

CHAPTER 8 – PUBLIC WAYS AND PROPERTY

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CHAPTER 8 – PUBLIC WAYS AND PROPERTY

Article 1 – Municipal Property

§8-101 DEFINITION.

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" shall mean that portion of a street between curb lines and adjacent property lines.

§8-102 MAINTENANCE AND CONTROL.

The City Council shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the City and shall cause the same to be kept open, in repair, and free from nuisances. (Neb. Rev. Stat. §17-567)

§8-103 TREES.

No person or persons shall plant, or allow to grow, any tree within the sidewalk space without first making a written or verbal application to and receiving a written permit from the City Council. Any tree planted within the sidewalk space after the adoption date of this section shall be deemed to be unlawfully planted and growing and shall, at the discretion of the Council, be deemed to be a nuisance. When any such tree is declared to be a nuisance, the Council shall order, with proper notice, the tree removed at the expense of the owner of the property adjacent to the sidewalk space upon which the tree has been unlawfully planted. If the property owner fails or neglects to remove or cause to be removed the said tree, the City Council shall order the same removed and assess the expense of such removal against the property adjacent to the sidewalk space wherein the tree is planted and growing. In the event the property owner is a nonresident of the county in which the property lies, the City 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. No fee shall be charged for said permit and nothing in this section shall be construed to apply to any existing trees now growing within the sidewalk space.

§8-104 SALE AND CONVEYANCE.

(A) Except as provided in subsection (D) of this section, the power of the City to convey any real and personal 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 such real and personal property and the manner and terms thereof, except that such real and personal property shall not be sold at public auction or by sealed bid when:

- (1) Such property is being sold in compliance with the requirements of federal or state grants or programs;
- (2) Such property is being conveyed to another public agency, or;
- (3) Such property consists of streets and alleys.

The City Council may establish a minimum price for such real and personal property at which bidding shall begin or shall serve as a minimum for a sealed bid.

(B) After the passage of the resolution directing the sale, notice of all proposed sales of real and personal property described in subsection (A) of this section and the terms thereof, shall be published once each week for three consecutive weeks in a legal newspaper published in or of general circulation in the City; provided, if a remonstrance against such sale, signed by registered voters thereof equal in number to 30% of the registered voters of the City voting at the last regular city election held therein, be filed with the City Council within 30 days after the third publication of the notice, such property shall not then, nor within one year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall

be collected within the 30-day period, but the filing shall be considered timely if filed or post-marked on or before the next business day. Real estate now owned or hereafter owned by the City may be conveyed without consideration to the State of Nebraska for state armory sites, or if acquired for state armory sites, such property shall be conveyed strictly in accordance with the conditions of Neb. Rev. Stat. §18-1001 to 18-1006.

(C) Following (1) passage of the resolution directing a sale, (2) publishing of the notice of the proposed sale, and (3) passing of the 30-day right of remonstrance period, the property shall then be sold. Such sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. The City Clerk shall upon passage of such ordinance certify the name of the purchaser to the Register of Deeds of the county in which the property is located.

(D) This section shall not apply to the sale of real and personal property if the authorizing resolution directs the sale of an item or items of real and personal property having a total fair market value of less than \$5,000.00. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the City for a period of not less than seven days prior to the sale of the property. Confirmation of the sale by passage of an ordinance may be required.

(Neb. Rev. Stat. §17-503, 17-503.01) (Am. by Ord. No. 545, 1/3/96)

§8-105 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 trees, shrubs and their roots may be removed by the City 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. (Neb. Rev. Stat. §17-557.01)

§8-106 WEEDS.

(A) 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, it shall be the duty of the Chief of Police or his representative to notify the owner or occupant thereof to cut down such weeds within seven days 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; provided, any weeds growing in excess of 8 inches on any sidewalk space shall be considered a violation of this section.

(B) In the event that the owner of the lot or parcel of land abutting said sidewalk space within the City is a nonresident of the City 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 City to whom notice can be given, it shall be the duty of the Street Superintendent or his agent to post a copy of the notice on the premises and then to cut or cause the weeds thereon to be cut and report the cost thereof in writing to the City Council. The cost shall then be audited and paid by the City 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 City or may be recovered by civil suit brought by the City against the owner of the parcel of land.

(C) In the event the property owner is a nonresident of the county in which the property

lies, the City 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 OVERHANGING BRANCHES.

The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any street or sidewalk over which the branches of trees extend shall at all times keep the branches or limbs thereof trimmed to the height of at least 7 feet 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 owner or occupant of the property whereon the tree is growing shall remove said obstructions within seven days after having received a written order to do so from the Chief of Police or his representative, stating that the City 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 order is not complied with. In the event the property owner is a nonresident of the county in which the property lies, the City 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. (Neb. Rev. Stat. §17-557.01)

§8-108 TREE TOPPING.

(A) It shall be unlawful for any person to top any tree on city-owned land or public right of way.

(B) For purposes of this section, the terms “top” or “topping” are defined as removing the vertical leader stems and cutting the tree limbs back to a stub, bud or lateral branch not large enough to assume a terminal role, resulting in decay of the trunk/or main branches and sprout production. Topping usually involves removing more than one-third of the tree canopy.
(Ord. No. 734, 2/8/06)

Article 2 – Sidewalks

§8-201 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 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 9:00 A.M. the following day; provided, sidewalks within the residential areas of the City shall be cleaned within 24 hours after the cessation of the storm. (Neb. Rev. Stat. §17-557)

§8-202 (Reserved for Future Use)

§8-203 REPAIR.

(A) The Mayor and City Council may construct and repair sidewalks or cause the construction and repair of sidewalks in such manner as they 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 issue of a legal newspaper of general circulation in the City; 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 the premises ten days prior to the commencement of the repair or construction. (Neb. Rev. Stat. §17-522)

(B) The notice shall:

(1) State that the City Council has ordered repair of the sidewalk;

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

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

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

(C)(1) Before the City 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 the notice is first published. (Neb. Rev. Stat. §13-310)

(2) The City Clerk shall mail the notice by certified mail with return receipt requested. (Neb. Rev. Stat. §13-312)

(3) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning. "Nonresident property owner" shall mean 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. (Neb. Rev. Stat. §13-314)

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

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

§8-204 CONSTRUCTION BY OWNER.

(A) 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.

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

§8-205 CITY CONSTRUCTION.

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

(B) 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 premises ten days prior to the commencement of construction. The notice required in this section shall be prepared by the City 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.

(C) Said notice shall notify the owner of the premises of the passage of the resolution ordering him to construct or cause to be constructed a sidewalk within 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 City will cause the sidewalk to be constructed and the cost thereof shall be levied and assessed as a special tax against the premises; 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 City 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.

(Neb. Rev. Stat. §17-522, 17-523)

§8-206 CONSTRUCTION BY PETITION.

If the owners of the record title representing more than 60% of the front footage of the directly abutting property subject to assessment for sidewalk improvements petition the City Council to make the same, the Council 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 City Council may order permanent sidewalks built in accordance with this article upon the freeholder making, executing, and delivering to the City an agreement to the effect that the petitioning freeholder will pay the engineering service fee and all other incidental construction costs which 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 City 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, fi-

nanced, 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 City 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. (Am. by Ord. No. 363, 11/8/83)

§8-207 PERMITTED OBSTRUCTIONS.

It shall be unlawful for any person within the corporate limits of the City to erect, maintain or suffer to remain any stand, wagon, automobile, merchandise, machinery or any other obstruction on any public sidewalk or on any portion of the area between the lot line and curb line of any street except as herein provided. A reasonable time shall be allowed to remove goods, wares or merchandise being received and shipped. It shall be lawful for any person to use 3 feet of that portion of the sidewalk nearest the store front for displays, merchandise, and sales personnel; provided, said portion shall not exceed one-half of the distance between the store front and curb. The area of walk nearest the curb or street shall be kept clear for pedestrian use.

Article 3 – Streets

§8-301 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 Street Superintendent.

§8-302 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.

§8-303 HARMFUL LIQUIDS.

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

§8-304 PAVEMENT CUTTING AND REPLACEMENT.

(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 Street Superintendent. Before any person obtains a permit, he shall inform the Superintendent of the place where such cutting is to be done and it shall be the Superintendent's duty to inspect the place of entry into the paving, sidewalk, or curb before the same is cut. When cutting into any paving, it shall be the duty of the party to cut the paving under such rules and regulations as may be prescribed by the City Council or the Street Superintendent. It shall be discretionary with the Council to order the Street Superintendent to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit.

(B) When the applicant is ready to close the opening made, he shall inform the Street Superintendent, who shall supervise and inspect the materials used and the work done in closing the

opening. All concrete street replacement shall be doweled in and vertically centered in the existing concrete a minimum of 6 inches, with 12 inches extending into the fresh concrete at 36-inch intervals using #4 rebar pounded in a one-half-inch hole. Joints or cracks shall be doweled approximately 6 inches on each side of the joint or crack. Replacement concrete shall conform to the State Highway Construction Specifications for #47B concrete.

(C) Before any permit is issued by the Street Superintendent, the applicant for such permit shall deposit with the City Treasurer a sum set by resolution of the City Council for all paving, curb, or sidewalk to be cut. The deposit shall be retained by the City until the work is completed to the satisfaction of the Superintendent. In addition to making the said deposit, the applicant shall, before any permit is issued, execute a bond to the City with a good and sufficient surety or sureties to be approved by the City Council in a sum set by resolution.

(Am. by Ord. No. 553, 8/5/96)

§8-305 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 city street or sidewalk. (Neb. Rev. Stat. §17-557)

§8-306 PETITION FOR IMPROVEMENTS.

Whenever a petition signed by the owners of record title representing more than 60% 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 City Clerk, petitioning therefor, the City Council 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, contracting 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 City Council 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 City Council should deny a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties. (Neb. Rev. Stat. §17-510) (Ord. No. 359, 9/6/83)

§8-307 VACATION OF STREET OR ALLEY; TITLE.

(A) Upon the vacation of any street or alley or any part thereof by the City, the title of such property shall vest in the owner of the abutting property and become part of such property, one-half on each side thereof, except that the City may reserve title to such property in the ordinance vacating such street or alley. If 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 interest of the City.

(B) In the event the City does not elect to reserve title in the vacated portion of such street or alley, the title to said property nonetheless shall be subject to the following:

(1) 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

(2) 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, 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.

(Neb. Rev. Stat. §17-558) (Ord. No. 770, 3/1/10)

Article 4 – Penal Provision

§8-401 VIOLATIONS; PENALTY.

(A) 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 \$500.00. A new violation shall be deemed to have been committed every 24 hours of failure to comply with the provisions of this chapter.

(B)(1) Whenever a nuisance exists as defined in this chapter, the City may proceed by a suit in equity to enjoin, abate, and remove the same in the manner provided by law.

(2) 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.

(Neb. Rev. Stat. §17-505, 18-1720, 18-1722) (Am. by Ord. No. 645, 7/5/00)