholder who is an abutting owner in fee simple of property subject to assessment for sidewalk improvements, the Governing Body may order permanent sidewalks built in accordance with this Article upon the freeholder making, executing, and delivering to the Municipality an agreement to the effect that the petitioning freeholder will pay the engineering service fee and all other incidental construction costs until paid shall be a perpetual lien upon the real estate along which the freeholder desires such sidewalk to be constructed and that the petitioner gives and grants to the Municipality the right to assess and levy the costs of such construction against the freeholder's real estate abutting the sidewalk improvement and promises to pay such costs with interest. The total cost of such improvement shall be levied, allocated, financed, and specially assessed as provided by law. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (*Amended by Ord. No. 216, 4/1/80*)

Article 3. Streets

§8-301 STREETS; NAMES AND NUMBERS. The Governing Body may at any time, by ordinance, rename any street or provide a name for any new street. Buildings used for residence or business purposes and located along such streets shall retain such numbers as the Governing Body may require. It shall be the duty of the Municipal official in charge of streets, upon the erection of any new building or buildings to assign the proper numbers to said building or buildings and give notice to the owner or owners and occupant or occupants of the same.

§8-302 STREETS; CROSSINGS. The Governing Body may order and cause to be constructed, under the supervision of the Municipal official in charge of streets, such street, avenue, and alley crossings as the Governing Body shall deem necessary. When a petition for the construction of any such crossings is filed by an interested resident in the office of the Municipal Clerk, said Municipal Clerk shall refer such application to the chief street official who shall investigate and make his recommendation to the Governing Body. Action by the Governing Body on such application, whether the application is approved or rejected, shall be considered final.

§8-303 STREETS AND ALLEYS; OPENING, WIDENING, IMPROVING, OR VACATING. (A) (1) The Municipality shall have power to open, widen, or otherwise improve or vacate any street, avenue, alley, or lane within the limits of the Municipality and also to create, open, and improve any new street, avenue, alley, or lane. All damages sustained by the citizens of the Municipality, or by the owners of the property therein, shall be ascertained in such manner as shall be provided by ordinance.

(2) Whenever any street, avenue, alley, or lane is vacated, the same shall revert to the owners of the abutting real estate, one-half on each side thereof and become a part of such property, unless the Municipality reserves title in the ordinance vacating such street or alley. If title is retained by the Municipality, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the Municipality.

(3) When a portion of a street, avenue, alley, or lane is vacated only on one side of the center thereof, the title to such land shall vest in the owner of the abutting property and become a part of such property, unless the Municipality reserves title in the ordinance vacating a portion of such street or alley. If title is retained by the Municipality, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the Municipality.

(4) When the Municipality vacates all or any portion of a street, avenue, alley, or lane, the Municipality shall, within thirty (30) days after the effective date of the vacation, file a certified copy of the vacating ordinance with the Register of Deeds for the county in which the vacated property is located to be indexed against all affected lots.

(5) The title to property vacated pursuant to this section shall be subject to the following:

(a) There is reserved to the Municipality the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

(b) There is reserved to the Municipality, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, above, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times. *(Ref. 17-558 RS Neb.)*

(B) The Municipality shall have power to create, open, widen, or extend any street, avenue, alley, off-street parking area, or other public way, or annul, vacate, or discontinue the same. *(Ref. 17-559 RS Neb.) (Amended by Ord. Nos. 323, 4/3/90; 555, 4/2/02)*

§8-304 STREETS; EXCAVATION. It shall be unlawful for any person to make an excavation in any street or streets for any purpose whatsoever unless a written permit is issued by the chief Municipal street official authorizing such excavations. *(Ref. 17-567 RS Neb.)*

§8-305 STREETS; DRIVING STAKES. It shall be unlawful for any person to drive any peg or stake of any kind into the pavement in any street or alley without first procuring the written consent of the chief Municipal Street official.

§8-306 STREETS; MIXING CONCRETE. It shall be unlawful for any person to mix any concrete or plastering material directly on the street pavement for any reason whatsoever.

§8-307 STREETS; HARMFUL LIQUIDS. It shall be unlawful for any person to place or permit to leak in the gutter of any street, waste gasoline, kerosene, or high lubricating oils, which damage or act as a solvent upon said streets.

§8-308 STREETS; EAVE AND GUTTER SPOUTS. It is hereby declared unlawful for any person to erect or maintain any dwelling house or business building within the limits of the Municipality where the said dwelling or building abuts on any sidewalk or street without providing proper guttering and eave spouts to receive the waste waters that collect on the said sidewalks and streets. All eave spouts erected on any dwelling house or business building shall be constructed to drain into the alleys, or shall be buried beneath the sidewalks and drain into the streets where it is found to be impossible to drain said eave spouts into the alley.

§8-309 STREETS; HEAVY EQUIPMENT. It shall hereafter be unlawful for any person or person to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing on any unpaved street without first having protected such curb, gutter, bridge, culvert, sidewalks, crosswalk, or crossing with heavy plank sufficient in strength to warrant against the breaking or damaging of such curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing. Hereafter, it shall be unlawful to run, drive, move, operate, or convey over or across any paved street a vehicle, machine, or implement with sharp discs or sharp wheels that bear upon said pavement; with wheels having cutting edges; with wheels having lugs, any protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark,

mar, indent, or otherwise injure or damage any pavement, gutter, or curb; provided, where heavy vehicles, structures, and machines move along paved or unpaved streets the Maintenance Superintendent is hereby authorized and empowered to choose the route over which the moving of such vehicles, structures, or machines will be permitted and allowed. Nothing in this section shall be construed to apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths (5/16) of an inch in diameter inclusive of the stud-casting with an average protrusion beyond the tread surface of not more than seven sixty-fourths (7/64) of an inch between October 1, and April 15; provided, that school buses and emergency vehicles shall be permitted to use metal or metal-type studs all year; it shall be permissible to use farm machinery with tires having protuberances which will not injure the streets; and it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide, or skid. (*Ref. 39-6,131 RS Neb.*)

§8-310 STREETS; PIPE LINES AND WIRES. Poles, wires, gas mains, pipe lines, and other appurtenances of public service companies shall be located, or erected over, upon, or under the streets, alleys, and common grounds of the Municipality. Application for location of the above shall be made to the Governing Body in writing. Approval by that body shall be issued in writing. Any public service company granted a right-of-way for the erection and maintenance of poles, conduits, gas mains, pipe lines, and wires shall at all times erect and locate their poles, wires, gas mains, pipe lines, and other appurtenances at such places and in such manner as shall be designated by the Governing Body. Such poles, wires, gas mains, pipe lines, and other appurtenances, shall be removed or relocated by said companies at their own expense when requested to do so by the any such relocation shall be ordered by resolution of the Governing Body and the Municipal Clerk shall notify any and all companies affected. Said companies shall, within twenty-four (24) hours after receiving notice, at their own expense, cause the poles, wires, gas mains, pipe lines, or other appurtenances to be removed. The Governing Body shall designate another location as closely as possible where said poles, wires, gas mains, pipe lines, or other appurtenances, may be reset or placed. All poles, wires, gas mains, pipe lines, or other appurtenances, shall be reset, placed, or erected in such a manner that they will not interfere with the water system; sewerage system; poles, wires, and mains of any public utility; adjacent buildings; or with travel on the public ways and property. Whenever possible, all pole lines, wires, gas mains, pipe lines, or appurtenances shall be confined to the alleys of the Municipality.

§8-311 STREETS; CONSTRUCTION ASSESSMENT. To defray the costs and expenses of street improvements, as may be authorized by law, the Governing Body shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, abutting upon, or especially benefiting from, the street, avenue, alley, or sidewalk in whole or in part opened, widened, curbed and guttered, graded, paved, repaired, graveled, macadamized, parked, extended, constructed, or otherwise improved or repaired. The Governing Body sitting as the Board of Equalization shall review all such improvements in accordance with the procedure provided by law. All special assessments shall be made by the Governing Body at a regular or special meeting by resolution, taking into account the benefits

derived or injuries sustained in consequence of such improvements and the amount charged against same. The vote shall be recorded in the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in some legal newspaper published, or of general circulation, in the Municipality at least four (4) weeks before the same shall be held. In lieu of such aforementioned notice, personal service may be had upon the persons owning or occupying the property to be assessed. Such assessments shall be known as "special assessments for improvements" and with the cost of notice shall be levied and collected as a special tax in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other Municipal taxes and shall be certified to the County Clerk by the Municipal Clerk forthwith after the date of levy, for collection by the Treasurer of said County unless otherwise specified. After it shall become delinquent said assessment shall draw interest at the legal interest rate per annum. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (*Ref. 17-511, 17-524, 19-2428 through 19-2431, 45-104.01 RS Neb.*)

§8-312 STREETS, ALLEYS, WALKS, MALLS AND OTHER IMPROVEMENTS. The governing body may grade, partially or to an established grade, change grade, curb, recurb, gutter, regutter, pave, gravel, regravell, macadamize, remacadamize, widen, or narrow streets or roadways, resurface or re-lay existing pavement, or otherwise improve any streets, alleys, public grounds, public ways, entirely or partially, and streets which divide the municipal corporate limits and the area adjoining the municipality; construct or reconstruct pedestrian walks, plazas, malls, landscaping, outdoor sprinkler systems, fountains, decorative water ponds, lighting systems, and permanent facilities; and construct sidewalks and improve the sidewalk space. These projects may be funded at public cost or by the levy of special assessments on the property especially benefitted in proportion to such benefits, except as provided in sections 19-2428 through 19-2431 RS

Neb. The governing body may by ordinance create improvement districts, to be consecutively numbered, which may include two or more connecting or intersecting streets, alleys, or public ways, and may include two or more types of the improvements authorized under this section in a single district in one proceeding. All of the improvements which are to be funded by a levy of special assessment on the property especially benefitted shall be ordered as provided in sections 17-510 to 17-512 RS Neb., except as otherwise provided in section 17-509 RS Neb. (*Ref. 17-509 RS Neb.*) (*Ord. No. 217, 4/1/80*) (*Amended by Ord. No. 990, 8/7/18*)

§8-313 STREETS; PETITION FOR IMPROVEMENTS. Whenever a petition signed by the owners of record title representing more than sixty (60%) percent of the front footage of the property directly abutting upon the street, streets, alley, alleys, public way, or the public grounds proposed to be improved, shall be presented and filed with the Municipal Clerk, petitioning therefor, the Governing Body shall by ordinance create a paving, graveling, or other

improvement district or districts, and shall cause such work to be done or such improvement to be made, and shall contract therefor, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley, or alleys, especially benefited thereby in such district in proportion to such benefits, to pay the cost of such improvement. The Governing Body shall have the discretion to deny the formation of the proposed district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the Governing

Body should deny a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties. *(Ref. 17-510 RS Neb.) (Ord. No. 221, 4/1/80) (Amended by Ord. No. 257, 11/1/83)*

§8-314 STREETS; IMPROVEMENT DISTRICTS; OBJECTIONS. Whenever the Governing Body deems it necessary to make any improvements allowed by statute which are to be funded by a levy of special assessment on the property especially benefited, the Governing Body shall by ordinance create a paving, graveling, or other improvement district and, after the passage, approval, and publication or posting of such ordinance, shall publish notice of the creation of any such district for six (6) days in a legal newspaper of the Municipality, if a daily newspaper, or for two (2) consecutive weeks if it is a weekly newspaper. If no legal newspaper is published in the Municipality, the publication shall be in a legal newspaper of general circulation in the Municipality. If the owners of the record title representing more than fifty percent (50%) of the front footage of the property directly abutting on the street or alley to be improved file with the Municipal Clerk within twenty (20) days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If objections are not filed against the district in the time and manner prescribed in this section, the Governing Body shall immediately cause such work to be done or such improvement to be made, shall contract for the work or improvement, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street or alley especially benefited in such district in proportion to such benefits to pay the cost of such improvement. *(Ref. 17-511 RS Neb.)(Ord. No. 221, 4/1/80) (Amended by Ord. No. 389, 12/19/95)*

§8-315 STREETS; DEFERRAL FROM SPECIAL ASSESSMENTS. (A) Whenever the Governing Body of a Municipality creates an improvement district as specified in section 8-111 which includes land adjacent to the Municipality which is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments. For purposes of this section, AGRICULTURAL USE means the use of land as described in 77-1359 RS Neb, so that incidental use of the land for nonagricultural or nonhorticultural purposes shall not disqualify the land and AGRICULTURAL USE ZONE means designation of any land predominantly for agricultural or horticultural use by any political subdivision pursuant to sections 19-924 to 19-933; Chapter 14, Article 4; Chapter 15, Article 9; Chapter 16, Article 9; Chapter 17, Article 10 or Chapter 23, Article 1 RS Neb. The primary objective of the agricultural use zoning shall be to preserve and protect agricultural activities and the potential for agricultural, horticultural or open use of land. Uses to be

allowed on such lands include primarily agricultural-related or horticultural-related uses, and nonagricultural or nonhorticultural industrial, commercial or residential uses allowed on such lands shall be restricted so that they do not conflict with or detract from this objective.

(B) Any owner of record title eligible for the deferral granted by this section shall, to secure such assessment, make application to the Governing Body of the Municipality within ninety (90) days after creation of an improvement district as specified in section 8-110. Any owner of record title who makes application for the deferral provided by this section shall notify the County Register of Deeds of such application in writing prior to approval by the Governing Body. The Governing Body shall approve the application of any owner of record title upon determination that the property:

- (1) Is within an agricultural use zone and is used exclusively for agricultural use, and
- (2) The owner has met the requirements of this section.

(C) The deferral provided for in this section shall be terminated upon any of the following events:

- (1) Notification by the owner of record title to the Governing Body to remove such deferral;
- (2) Sale or transfer to a new owner who does not make a new application within sixty (60) days of the sale or transfer, except as provided in subdivision 3 of this section.
- (3) Transfer by reason of death of a former owner to a new owner who does not make application within one hundred twenty-five (125) days of the transfer;
- (4) The land is no longer being used as agricultural land; or
- (5) Change of zoning to other than an agricultural zone.

(D) Whenever property which has received a deferral pursuant to this section becomes disqualified for such deferral, the owner of record title of such property shall pay to the Municipality an amount equal to:

- (1) The total amount of special assessments which would have been assessed against such property, to the extent of special benefits, had such deferral not been granted; and
- (2) Interest upon the special assessments not paid each year at the rate of six percent (6%) from the dates at which such assessments would have been payable if no deferral had been granted.

(E) In cases where the deferral provided by this section is terminated as a result of a sale or transfer described in subdivision (B) or (C) of this section the lien for assessments and interest shall attach as of the day preceding such sale or transfer. *(Ref. 19-2428 through 19-2431 RS Neb.) (Ord. No. 258, 11/1/83)*

§8-316 STREETS; DRIVEWAY APPROACHES. The Street Superintendent may require the owner of property served by a driveway approach constructed or maintained upon the street right-of-way to repair or replace any such driveway approach which is cracked, broken, or otherwise deteriorated to the extent that it is causing or is likely to cause damage to or interfere with any street structure including pavement or sidewalks.

The Municipal Clerk shall give the property owner notice by registered letter or certified mail, directed to the last-known address of such owner or the agent of such owner, directing the repair or replacement of such driveway approach. If within thirty (30) days of mailing such notice the property owner fails or neglects to cause such repairs or replacements to be made,

the Street Superintendent may cause such work to be done and assess the cost upon the property served by such approach. (Ref. 18-1748 RS Neb.) (Ord. No. 276, 12/4/84)

§8-317 STREETS; VACATING PUBLIC WAYS.

(A) SPECIAL DAMAGES shall mean 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 damages 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 known address 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 such street, avenue, alley, lane, or similar public way at its next regular meeting or, if a special meeting is scheduled for such discussion, then the date, time, and place of such 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 such 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 sections 17-558 and 17-559 RS Neb.

(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.

(b) A statement that the City will have an easement for maintaining 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 entitled to recover as compensation the difference between the value of the property immediately before and immediately after the vacating of such street, avenue, alley, lane, or similar public way. If no difference in value exists, the abutting property owner is entitled to no compensation.

(Ord. No. 324, 4/3/90) (Amended by Ord. No. 556, 4/2/02)

§8-318 STREETS; VACATING PUBLIC WAYS; DEFINITIONS AND ASCERTAINING DAMAGES.

(Repealed by Ord. No. 556, 4/2/02)

Article 4. Curb and Gutter

§8-401 CURB AND GUTTER; CUTTING CURB. (A) It shall be unlawful for any person to cut into any paving, curb, or sidewalk for the purpose of constructing a driveway or any other purpose whatsoever without first having obtained a written permit from the City Clerk. Before any person shall obtain a permit, he/she shall inform the City Clerk of the place where such cutting is to be done, and it shall be the Municipal Street Superintendent's duty to make the cut, tear out and remove the old concrete, and haul it away. The applicant shall notify the Municipal Street Superintendent and obtain the written permit at least twenty-four (24) hours before the cutting is to be done. In the event of an emergency, if a party must cut into the paving, it shall be the duty of the party to cut the paving under such rules and regulations as may be prescribed by the Municipal Street Superintendent; provided, that all such cuts shall be "saw cuts" unless the applicant secured written permission from the City Council to use another method. When the applicant is ready to close the opening made, he/she shall inform the Municipal Street Superintendent at least twenty-four (24) hours before the opening is to be closed. The work of cutting and closing the paving shall be charged to the party who obtained such permit.

(B) Before any permit is issued by the City Clerk, the applicant for such permit shall deposit with the City Treasurer a fee for all paving, curb, or sidewalk to be cut, which fee shall be set on a per square-foot cost of construction basis. Said fee shall be set by ordinance of the City Council, on file at the office of the City Clerk and available for public inspection during office hours. The deposit shall be retained by the City for the purpose of making the cut, removing the old concrete, removing the debris and replacing the paving, curb, or sidewalk. The deposit shall be retained by the City until the work is completed to the satisfaction of the Municipal Street Superintendent. The costs of the cutting, tearing out, removing and replacing shall be deducted from the deposit, and the balance shall be returned to the applicant. No permit shall be granted unless the applicant shall in addition to all other requirements, agree in writing to the following conditions:

(1) That the applicant will compensate the City for all work done by the City in cutting, removing, replacing or repairing any places cut in the pavement, curb, or sidewalk by the applicant or the City.

(2) That the applicant will obey all laws of the City and will save the City harmless from any damages which may occur as the result of any work performed by the applicant.
(Amended by Ord. No. 799, 1/3/12)

Article 5. Trees

§8-501 TREES; STREET TREE SPECIES TO BE PLANTED. The City of Springfield, Nebraska shall maintain a list of recommended trees for planting in public areas. This list shall be available to residents of the City upon request to aid in the selection of trees for private properties. The list of recommended trees shall be updated periodically to reflect new developments or species that will affect the population of the community forest. *(Ord. No. 294, 8/4/87)*

§8-502 TREES; SPACING AND DISTANCES. Street trees may be planted no closer together than thirty (30) feet except in special plantings approved by the Tree Board or Community Forest Manager. *(Ord. No. 294, 8/4/87)*

§8-503 TREES; DISTANCES AND CLEARANCES FOR PLANTING. Street trees may be planted in the tree lawn where there is more than six (6) feet between the edge of the sidewalk and the curb of the street. Street trees shall be planted no closer than three (3) feet from a sidewalk or a street.

No street tree shall be planted closer than thirty-five (35) feet from any street corner, measured from the point of the nearest intersection of curbs or curblines.

No street tree shall be planted closer than ten (10) feet from any fireplug.

Special permission must be obtained from the Tree Board or the Community Manager when planting street trees within ten (10) feet of any point on a line on the ground immediately below any overhead utility wire, or within five (5) lateral feet of any underground water line, sewer line, transmission line, or other utility. *(Ord. No. 294, 8/4/87)*

§8-504 TREES; PUBLIC TREE CARE. The City shall have the right to plant, prune, maintain, and remove trees, plants and shrubs within right-of-way or bounds of all streets, alleys, lanes, squares, and public grounds, as may be necessary to insure the public safety or to preserve or enhance the beauty of such public grounds.

The Tree Board may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is seriously affected with any injurious insect or disease. *(Ord. No. 294, 8/4/87)*

§8-505 TREES; PERMITS REQUIRED. No person shall plant a street tree or any other tree in the public right-of-way without first obtaining a permit from the City Clerk. There will be no fee for such permit. *(Ord. No. 294, 8/4/87)*

§8-506 TREES; COMPENSATORY PAYMENTS. No person shall remove any public tree without replacing such tree with a tree or trees of equivalent dollar value in the vicinity of the removed tree. The value of trees shall be determined by the Community Forest Manager in accordance with regulations considering the species, location, size and condition of trees adopted by the Tree Board. If no suitable location exists in the vicinity of the tree removed or if the replacement tree is of lesser value, the person causing the tree to be removed shall make a compensatory payment to the City equal to the difference in value between the tree removed

and any replacement tree. Such compensatory payment shall be paid into a fund established by the director of finance and used solely for the purpose of enhancing the community forest. (Ord. No. 294, 8/4/87)

§8-507 TREES; TREE TOPPING. It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree. trees severely damaged by storms or other causes, or certain trees under utility wires or other obstruction where other pruning practices are impractical may be exempted from this section at the determination of the Tree Board or the Community Forest Manager. (Ord. No. 294, 8/4/87)

§8-508 TREES; CLEARANCE OVER STREETS AND WALKWAYS. Clearance over streets and walkways shall be the responsibility of the abutting property owner. A clearance of eight (8) feet must be maintained over walkways and a clearance of fourteen (14) feet must be maintained over streets. Property owners are responsible for trees on their own property as well as trees on the public way that abuts their property. (Amended by Ord. No. 798, 10/4/11)

§8-509 TREES; DEAD OR DISEASED. (A) (1) It is hereby declared a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the City or within its extraterritorial zoning jurisdiction.

(2) Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any. Notice shall be given by mailing a copy of the notice by certified mail to the owner or the owner's duly authorized agent and by first class mail to the occupant, if any. Such mail shall be conspicuously marked as to its importance. Notice shall also be given on the same day as the mail is sent to the owner, the owner's duly authorized agent and occupant by conspicuously posting the notice on the real estate upon which the violation is to be abated and removed. The notice shall be printed on 8½ x 11 inch paper in no less than twelve (12) point type and shall describe the violation and reference this section. Within five (5) days after receipt of such notice or posting of the notice on the real estate, the owner or occupant of the lot or piece of ground may request a hearing with the Municipality to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the City Clerk. A hearing on the appeal shall be held within fourteen (14) days after the filing of the appeal and shall be conducted by the City Council. The City Council shall render a decision on the appeal within five (5) business days after the conclusion of the hearing. If the appeal fails, the City may have the work done to abate and remove the dead or diseased trees. Within five (5) days after receipt of such notice or posting of the notice on the real estate, if the owner or occupant of the lot or piece of ground does not request a hearing with the City or fails to comply with the order to abate and remove the nuisance, the City may have such work done. The City may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefitted as a special assessment. (Ref. 17-555 RS Neb.)

(B) It is hereby declared a nuisance for a property owner to pennit, allow, or maintain any dead or diseased trees on private property within the corporate limits of the City or within its extraterritorial zoning jurisdiction. The provisions in division (A)(2) shall apply to such nuisances. For the purpose of carrying out the provisions of this section, the City Administrator or agent shall have the authority to enter upon private property to inspect the trees thereon. *(Ord. No. 294, 8/4/87) (Amended by Ord. Nos. 923, 5/17/16; 954, 5/2/17)*

§8-510 TREES; REMOVAL OF STUMPS. All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground. *(Ord. No. 294, 8/4/87)*

§8-511 TREES; INTERFERENCE WITH THE TREE BOARD. It shall be unlawful for any person to prevent, delay or interfere with the Tree Board or any of its representatives or agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any trees within the community forest, as authorized in this Article. *(Ord. No. 294, 8/4/87)*

§8-512 TREES; ACCESS. It shall be unlawful for any person to prevent, delay or interfere with access to private property by the City or its representative in the legal performance of any section of this Article. *(Ord. No. 294, 8/4/87)*

§8-513 TREES; ARBORIST LICENSE AND BOND. It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating or removing any street tree, park tree or other privately owned tree without first applying for and procuring a license. The license fee shall be set by the Tree Board. No license shall be required by any public service or employee doing such work in the pursuit of their public service endeavors.

Before license shall be issued, each applicant shall first file evidence of possession of liability insurance and meet other requirements set by the Tree Board. *(Ord. No. 294, 8/4/87)*

Article 6. Penal Provision

§8-601 VIOLATIONS; PENALTY. (1) Any person, or any person's agent or servant, who violates any of the provisions of this chapter, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars (\$500.00) A new violation shall be deemed to have been committed every twenty-four (24) hours of failure to comply with the provisions of this chapter.

(2) (a) Whenever a nuisance exists as defined in this chapter, the Municipality may proceed by a suit in equity to enjoin, abate, and remove the same in the manner provided by law.

(b) Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (*Ref. 17-505, 18-1720, 18-1722 RS Neb.*) (*Amended by Ord. No. 495, 7/5/00*)