

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.

Except as provided in this section, the power of the Municipality 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:

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

The Governing Body of the Municipality 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.

After the passage of the resolution directing the sale, notice of all proposed sales of real and personal property described above and the terms thereof, shall be published once each week for three (3) consecutive weeks in a legal newspaper published in or of general circulation in the Municipality; provided, if a remonstrance against such sale, signed by legal electors thereof equal in number to thirty

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(30%) percent of the electors of the Municipality voting at the last regular Municipal election held therein, be filed with the Governing Body of such Municipality, within thirty (30) days after the third (3rd) publication of the notice, such property shall not then, nor within one (1) year thereafter, be sold; and provided further, that real estate now owned or hereafter owned by the Municipality may be conveyed without consideration to the State of Nebraska or to the Nebraska Armory Board for state armory sites or, if acquired for state armory sites, such property shall be conveyed strictly in accordance with the conditions of sections 18-1001 to 18-1006 RS Neb.

Following (a) passage of the resolution directing a sale, (b) publishing of the notice of the proposed sale, and (c) passing of the thirty-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 Municipal 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.

This section shall not apply to the sale of personal property if the authorizing resolution directs the sale of an item or items of personal property the total fair market value of which is less than one thousand (\$1,000.00) dollars. Following the passage of the resolution directing the sale of such property, notice of such sale shall be posted in a prominent place within the Municipality for a period of not less than seven (7) days prior to the sale of such property. Such 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 RS Neb.*) (*Amended by Ord. No. 486, 1/3/83*)

§ 8-104 MUNICIPAL PROPERTY; OBSTRUCTIONS.

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

§ 8-105 MUNICIPAL PROPERTY; WEEDS.

It is hereby the duty of the Utilities 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, 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; provided, any weeds growing in excess of six (6") inches shall be considered a violation of this section. 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 Utilities Superintendent 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.

§ 8-106 MUNICIPAL PROPERTY; SIGNS AND CANOPIES.

No person, firm, or corporation shall erect, or maintain, any sign, signboard, poster, or rigid canopy over any street, sidewalk, alley, or on other public property without having first obtained a permit therefor. Permits for signs, canopies, posters, and signboards shall be issued by the Mayor. All signs and canopies extending over any public sidewalk, street, alley, or other public place must be securely fastened and constructed so that there will be no danger of the same being dislodged by ordinary winds, or falling from other causes. No sign or canopy shall be erected or maintained which extends over any public sidewalk, street, alley, or other public place in such a location as to obstruct the view of any traffic light, sign, or signal. Upon the written order of the Governing Body, any person owning or occupying the premise where such a sign, canopy, poster, or signboard is located, shall cause the same to be removed within the time limit specified on such notice. In no case, however, will a permit be issued where the petitioner desires to support said sign by a post in any street or on any sidewalk.

§ 8-107 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 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. 550, 10/6/87*)

§ 8-108 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 as a sewer, 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 section 8-315. (*Ref. 19-2427 RS Neb.*) (*Ord. No. 551, 10/6/87*)

§ 8-109 MUNICIPAL PROPERTY; ACQUISITION OF REAL PROPERTY.

(1) 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.

(2) The City shall provide to the public a right of access for recreational use to real property acquired for public recreational purposes. Such access shall be at designated access points and shall be equal to the right of access for recreational use held by adjacent landowners. The right of access granted to the public for recreational use shall meet or exceed such right held by a private landowner adjacent to the real property. (*Ref. 18-1755 RS Neb.*) (*Ord. No. 643B, 6/6/95*)

ARTICLE 2: SIDEWALKS

§ 8-201 MUNICIPAL TREE PRUNING; TRIMMING; REMOVAL.

(1) All trees and shrubs within the Municipality shall be trimmed or pruned when such trees or shrubs obstruct visibility of normal vehicle traffic, obstruct the visibility of any traffic control device or sign, obstruct the passage of pedestrians on sidewalks, or obstruct the view of any street or alley intersection. The minimum clearance of any overhanging branch is fourteen feet (14') on all alleys and streets within the Municipality, and eight feet (8') over sidewalks.

(2) All shrubs and hedges shall be kept trimmed by the abutting property owner at least one foot back from all curbs, sidewalks, driveways or alleys; and the same shall at all times be left trimmed to a height not greater than thirty inches (30") above the top of the curb unless the Municipal Police, for other than corner lots, determine that a greater height would not constitute a hazard to pedestrians or vehicular traffic.

(3) The property owners shall be responsible for the trimming of all trees, shrubs and other growth on the property owned by such owner. The City maintenance crew shall be responsible for trimming and cutting down trees located on public rights-of-way. The property owner will be responsible for trimming or removal of all branches hanging over the sidewalk or street from trees and shrubs located on the owner's property.

(4) The Utilities Superintendent shall direct the owner of any property to cut, prune or remove trees or shrubs in violation of this section at their own expense. In the event of failure of owners to comply with said notice, the Municipality shall have the authority to prune, trim or remove said trees or shrubs and assess the cost of said pruning, trimming or removal to the property owner. If the owner fails to reimburse the Municipality after being properly billed, the cost shall be assessed against the real estate and the Governing Body shall have the assessment certified to the County Treasurer and the same shall be collected in the manner provided by law. (*Amended by Ord. Nos. 1992-606, 11/3/92; 622, 10/5/93*)

§ 8-202 SIDEWALKS; KEPT CLEAN.

(1) It shall be unlawful for the owner or occupant of any lot or lots or the owner or occupant of any vacant lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substances to accumulate on the sidewalks abutting said lot or lots, 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 and

cleared within five (5) hours after the cessation of a storm or snow, unless the storm or fall of snow shall have taken place during the night, in which case the sidewalk shall be cleaned before eight-thirty (8:30) o'clock a.m. immediately following the cessation of said storm or snow fall. All sidewalks within the residential district shall be cleaned within twenty-four (24) hours after the cessation of said storm or fall of snow.

(2) Any person or persons violating this section shall be subject to a fine in the amount of not less than twenty-five dollars (\$25.00) and not exceeding fifty dollars (\$50.00). (*Amended by Ord. Nos. 445, 3/6/79; 736, 3/4/03*)

§ 8-203 SIDEWALKS; MAINTENANCE.

(Repealed 2005)

§ 8-204 SIDEWALKS; REPAIR.

(A) The Mayor and City Council may construct and repair sidewalks, or cause the construction and repair fo sidewalks in such manner as the Mayor and City Council deems 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. 738, 5/7/03*)

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

§ 8-206 SIDEWALKS; MUNICIPAL CONSTRUCTION.

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

ARTICLE 3: STREETS

§ 8-301 STREETS; NAMES AND NUMBERS.

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

§ 8-302 STREETS; CROSSINGS.

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

§ 8-303 STREETS; OPENING, WIDENING, IMPROVING OR VACATING.

(A) (1) The City shall have power to open, widen, or otherwise improve or vacate any street, avenue, alley, or lane within the limits of the City and also to create, open, and improve any new street, avenue, alley, or lane. All damages sustained by the citizens of the City, or by the owners of the property therein, shall be ascertained in that 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 that property, unless the city reserves title 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 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 the land shall vest in the owner of the abutting property and become a part of that

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property, unless the City reserves title 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 interests of the City.

(4) When the City vacates all or any portion of a street, avenue, alley, or lane, the City 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 City 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.*)

§ 8-304 STREETS; EXCAVATION.

It shall be unlawful for any person to make an excavation in any street or streets for any purpose whatsoever unless a written permit is issued by the chief Municipal street official authorizing such excavations.

§ 8-305 STREETS; DRIVING STAKES.

It shall be unlawful for any person to drive any peg or stake of any kind into the pavement in any street or alley without first procuring the written consent of the chief Municipal Street official.

§ 8-306 STREETS; MIXING CONCRETE.

It shall be unlawful for any person to mix any concrete or plastering material directly on the street pavement for any reason whatsoever. Except at the direction of the City or for authorized City purposes.

§ 8-307 STREETS; HARMFUL LIQUIDS.

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

§ 8-308 STREETS; EAVE AND GUTTER SPOUTS.

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

§ 8-309 STREETS; HEAVY EQUIPMENT.

It shall hereafter be unlawful for any person or 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 against the breaking or damaging of such curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing. Hereafter, it shall be unlawful to run, drive, move, operate, or convey over or across any paved street a vehicle, machine, or implement with sharp discs or sharp wheels that bear upon said pavement; with wheels having cutting edges; with wheels having lugs, any protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent, or otherwise injure or damage any pavement, gutter, or curb; Provided, where heavy vehicles, structures, and machines move along paved or unpaved streets the 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 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 of an inch between October 1, and April 15; Provided, that school buses and emergency vehicles shall be permitted to use metal or

metal-type studs all year; it shall be permissible to use farm machinery with tires having protuberances which will not injure the streets; and it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide, or skid. (*Ref. 39-771 RS Neb.*)

§ 8-310 STREETS; CONSTRUCTION ASSESSMENTS.

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 benefitting 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 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. 17-511, 17-524 RS Neb.*)

§ 8-311 STREETS; IMPROVEMENT OF STREETS ON CORPORATE LIMITS.

The Chairman and Board of Trustees 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 Board of Trustees 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. 458, 10/2/79*)

§ 8-312 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. 459, 10/2/79) (Amended by Ord. No. 499, 10/4/83)*

§ 8-313 STREETS; IMPROVEMENT DISTRICTS, OBJECTIONS.

Whenever the Governing Body shall deem it necessary to make any improvements allowed by statute, the Governing Body shall by ordinance create a paving, graveling, or other improvement district or districts, and after the passage, approval, and publication or posting of such ordinance, shall publish notice of the creation of any such district or districts for six (6) days in a legal newspaper of the Municipality, if a daily newspaper, or for two consecutive weeks, if the same be a weekly newspaper. If the owners of the record title representing more than fifty (50%) percent of the front footage of the property directly abutting on the street, streets, alley, or alleys to be improved, shall file with the Municipal Clerk within twenty (20) days after the first publication of said notice, written objections to the creation of such district or districts, said improvements shall not be made as provided in said ordinance; but said ordinance shall be repealed. If said objections are not filed against the district in the time and manner aforesaid, the Governing Body shall forthwith 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. *(Ref. 17-511 RS Neb.) (Ord. No. 459, 10/2/79)*

§ 8-314 STREETS; DEFERRAL FROM SPECIAL ASSESSMENTS.

(1) Whenever the Governing Body of a Municipality creates an improvement district as specified in section 8-111 which includes land adjacent to the Municipality which is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments. For purposes of this section, **AGRICULTURAL USE** means the use of land as described in 77-1359 RS Neb, so that incidental use of the land for nonagricultural or nonhorticultural purposes shall not disqualify the land and **AGRICULTURAL USE ZONE** means

designation of any land predominantly for agricultural or horticultural use by any political subdivision pursuant to sections 19-924 to 19-933; Chapter 14, Article 4; Chapter 15, Article 9; Chapter 16, Article 9; Chapter 17, Article 10 or Chapter 23, Article 1 RS Neb. The primary objective of the agricultural use zoning shall be to preserve and protect agricultural activities and the potential for agricultural, horticultural or open use of land. Uses to be allowed on such lands include primarily agricultural-related or horticultural-related uses, and nonagricultural or nonhorticultural industrial, commercial or residential uses allowed on such lands shall be restricted so that they do not conflict with or detract from this objective.

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

- (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.

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

- (a) Notification by the owner of record title to the Governing Body to remove such deferral;
- (b) 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.
- (c) 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;
- (d) The land is no longer being used as agricultural land; or
- (e) Change of zoning to other than an agricultural zone.

(4) 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%) percent from the dates at which such assessments would have been payable if no deferral had been granted.

(5) 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. 500, 10/4/83)*

§ 8-315 STREETS; DRIVEWAY APPROACHES.

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

The Municipal Clerk shall give the property owner notice by registered letter or certified mail, directed to the last-known address of such owner or the agent of such owner, directing the repair or replacement of such driveway approach. If within thirty (30) days of mailing such notice the property owner fails or neglects to cause such repairs or replacements to be made, the Street Superintendent may cause such work to be done and assess the cost upon the property served by such approach. *(Ref. 18-1748 RS Neb.) (Ord. No. 519, 10/2/84)*

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 without first having obtained a written permit from the Governing Body therefor. Before any person shall obtain a permit, he shall inform the Municipal Clerk of the place where such cutting is to be done, and it shall be the chief street official'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 Governing Body or the Municipal Engineer. When the applicant is ready to close the opening made, he shall inform the chief street official, who shall supervise and inspect the materials used and the work done in closing the opening. It shall be discretionary with the Governing Body to order the chief street official, under the supervision and inspection of the Municipal Engineer or the committee of the Governing Body on the streets and alleys, to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit. The Governing Body may consent to the work of cutting and closing the paving to be done by the party holding such permit. Before any permit is issued by the Governing Body, the applicant for such permit shall deposit with the Municipal Treasurer a sum set by resolution of the Governing Body for all paving, curb, or sidewalk to be cut. Such sum shall be set on a per square foot cost of construction basis. The deposit shall be retained by the Municipality for the purpose of replacing the paving, curb, or sidewalk, in the event the work is done by the Municipality. In the event the Municipality elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the Municipality until the work is completed to the satisfaction of the chief street official or of the committee of the Governing Body on streets and alleys. In addition to making the deposit above set forth, the applicant shall, before any permit is issued, execute a bond to the Municipality with a good and sufficient surety or sureties to be approved by the Governing Body in a sum set by resolution of the Governing Body.

ARTICLE 5: PENAL PROVISION

§ 8-501 VIOLATION; PENALTY.

(Repealed by Ord. No. 703, 4/4/00)

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

