

Chapter 8

§8-101

PUBLIC WAYS AND PROPERTY

§8-111

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; SALE AND CONVEYANCE. (1) The Municipality may sell and convey any real or personal property owned by the Municipality, including park land, in such manner and upon such terms and conditions as may be deemed in the best interests of the Municipality; except that real estate owned by the Municipality may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, shall be conveyed in the manner strictly as provided in sections 18-1001 to 18-1006 RS Neb.

(2) The power to sell and convey any real estate owned by the Municipality, including park land, except real estate used in the operation of public utilities and except real estate for state armory sites for the use of the State of Nebraska as expressly provided in subsection (1) of this section, shall be exercised by ordinance directing the conveyance of such real estate and the manner and terms thereof. Notice of such sale and the terms thereof shall be published for three (3) consecutive weeks in a legal newspaper published in or of general circulation in the Municipality immediately after the passage and publication of such ordinance.

(3) If within thirty (30) days after the passage and publication of such ordinance a remonstrance against such sale is signed by registered voters of the Municipality equal in number to thirty (30%) of the registered voters of the Municipality voting at the last regular municipal election held therein and is filed with the Governing Body, the property shall not then, nor within one (1) 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 thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

(4) 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 remonstrance, The Governing Body shall deliver the remonstrance to the Election Commissioner or County Clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the remonstrance, the Election Commissioner or County Clerk shall issue to the Governing Body a written receipt that the remonstrance 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 remonstrance with the voter

registration records to determine if each signer was a registered voter on or before the date on which the remonstrance 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 municipal 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 municipal or post office address matches the registration records and that the registration was received on or before the date on which the remonstrance 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 remonstrance, the sufficiency of the remonstrance, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the remonstrance process. 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 non-registration 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 for the duplicate signature and shall count only the earliest dated signature. 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.

(5) The Governing Body shall, within the (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. (Ref. 16-201, 18-1001 thru 18-1006 RS Neb. Ref. 16-201, 16,202 RS Neb., Amended by Ord. No. 45-98, 11-17-98)

§8-103 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 trees, shrubs and their 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. 16-207 RS Neb.)

§8-104 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 Street Commissioner 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 Street Commissioner.

§8-105 MUNICIPAL PROPERTY; WEEDS. It is hereby the duty of the Street Commissioner 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 non-resident 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 Street Commissioner 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 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. 16-230, 18-1719 RS Neb.; 2-4-1, 2-4-2 Code 1964)

§8-106 MUNICIPAL PROPERTY; AWNINGS IN SIDEWALK SPACE. All awnings hereafter erected or suffered to remain in the sidewalk space shall be elevated at least seven (7') feet at the lowest part from the top of the public sidewalk and shall not project over said sidewalk to exceed three-fourths (3/4) of the width thereof. They shall

be supported without posts by iron brackets or by any iron framework attached firmly to the building, so as to leave the sidewalk wholly unobstructed thereby; provided, nothing herein shall be construed to prevent the owner of any building from constructing a substantial awning or marquee of non-combustible material supported with or without posts over the sidewalk space if located flush with the outer edge thereof and if permission in writing shall have first been secured from the Mayor and Council. (Ref. 2-8-18 Code 1964)

§8-107 MUNICIPAL PROPERTY; CURB PUMPS, FILLING STATIONS. No curb pump or filling station used for the storage and sale of petroleum products shall be constructed or suffered to remain within the limits of any street between lot line and lot line. All such curb pumps or filling stations now erected or hereafter constructed in the streets of the City are hereby declared to be a nuisance and, regardless of any permit heretofore granted by the Mayor and Council, the Mayor and Council are hereby empowered at any time the public good demands, to order the removal of such curb pump or filling station. Before any curb pump or filling station now located within the limits of any street shall be removed, the Chief of Police shall serve a notice on the owner and tenant or user of such pump or station, if there be any, to remove said pump or filling station beyond the limits of the street. The Chief of Police shall not serve such order of removal until the Council by resolution shall direct the same upon a vote of a majority of the members of the Council. If the owner or lessee of said curb pump or filling station shall refuse or neglect to comply with the notice of removal, then the Chief of Police shall remove said obstruction from the street in which it is situated, shall restore the street to a condition safe for public travel thereon, shall notify the owner or lessee that the salvage from said curb pump or filling station is located at a definite place within the corporate limits at the expense or risk of said owner or lessee, shall report the expense of such removal to the Mayor and Council, and, if the expense incident to the removal thereof be approved by the Council, then a warrant shall be drawn on the General Fund to reimburse the Chief of Police for the money expended by him in abating said nuisance. The City shall thereupon recover the sum so expended by civil suit brought against the owner or lessee of the pump or filling station in any court of competent jurisdiction. (Ref. 6-6-1 Code 1964)

§8-108 MUNICIPAL PROPERTY; SPECIAL, IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCEDURE. The Municipality 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 benefitted 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. 22-87, 10/6/87)

§8-109 MUNICIPAL PROPERTY; ACQUISITION OF REAL PROPERTY. When acquiring 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. (Ref. 18-1755 RS Neb.) (Ord. No. 20-95, 3/7/95)

§8-110 MUNICIPAL PROPERTY; ACQUISITION OF PROPERTY; APPRAISAL. 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 estate appraiser. (Ref. 13-403 RS Neb.) (Ord. No. 21-95, 3/7/95)

S8-111 PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS.

(A) Except as provided in division (B) of this section, 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.

(B) Division (A) of this section shall not apply to the following activities:

(1) Any public works project with contemplated expenditures for the completed project that do not exceed \$86,000.00;

(2) 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;

(3) Performance by the municipality of professional services for itself if the municipality appoints a municipal engineer or employs a full-time person licensed under the Engineers and Architects Regulation Act who is in responsible charge of architectural or engineering work;

(4) the practice of any other certified trade or legally recognized profession;

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

(6) 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;

(7) 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;

(8) The construction of water wells as defined in Neb. RS 46-1212, 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; and

(9) Any other activities described in Neb. RS 81-3449 to 81-3453. (Neb. RS 81-3423, 81-3445, 81-3449, and 81-3453, Ord No 56-00, 12-5-2000, Amended by Ord 20-05, 4-5-2005)

§8-201 Public Ways and Property §8-213

Article 2. Sidewalks

§8-201 SIDEWALKS; OVERHANGING BRANCHES. (Repealed by Ord. No. 12-82, 6/1/82)

§8-202 SIDEWALKS; MAINTENANCE. It shall be unlawful for the owner or 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 takes place during the night, in which case the sidewalk shall be cleaned before eight-thirty o'clock (8:30) A.M. the following day. All sidewalks within the residential district shall be cleaned within twenty-four (24) hours after the cessation of a storm or fall of snow. (Ref. 16-207, 16-663 RS Neb.; 2-5-1 Code 1964) (Amended by Ord. No. 40-93, 10/19/93)

§8-203 SIDEWALKS; KEPT CLEAN; NOTICE. If the requirements of City Code 8-202 are not complied with, notice to remove snow, sleet, mud, ice or other substance from any lot(s) or vacant lot(s) within the corporate limits shall be made to the occupant or owner. The notice shall be made by the Street Superintendent or his/her agent either verbally, by telephone, posting, or mail service, and complete documentation on the notice given shall be maintained. The notice shall contain the location of the violation and the occupant or owner shall be allowed twenty-four (24) hours in which to comply. If the notice is not complied with, the Street Superintendent or his/her agent shall order the substance removed from the sidewalks, and the cost, as adopted as City policy, will be assessed to the property. If the costs are not paid and are deemed delinquent, the Municipality may file a lien against the property and they shall be collected in the manner as provided by law. (Ref. 16-207, 16-663 RS Neb.; 2-5-2 Code 1964) (Amended by Ord. No. 41-93, 10/19/93)

§8-204 SIDEWALKS; MAINTENANCE. Every owner of any lot, lots, or piece of land within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to said lot, lots, or pieces of land, as the case may be, in good and proper repair, and in a condition reasonably safe for travel for all travelers thereon. In the event that the owner or owners of any lot, lots, or lands, abutting on any street, avenue, or part thereof shall fail to construct or repair any sidewalk in front of his, her, or their lot, lots, or lands, within the time and in the manner as directed and required herein after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the Governing Body shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property. (Ref. 16-661, 16-662 RS Neb.; 2-8-1 Code 1964)

§8-205 SIDEWALKS; REPAIR. The City Administrator may require sidewalks of the Municipality to be repaired. Notice to the owners of property upon which such sidewalks in disrepair are located shall require within five (5) days from issuance notice said owners to make arrangements to have the sidewalk repaired. Said repairs shall be completed within thirty (30) days after issuance of said notice. No special assessment shall be levied against the property unless said owner shall neglect or refuse to repair within the time prescribed and in the event that such owner fails to repair, the Municipality shall cause the repairs to be made and assess the property

owner the expense of such repairs. 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. 16-661, 16-662 RS Neb.; 2-8-3 through 2-8-5 Code 1964)

§8-206 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 Street Commissioner. The permit shall give a description of the lot, or piece of land along which the sidewalk is to be constructed. The Street Commissioner 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 Street Commissioner 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 Street Commissioner. (Ref. 16-250 RS Neb.; 2-8-1 Code 1964)

§8-207 SIDEWALKS; CONSTRUCTION; MATERIALS TO BE USED. All sidewalks, on either side of the streets and avenues of this City, in front of or along any lot, lots or lands abutting upon the same, which shall be hereinafter constructed, reconstructed or replaced, shall be of concrete. No person shall construct, reconstruct or replace any sidewalk of any other material within the limits of this City without the written permission of the Mayor and Council. (Ref. 2-8-8 Code 1964)

§8-208 SIDEWALKS; WIDTH AND DISTANCE FROM LOT LINE. All sidewalks shall be of such width as the Mayor and Council in each case by resolution fix. Sidewalks shall be located at a distance of eighteen (18") inches from the lot line, unless otherwise authorized by the Mayor and Council. Whenever possible they shall correspond in width to sidewalks already built to which they are adjacent or adjoin. (Ref. 2-8-9 Code 1964)

§8-209 SIDEWALKS; MANNER OF CONSTRUCTION. All concrete sidewalks shall be constructed according to the following specifications:

1. Cement. The cement shall be a standard Portland cement.
2. Water. The water shall be clean, free from oil, acid, strong alkalis or vegetable matter.

3. Sand. The sand shall be clean, coarse, hard, durable, free from loam, vegetable or other deleterious matter.
4. Sub-base. The sub-base shall consist of a layer of sand one (1") inch thick, well tamped.
5. Sub-grade. All soft or spongy places shall be removed, and all depressions filled with suitable material, which shall be thoroughly compacted by flooding and tamping in layers not exceeding six (6") inches in thickness.
6. Deep Fills. When a fill exceeding one (1') foot in thickness is required to bring the walk to grade, it shall be made in a manner satisfactory to the Commissioner. The top of all fills shall extend beyond the walk on each side at least one (1') foot, and the sides shall have a slope of not less than one to one and one half (1 to 1 1/2).
7. Proportions of Materials. The proportions shall not exceed on (1) part cement and four (4) parts of gravel and sand. All sidewalks shall be float-finished.
8. Measuring. The method of measuring the materials for the concrete, including water, shall be one which will insure separate uniform proportions at all times.
9. Mixing. The ingredients of the concrete shall be thoroughly mixed dry, sufficient water added to obtain the desired consistency, and mixing continued until the materials are uniformly distributed and the mass is uniform in color and homogeneous.
10. Slabs. The slabs shall be four (4') feet square, except in the business district, where the size of the slabs shall be determined by the Street Commissioner before the construction of the walk.
11. Thickness. The thickness of the slabs for the Residential District shall not be less than four (4") inches and for the Business District not less than five (5") inches.

Sidewalks shall be laid upon a grade of one-fourth (1/4) of an inch to the foot above the curb grade, unless otherwise authorized by the Mayor and Council. All sidewalks shall conform to the specifications adopted by the City as to the quality of work and materials. The whole work of grading and laying of said sidewalk, whether done by the City, or by the owner of the respective lot, lots, or parcels of land abutting upon the same, shall be under the supervision of the Street Commissioner, and subject to his approval. All sidewalks shall conform to the grade, where established, and on streets where no grade is yet established, then on a grade established by the Engineer or Street Commissioner with relation to the particular points between which said sidewalk is to be built. The Street Commissioner shall assist the Engineer in establishing grades on streets where the same have not yet been run.

Sidewalks shall be built on a grade or level with the surface of the ground as near as can be. When ordered by the Council, any property owner shall rebuild or reconstruct his sidewalk to conform to the grade thus established. It shall be the duty of the Engineer to furnish sidewalk grade when requested by the Street Commissioner. (Ref. 2-8-10 Code 1964)

§8-210 SIDEWALKS AND DRIVEWAYS; EXPANSION JOINTS. All concrete

sidewalks and driveways hereafter constructed, reconstructed or repaired within the limits of the City, that shall abut on City streets with concrete curbing or pavement shall be constructed with a minimum expansion joint, of approved design and materials, of one (1") inch between sidewalk and concrete curbing, or pavement, and a minimum expansion joint, of approved design and materials, of one (1") inch between driveway and curb or apron, which shall be located a minimum distance of four (4') feet from the edge of pavement or street and a maximum distance from edge of pavement or street of ten (10') feet, or at the edge of existing sidewalk, where such exists at a lesser distance from the edge of pavement or street. (Ref. 2-8-19 Code 1964)

§8-211 SIDEWALKS; CONSTRUCTION NOT IN ACCORDANCE WITH REGULATIONS. In case any lot owner or the owners of a piece of land within the corporate limits of this City, under notice given or otherwise, shall construct a sidewalk in violation of this Article, the Street Commissioner may stop the work of such construction and order the same to be constructed in accordance with said Article and the work already done to be changed, and on the failure of such owner to change any such work, the Street Commissioner or other officer shall forthwith change said work, and the expense of the same shall be assessed and taxed to said lot and collected as if taxed, as provided by law. (Ref. 2-8-11 Code 1964)

§8-212 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 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. 16-250, 16-664, 16-666 RS Neb.; 2-8-7 Code 1964)

§8-213 SIDEWALKS; MUNICIPAL CONSTRUCTION; COST OF INTERSECTIONS. In case of corner lots, such lots shall not be charged with the costs of so much additional walk between the outer edge of the sidewalk line and the curb line as was required to be laid for the intersections of the walks abutting the frontage of such lots, but such work of construction shall be done by the City, unless otherwise ordered by the Mayor and Council. The City shall construct all crossings and crosswalks from curb line to curb line in all streets. The cost of the construction, widening or rebuilding of any sidewalks shall be levied upon the lot or lots or parcel of ground fronting and adjoining which such sidewalks are laid, widened or rebuilt by resolution, which resolution shall specify the street upon which such walk has been so constructed, widened or rebuilt, the length and width of each walk constructed, widened or rebuilt fronting on any lot or piece of ground. Such assessment shall be made by the Council at a special meeting by resolution, fixing the valuation of the lots assessed, taking into account the benefits derived, or injuries sustained, in consequence of such improvements, and the amount charged against the same, which, with the vote thereon, by "yeas" and "nays," shall be spread upon the minutes. Notice of the time and place of holding such meeting and the purpose for which it is to be held shall be published in a legal newspaper published and in general circulation in the City, at least four (4) weeks before the same shall be held, or in lieu thereof, personal service may be made upon the person owning the property to be assessed. All such assessments shall be known as "Special Assessments for Improvement" and shall be levied and collected as a separate tax in addition to the tax for general purposes to be placed upon the tax roll for collection, subject to the same penalties and collected in like manner as other City taxes. Whenever any such special tax is levied, the Clerk shall forthwith deliver a certified copy of such resolution to the County Clerk who shall place the same on the tax list to be collected by law as in such cases made and provided. (Ref. 2-8-15 Code 1964)

§8-301

Public Ways and Property

§8-311

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 Building Inspector, upon the approval of a permit for the construction 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. (Ref. 16-609, 16-614 RS Neb.; 29-1 Code 1964) (Amended by Ord. No. 1-89, 1/17/89)

§8-302 STREETS; WIDENING OR OPENING. The Governing Body shall have the power to open or widen any street, alley, or lane within the limits of the Municipality; to

create, open, and improve any new street, alley, or lane; provided, all damages sustained shall be ascertained in such manner as shall be provided by ordinance. (Ref. 16-609, 16-645 RS Neb.; 2-9-3 Code 1964)

§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 Street Commissioner.

§8-304 STREETS; HEAVY EQUIPMENT. It shall hereafter be unlawful for any person or persons 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 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 Municipal Police are 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. It shall be permissible to use a rubber tired crane with a fixed load when such vehicle will be transported on a state highway or on any road within the corporate limits of the Municipality, the Municipality in which the crane is intended to be transported has authorized a one-day (1) permit for the transportation of the crane and specified the route to be used and the hours during which the crane can be transported, such vehicle is escorted by another vehicle or vehicles assigned by the Municipality, and such vehicle's gross weight does not exceed the limits set out in 39-6,180(10) RS Neb. 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. 39-771 RS Neb.; 2-9-4, 2-9-5 Code 1964) (Amended by Ord. No. 39-80, 11/4/80)

§8-305 STREETS; CONSTRUCTION NOTICE. The Mayor and Council 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.

§8-306 STREETS; PROTECTION OF PAVING. No person shall remove, destroy, or tear down any barricade, fence, railing, or other device erected or constructed for the purpose of protecting paving or any other work while in course of construction or after it has been constructed on any of the streets, alleys or public grounds of the City. No person shall drive over or upon or go upon any paving or other public work in any of the streets, alleys, or public grounds of the City while the same is protected by any barrier, fence, or railing, or until such barrier, fence, or railing has been removed by the contractors in charge of such work, or by the duly authorized officials of the City. (Ref. 2-9-7 Code 1964)

§8-307 STREETS; 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 benefitted thereby, except as provided in Section 8-308. (Ord. No. 1189, 9/18/79) (Amended by Ord. No. 25-87, 10/20/87)

§8-308 STREET; DEFERRAL FROM SPECIAL ASSESSMENTS. Whenever the Governing Body of a Municipality creates an improvement district as specified in Section 8-307 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, the terms agricultural use and agricultural use zone shall have the meaning specified in Section 77-1343 Reissue Revised Statutes of Nebraska 1943.

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 8-307. 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 (a) is within an agricultural use zone and is used exclusively for agricultural use, and (b) the owner has met the requirements of this Section.

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.

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:

- A. 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
- B. Interest upon the special assessments not paid each year at the rate of six (6%) per cent from the dates at which such assessments would have been payable if no deferral had been granted.

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 thru 19-2431 RS Neb.) (Ord. No. 26-83, 10/4/83) (Amended by Ord. No. 24-87, 10/20/87)

§8-309 STREETS; PETITION FOR IMPROVEMENTS. Owners of lots or lands abutting upon any street, avenue, or alley within the Municipality representing three-fourths (3/4) of the front footage thereon may petition the Governing Body to create an improvement district, so that such district when created will make up one (1) continuous or extended thoroughfare or more without cost to the Municipality. The Governing Body shall assess the entire cost of any such improvements in any such street, avenue, or alley, including intersections of streets or avenues and spaces opposite alleys, against the private property within such improvement district, or districts. It shall be the duty of the Governing Body to create the proper improvement district or districts, which shall be consecutively, numbered, and to improve the same and to proceed in the same manner and form as hereinbefore provided for in other paving and improvement districts. Provided, the Governing Body shall have power to levy the entire cost of such improvements of any such street, avenue, or alley, including intersections of streets or avenues and spaces opposite alleys, against the private property within such district, and to issue Street Improvement Bonds to pay for such improvements. Such bonds shall be issued to cover the entire cost of so improving such streets or avenues, intersections of the same, and spaces opposite alleys. If the assessments hereinbefore

provided for, or any part thereof, shall fail, or for any reason shall be invalid, the Governing Body make other and further assessments upon such lots or lands as may be required to collect from the same the cost of any improvements properly chargeable thereto, as herein provided. The Governing Body shall have the discretion to deny the formation of the proposed district when the area to be improved 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, they shall state their grounds for such denial in a written letter to interested parties. (Ref. 16-624 RS Neb.) (Ord. No. 27-83, 10/4/83)

§8-310 STREETS; DRIVEWAY APPROACHES. The Street Commissioner 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 Commissioner 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. 22-84, 8/21/84)

S8-311 VACATION OF STREETS AND ALLEYS.

(A) Upon the vacation of any street by the City, the title to such property shall vest in the owners of the abutting property and become a part of such property, one-half on each side thereof.

(B) When an alley is vacated by the City, the title to such property shall vest in the owners of the abutting property and become a part of such property, one-half on each side thereof, unless the alley is taken wholly from one or more lots, in which case the title to such property shall vest in the owner of the abutting property and become a part of such property.

(C) When a portion of a street or alley is vacated only on one side of the center thereof, the title to such property shall vest in the owner of the abutting property and become part of such property.

(D) When the City vacates all or any portion of a street or alley, the City shall, within 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. (Neb. RS 16-611, Ord. No. 31-02, 8-20-02)

Article 4. Curb and Gutter

§8-401 PAVING, CURB CUTS; STREET, ALLEY EXCAVATIONS. It shall be unlawful for any person or persons to cut into any paving, curb, street, alley, sidewalk, or any City property for the purpose of removing same, or for the constructing of a driveway, sidewalk, or for any other purpose, or to make any excavations on City Property whatsoever without first having obtained a written permit issued by the City Building and Purchasing office. Any person or persons to whom a permit is granted under this Section shall maintain good and sufficient barricades, guards, lights, and signals so as to fully protect the public from injury or damage by reason of any cutting or excavation made, and shall, before commencing any such work file with the City Building and Purchasing Office a performance bond with sureties to be approved by the City Council of Seward, Nebraska, in the sum of five thousand (\$5,000.00) dollars which bond shall be conditioned as follows:

1. To cover and provide the cost of any unfinished, unskilled and inadequate work;
2. That said applicant if requested by the City, properly replace and repair each and every place cut into any pavement, curb or sidewalk under the rules as prescribed by the Street Commissioner in as good a condition as before the same was cut;
3. That said applicant will promptly compensate the City for all work done by the City in replacing or repairing any places cut in pavement, curb or sidewalk or for any excavation made into any City property, in order to place the same in as good a condition as it was before the same was cut;
4. That applicant will obey the ordinances and regulations of the City;
5. That applicant will defend, save harmless and indemnify the City of Seward, Nebraska from any and all liability, claims, damages, judgments, costs and expenses of every nature and description caused by or growing out of the cutting or removal of any paving, curb or sidewalks or any excavation made on City property not covered by or provided for by liability or property damage insurance.

The applicant shall also provide a certificate of liability insurance coverage with bodily injury coverage in a sum of at least three hundred thousand (\$300,000.00) dollars for the injury or death of any number of persons in any one (1) accident, and with a coverage in the sum of at least one hundred thousand (\$100,000.00) dollars for property damage in any one (1) accident. Permits for curb cuts, street cuts, driveway access and excavation shall be issued by the Street Commissioner in accordance with the ordinances and the rules and regulations and specifications which are adopted by the Governing Body. A copy of such rules, regulations and specifications and any amendments thereto shall be filed with the City Clerk, Street Commissioner and Building Department. (Ref. 2-9-6 Code 1964)(Amended by Ord. Nos. 1156, 2/6/79; 32-82, 10/19/82)