

CHAPTER 8: PUBLIC WAYS AND PROPERTY

Article

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ARTICLE 1: MUNICIPAL PROPERTY

§ 8-101 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.

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(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 municipal election held therein and is filed with the Governing Body, that property shall not then, nor within one (1) 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 (1) 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 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 (\$5,000.00). 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 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.*) (*Amended by Ord. Nos. 402, 9/14/82; 592, 7/12/94; 652, 2/13/96; 710, 8/11/98; 817, 3/9/04; 942, 2/13/18*)

§ 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 \$5000, 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) above when:

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

(2) Such property is being conveyed to another public agency. (*Ref. 17-503.02 RS Neb.*)

§ 8-104 MUNICIPAL PROPERTY; 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.*) (*Amended by Ord. No. 8-107, 12/8/15*)

§ 8-104.01 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. 5-710, 12/8/15*)

Cross references:

Sidewalks, see Chapter 8, Article 2

Streets, see Chapter 8, Article 3

§ 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 City Administrator 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 City Administrator issuing the permit.

§ 8-106 MUNICIPAL PROPERTY; WEEDS.

It is hereby the duty of the City Administrator 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, he 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. In the event that the owner of any lot or parcel of land within the Municipality is a nonresident of the Municipality or cannot be found therein the notice may be given to any person having the care, custody, or control of such lot or parcel of land. In the event that there can be found no one within the Municipality to whom notice can be given, it shall be the duty of the City Administrator or his agent to post a copy of the notice on the premise and then to cut or cause the weeds thereon to be cut as therein provided and report the cost thereof in writing to the Governing Body. The cost shall then be audited and paid by the Municipality and the amount thereof shall be assessed against the lot or parcel of land as a special tax thereon and shall be collected as are other taxes of the Municipality or may be recovered by civil suit brought by the Municipality against the owner of the parcel of land. In the event the property owner is a nonresident 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 nonresident 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.

§ 8-107 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. 386, 12/8/81*) (*Amended by Ord. No. 653, 2/13/96*)

§ 8-108 MUNICIPAL PROPERTY; SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCEDURE.

The Municipality's Governing Body may, by ordinance, create a special improvement district for the purpose of replacing, reconstructing, or repairing an existing street, alley, water line, sewer line, or any other such improvement.

Except as provided in sections 19-2428 to 19-2431 RS Neb., the Governing Body shall have power to assess, to the extent of such benefits, the costs of such improvements upon the properties found especially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the Governing Body shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law. *(Ref. 18-1751 RS Neb.) (Ord. No. 478, 9/8/87)*

§ 8-109 MUNICIPAL PROPERTY; IMPROVEMENT DISTRICT; LAND ADJACENT.

Supplemental to any existing law on the subject, a Municipality may include land adjacent to such Municipality when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The Governing Body shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby, except as provided in sections 8-316. *(Ref. 19-2427 RS Neb.) (Ord. No. 479, 9/8/87)*

§ 8-110 MUNICIPAL PROPERTY; ACQUISITION OF REAL PROPERTY; ACCESS FOR RECREATIONAL USE.

(A) The City shall acquire an interest in real property by purchase or eminent domain only after the Governing Body has authorized the acquisition by action taken in a public meeting after notice and public hearing.

(B) 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. 613, 2/14/95)*

§ 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. 614, 2/14/95)*

§ 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

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(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. 81-3423 RS Neb.) (Ord. No. 711, 8/11/98) (Amended by Ord. Nos. 743, 7/11/00; 835, 2/8/05; 8-112, 5/8/12; 8-112, 12/8/15)*

ARTICLE 2: SIDEWALKS

§ 8-201 SIDEWALKS; OVERHANGING BRANCHES.

The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any street or 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 ten feet (10') above the surface of said street or walk. Whenever the limbs or branches of any tree or trees extend over streets or 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 street or 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 City Administrator 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 nonresident 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 nonresident 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 ten (10:00) o'clock A.M. the following day. (Ref. 17-557 RS Neb.)

§ 8-202.01 SIDEWALKS; FAILURE TO KEEP CLEAN; ASSESSMENT OF COST.

When a property owner or occupant within the Municipality has failed to remove accumulated snow, sleet, mud, ice or other substance from an abutting sidewalk as required by section 8-202 of this Article, it shall be discretionary by the Municipality to remove such accumulations, or hire the same to be done, and to assess the cost of such removal against the abutting property owner or occupant as required by law. (Ref. 17-557, 17-557.01 RS Neb.) (Ord. No. 309, 3/13/78)

§ 8-203 SIDEWALKS; MAINTENANCE. *(Repealed by Ord. No. 836, 2/8/05)*

§ 8-204 SIDEWALKS; REPAIR.

(A) 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 deem necessary and assess the expense thereof on the property in front of which such 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 repair or construction. *(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. (*Amended by Ord. No. 836, 2/8/05*)

§ 8-205 SIDEWALKS; CONSTRUCTION BY OWNER.

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.

Said owner shall make application in writing for a permit and file such application in the office of the City Administrator. The permit shall give a description of the lot, or piece of land along which the sidewalk is to be constructed. The City Administrator 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 City Administrator 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 City Administrator.

§ 8-206 SIDEWALKS; MUNICIPAL CONSTRUCTION.

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.

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.

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 nonresident 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 nonresident 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. 17-522, 17-523 RS Neb.*)

§ 8-207 SIDEWALKS; CONSTRUCTION BIDS.

Whenever the Municipality shall construct, widen, replace, or reconstruct any sidewalk, notice prepared by the Municipal Attorney, specifying the work to be done and calling for bids for doing such work and supplying the necessary materials and labor shall be published in at least one (1) issue of a legal newspaper of general circulation in the Municipality; provided, bids so invited shall be filed in the office of the Municipal Clerk within ten (10) days after the date of publication. Bids shall be opened at the next regular or special meeting of the Governing Body, and the Governing Body shall then award the work to the lowest responsible bidder. Upon approval of the work, the Governing Body may require the contractor to accept payment in certificates issued to him by the Municipal Clerk entitling him to all assessments or special taxes, against such real estate whenever such assessments or special taxes, shall be collected together with the interest or penalty collected thereon. Each certificate shall give the legal description of the lot, lots, or parcel of ground against which the assessments or special taxes are assessed. Such certificate or certificates may be assigned and transferred, entitling the holder to the same rights as if held by the original contractor. The County Treasurer shall pay over to such contractor or other holder of the certificate or certificates all assessments or special taxes against such real estate, together with the interest and penalty thereon, at any time upon presentation of such certificate or certificates after said assessments or special taxes against such real estate together with interest or penalty thereon shall have been collected.

§ 8-208 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 nonresident 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 nonresident 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. 336, 11/12/79)*

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; 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 or alley 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 City reserves title in the ordinance vacating such street or alley. If the title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the City.

(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 City reserves title in the ordinance vacating such street or alley. If the title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the City.

(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 City 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 City, 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, 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. No. 777, 6/11/02*)

§ 8-303 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.*)

§ 8-304 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 City Administrator.

§ 8-305 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.

§ 8-306 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.

§ 8-307 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.

§ 8-308 STREETS; CONSTRUCTION NOTICE.

The City Administrator shall notify the owners in fee simple of real estate abutting a street, alley, or a part thereof which is to be put under contract for paving or repaving. Notice shall also be given to all gas, electric service, and telephone companies. Notice shall also be given to all consumers of gas, water, and sewer services which will be discontinued during such construction. Said notice shall be published one (1) time in a legal newspaper at least twenty (20) days prior to the beginning of such construction by the party undertaking such construction and said notice shall state at what date connections must be made and excavation completed. All gas, water, sewer, and underground connections must be made prior to the paving or repaving of the street under construction. After expiration of such time, permits for excavation will not be issued, nor will excavation be allowed, until after the completion of the pavement in said street or alley, and the formal final acceptance thereof by the proper officials of the Municipality.

§ 8-309 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 Governing Body. 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.

§ 8-309.5 STREETS; 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 area 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 (2) or more connecting or intersecting streets, alleys, or public ways, and may include two (2) or more types of the improvements authorized under this section in a single district in one (1) 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. 942, 2/13/18*)

§ 8-310 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, 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 RS Neb.*)

§ 8-311 STREETS; UNLAWFUL DEPOSIT OF SNOW.

It shall be unlawful for any person, after clearing snow from any parking lot, driveway, or other private property, to deposit said snow on any Municipal street or sidewalk. (*Ref. 17-557 RS Neb.*) (*Ord. No. 304, 12/12/77*)

§ 8-312 STREETS; IMPROVEMENT OF STREETS ON CORPORATE LIMITS.

The Mayor and Council shall have the power to improve any street or part thereof which divides the Municipal corporate area and the area adjoining the Municipality. When creating an improvement district including land adjacent to the Municipality, the Council shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby. (*Ref. 17-509 RS Neb.*) (*Ord. No. 335, 11/12/79*)

§ 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. 334, 11/12/79*) (*Amended by Ord. No. 416, 3/13/84*)

§ 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. 334, 11/12/79*) (*Amended by Ord. No. 654, 2/13/96*)

§ 8-315 STREETS; IMPROVEMENT OF MAIN THOROUGHFARES.

The Mayor and City Council shall have the power by a three-fourths (3/4) vote of the Governing Body, to create by ordinance a paving, graveling or other improvement district and to order such work done upon any federal or state highway in the Municipality or upon a street or route, designated by the Mayor and City Council as a main thoroughfare that connects, on both ends, to either a federal or state highway or a county road. The Governing Body shall contract therefor and shall have the power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby. (*Ref. 17-512 RS Neb.*) (*Ord. No. 358, 10/13/80*)

§ 8-316 STREETS; DEFERRAL FROM SPECIAL ASSESSMENTS.

(A) Whenever the Governing Body of a Municipality creates an improvement district as specified in section 8-109 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 8-108. 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 (6%) percent 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 2 or 3 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. 417, 3/13/84*) (*Amended by Ord. No. 480, 9/8/87*)

§ 8-317 STREETS; VACATING PUBLIC WAYS; DEFINITIONS AND ASCERTAINING DAMAGES.

(Repealed by Ord. No. 778, 6/11/02)

§ 8-318 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.

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(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. 465, 11/11/86) (Amended by Ord. No. 778, 6/11/02)

ARTICLE 4: CURB AND GUTTER

§ 8-401 CURB AND GUTTER; CUTTING CURB.

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. Said work shall be done only upon order of the City Administrator by Municipal employees. (*Ref. 17-567 RS Neb.*)

ARTICLE 5: PENAL PROVISIONS

§ 8-501 VIOLATION; PENALTY.

(Repealed by Ord. No. 744, 7/11/00)

For penalty provisions, see section 12-101 of Chapter 12.

§ 8-502 ABATEMENT OF NUISANCE.

(Repealed by Ord. No. 744, 7/11/00)

For penalty provisions, see section 12-101 of Chapter 12.

