

Municipal Code of the City of Battle Creek, Nebraska

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CHAPTER 8 – PUBLIC WAYS AND PROPERTY

Article 1 – City Property

§8-101 DEFINITIONS.

The following definition shall be applied throughout this Chapter. When no definition is specified, the normal dictionary usage of the word shall apply.

"Sidewalk space," as used herein, 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. (Ref. 17-567 RS Neb.)

§8-103 TREES.

(1) No person or persons shall plant or allow the growth of 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 City Council, be deemed to be a nuisance. When any such tree is declared to be a nuisance, the City Council, with proper notice, shall order 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 the said tree or cause it to be removed, 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.

(2) In the event the property owner is a non-resident 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 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. 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 OBSTRUCTIONS; TREES AND SHRUBBERY.

(1) 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 City at the expense of the owner of the property upon which the tree 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 any of the streets, alleys, or sidewalks by fences, gates, buildings, structures, or otherwise. The public ways and property shall be considered to be obstructed when the owner or occupant of the adjacent property shall permit or suffer to remain on any premises owned or controlled by him any hedge, shrubbery, bush, or similar growth within 2 feet adjacent to the lot line whether there is a sidewalk abutting or adjoining such premises or not. It shall be the duty of owners and occupants to at all times keep trimmed and pruned all such similar growth.

(2) Whenever any such growth is allowed to grow within 2 feet of the lot line contrary to the provisions of this Article, the City Council may pass a resolution ordering the owner or occupant to remove such obstructions within three days after having been served with a copy of said resolution by the City stating that the City will do so and will charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided, or shall collect the same by civil suit brought in the name of the City against the said owner or occupant.

(3) Trees and shrubs growing upon the lot line partially on public ground and partially upon the abutting property, or wholly upon the abutting property, but so close to the lot line as to interfere with the making of any public improvement or so that the roots thereof interfere with any utility wires or pipe shall be deemed an obstruction and such trees, shrubs, and roots may be removed by the City pursuant to the procedure pre-

scribed above.

(4) In the event the property owner is a non-resident 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 non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (Ref. 17-557.01 RS Neb.)

§8-105 PERMITTED OBSTRUCTIONS.

Persons engaged in the erection, construction, reconstruction, wrecking, or repairing of any building or the construction or repair of a sidewalk along any street may occupy the public street space with such building material and equipment as long as is necessary if such persons shall make application to and receive a permit in writing from the City official in charge of City streets to do so; provided, no permit for the occupancy of the sidewalk space and more than one-third 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 with barricades and lighted in the manner required by the official issuing the permit.

§8-106 SALE AND CONVEYANCE OF REAL PROPERTY.

(A) Except as provided in division (G) of this section, the power of the City to convey any real property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution, directing the sale at public auction or by sealed bid of such property and the manner and terms thereof, except that such 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.

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

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

(D) (1) If within 30 days after the third publication of the notice a remonstrance against such sale is signed by registered voters of the city equal in number to 30% of the registered voters of the city voting at the last regular municipal election held therein and is filed with the City Council, 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 postmarked on or before the next business day.

(2) Upon the receipt of the remonstrance, the City Council, with the aid and assistance of the Election Commissioner or County Clerk, shall determine the validity and sufficiency of signatures on the remonstrance. The City Council 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.

(3) Upon receipt of the remonstrance, the Election Commissioner or County Clerk shall issue to the City Council 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 City Council. The Election Commissioner or County Clerk shall also compare the signer's printed name, street and number or voting precinct, and city 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 city 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 City Council. The determinations of the Election Commissioner or County Clerk may be rebutted by any credible evidence which the City Council find sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping determine the validity of the remonstrance, the sufficiency of the remonstrance, and the qualification of the signer, shall be to prevent fraud, deception, and misrepresentation in the remonstrance process.

(4) Upon completion of the comparison of names and addresses with the voter registration records, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the validity 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 of the duplicate signature and shall count only the earliest dated signature.

(5) The Election Commissioner or County Clerk shall certify to the City Council 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 City Council within 40 days after the receipt of the remonstrance from the City Council. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than 20 signatures on one signature page shall be counted.

(6) The City Council shall, within 30 days after the receipt of the remon-

strance 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 City Council shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

(E) Real estate now owned or hereafter owned by the City may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of Neb. Rev. Stat. §18-1001 to 18-1006.

(F) 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. (Neb. RS 17-503)

(G) Divisions (A) through (F) of this section shall not apply to the sale of real property if the authorizing resolution directs the sale of real property, the total fair market value of which is less than \$5,000. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the City for a period of not less than seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required. (Neb. RS 17-503.01)

(Am. by Ord. Nos. 2001-011, 12/10/01; 2004-001, 1/12/04)

§8-107 SALE AND CONVEYANCE OF PERSONAL PROPERTY.

The power of the City to convey and personal property owned by it shall be exercised by resolution directing the sale and the manner and terms thereof. 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. If the fair market value of the property is greater than \$5,000, notice of the sale shall also be published once in a legal newspaper published in or of general circulation in the City at least seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. (Neb. RS 17-503.02) (Ord. Nos. 269, 7/11/94; 96-309, 3/11/96; 98-361, 1/11/99; 2001-012, 12/10/01; 2004-001, 1/12/04)

§8-108 ACQUISITION OF PROPERTY; CONSTRUCTION; ELECTIONS, WHEN REQUIRED.

(1) The City is authorized and empowered to (a) purchase, (b) accept by gift or devise, (c) purchase real estate upon which to erect, and (d) erect a building or buildings for an auditorium, fire station, city building, or community house for housing city enterprises and social and recreation purposes, and other public buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of the City.

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

on such question.

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

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

(B) The City Council may proceed without providing the notice and right of remonstrance required in subdivision (A) of this subsection if the property can be purchased below the fair market value as determined by an appraisal, there is a willing seller, and the purchase price is less than \$25,000.00. The purchase shall be approved by the City Council after notice and public hearing as provided in Neb. Rev. Stat. §18-1755. (Ref. 17-953, 17-953.01 RS Neb.) (Am. by Ord. No. 96-310, 3/11/96)

§8-109 OVERHANGING BRANCHES.

(1) The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any street or sidewalk over which branches of trees extend shall at all times keep the branches or limbs thereof trimmed to the height of at least 8 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 City Council at any regular or special meeting may pass a resolution ordering the owner or occupant to cut or remove said obstructions within five days after having received a copy thereof from the Street Superintendent 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 resolution is not complied with.

(2) In the event the property owner is a non-resident of the county in which the property lies, the City shall, before levying any special assessment against the property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

(Ref. 17-557.01 RS Neb.)

§8-110 WEEDS.

(1) 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, 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 10 inches shall be considered a violation of this section. In the event that the owner of any lot or parcel of land within the City is a non-resident 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.

(2) 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 as therein provided 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 collected as are other taxes of the City or such cost may be recovered by civil suit brought by the City against the owner of the parcel of land.

(3) In the event the property owner is a non-resident 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 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.

§8-111 SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCEDURE.

The City Council 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 Neb. Rev. Stat. §19-2428 to 19-2431, the City Council 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 Council 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. 173, 11/9/87)

§8-112 IMPROVEMENT DISTRICT; LAND ADJACENT.

Supplemental to any existing law on the subject, a City may include land adjacent to such City when creating an improvement as a sewer, water, water extension, or sanitary sewer extension district. The City Council 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 8-112.01. (Ref. 19-2427 RS Neb.) (Ord. No. 172, 11/9/87)

§8-112.01 DEFERRAL FROM SPECIAL ASSESSMENTS.

(A) Whenever the City Council creates an improvement district as specified in

section 8-112 which includes land adjacent to the City 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 Neb. Rev. Stat. §77-1343.

(B) Any owner of record title eligible for the deferral granted by this section shall, to secure such assessment, make application to the City Council within 90 days after creation of an improvement district as specified in section 8-111. 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 City Council. The City Council shall approve the application of any owner of record title upon determination that the property (1) is within an agricultural use zone and is used exclusively for agricultural use, and (2) the owner has met the requirements of this section.

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

(1) Notification by the owner of record title to the City Council to remove such deferral;

(2) Sale or transfer to a new owner who does not make a new application within 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 125 days of the transfer;

(4) The land is no longer being used as agricultural land; or

(5) Change of zoning to other than an agricultural zone.

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

(1) The total amount of special assessments which would have been assessed against such property, to the extent of special benefits, had such deferral not been granted; and

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

(E) In cases where the deferral provided by this section is terminated as a result of a sale or transfer described in subdivision (C) (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. 171, 11/9/87)

§8-113 ACQUISITION OF REAL PROPERTY.

When acquiring an interest in real property by purchase or eminent domain, the City shall do so only after the City Council has authorized the acquisition by action taken in a public meeting after notice and public hearing. (Ref. 18-1755 RS Neb.) (Ord. No. 290, 3/13/95)

§8-114 ACQUISITION OF PROPERTY; APPRAISAL.

The City shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value of \$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. 291, 3/13/95)

§8-115 PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS.

(A) Except as provided in division (B) of this section, the City 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;

(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 City of professional services for itself if it appoints a city 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 City that is not subject to a permit from the Department of Natural Resources;

(6) The work of employees and agents of the City 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. Rev. Stat. §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 City to be designed or supervised by an engineer or unless legal requirements are imposed upon the City as part of a public water supply; and

(9) Any other activities described in Neb. Rev. Stat. §81-3449 to 81-3453. (Neb. RS 81-3423, 81-3445- 81-3449, and 81-3453) (Ord Nos. 98-362, 1/11/99; 2005-003, 5/9/05)

Article 2 – Sidewalks

§8-201 DUTY TO KEEP 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. (Ref. 17-557 RS Neb.)

§8-202 (Repealed)

§8-203 REPAIR.

(A) The City Council may by resolution order the repair of a sidewalk on any lot or piece of ground within the City and may assess the expense thereof on the property in front of which such repairs are made, after having given notice of its intention to do so:

(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 such premises ten days prior to the commencement of such repair. (Neb. RS 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 10 days after the date of publication of the notice, notify the City that he or she will repair the sidewalk within 30 days after such date of publication;

(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

days, 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 for all non-resident property owners as shown on the current tax rolls at the time such notice is first published. (Neb. RS 13-310)

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

(3) For purposes of this division, "non-resident 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. (Neb. RS 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.
(Ord. No. 2005-003, 5/9/05)

§8-204 CONSTRUCTION BY OWNER.

Any person desiring to construct, or cause to be constructed, any sidewalk shall do so only as herein provided. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit. Said owner shall make application in writing for a permit and file such application in the office of the City Clerk. The permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed. The Street Superintendent 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 Superintendent 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 Street Superintendent.

§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 City 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.

(D) In the event the property owner is a non-resident 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 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.)

§8-206 CONSTRUCTION BIDS.

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

§8-207 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 (1) will pay the engineering service fee, and all other

incidental construction costs until paid shall be a perpetual lien upon the real estate along which the freeholder desires such sidewalk to be constructed, and (2) 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, financed, and specially assessed as provided by law. In the event the property owner is a non-resident of the county in which the property lies, the 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 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.

Article 3 – Streets

§8-301 NAMES AND NUMBERS.

The City Council 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 City Council may require. It shall be the duty of the Street Superintendent, 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 AND ALLEYS; OPENING, WIDENING, IMPROVING, OR VACATING.

(A) 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 such manner as shall be provided by ordinance. Whenever any street or alley is vacated, the same shall revert to the owners of the abutting real estate, one-half on each side thereof, and become a part of such property. When a portion of a street, avenue, alley, or lane is vacated only on one side of the center thereof, the title to such land shall vest in the owner of the abutting property and become a part of such property. When the City vacates all or any portion of a street, avenue, alley, or lane, 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. (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.) (Am. by Ord No. 2002-025, 10/16/02)

§8-302.01 STREETS AND ALLEYS; VESTING OF TITLE FOLLOWING VACATION.

(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. 2009-007, 6/8/09)

§8-303 EXCAVATION.

It shall be unlawful for any person to make an excavation in any street for any purpose whatsoever unless a written permit is issued by the Street Superintendent authorizing such excavation.

§8-304 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.

§8-305 MIXING CONCRETE.

It shall be unlawful for any person to mix any concrete or plastering material directly on the street pavement for any reason whatsoever.

§8-306 HARMFUL LIQUIDS.

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

§8-307 INSTALLATION AND MAINTENANCE OF TUBING.

Any person wishing to install a drive or sidewalk which will cause the blockage of the gutter shall be required to install and maintain at his or her own expense tubing or a culvert of such diameter as may be required by the Street Superintendent.

§8-308 PIPELINES AND WIRES.

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

§8-309 CONSTRUCTION NOTICE.

The Street Superintendent 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 time in a legal newspaper at least 20 days prior to the beginning of such construction by the party undertaking such construction. 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 City.

§8-310 CONSTRUCTION ASSESSMENT.

(1) To defray the costs and expenses of street improvements as may be authorized bylaw, the City Council shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, abutting upon, or especially benefiting from the street, avenue, alley, or sidewalk in whole or in part opened, widened, curbed, curbed and guttered, graded, paved, repaired, graveled, macadamized, parked, extended, constructed, or otherwise improved or repaired. The City Council, 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 City Council 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 in or of general circulation in the City at least four weeks before the same shall be held. In lieu of such aforementioned notice, per-

sonal service may be had upon the persons owning or occupying the property to be assessed.

(2) 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 city taxes and shall be certified to the County Clerk by the City Clerk forthwith after the date of levy for collection by the County Treasurer unless otherwise specified. After it shall have become delinquent, said assessment shall draw interest at the legal interest rate per annum.

(3) In the event the property owner is a non-resident 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 non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

(Ref. 17-511, 17-524 RS Neb.)

§8-311 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. The Council 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 City Council shall have the discretion to deny the formation of the proposed district when the area is not previously been improved with a water system, sewer system, and grading of streets. If the Council 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.) (Am. by Ord. No. 117, 11/14/83)

§8-312 IMPROVEMENT DISTRICTS; OBJECTIONS.

Whenever the City Council deems it necessary to make any improvements allowed by statute which are to be funded by a levy of special assessment on the property especially benefited, the City Council shall by ordinance create a paving, graveling, or other improvement district, and after the passage, approval, and publication or posting of such ordinance, shall publish notice of the creation of any such district for six days in a legal newspaper. If no legal newspaper is published in the City, the publication shall be in a legal newspaper of general circulation in the City. If the owners of record title representing more than 50% of the front footage of the property directly abutting on the street or alley to be improved file with the City Clerk within 20 days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If objections are not filed against the district in the time and manner prescribed in this section, the City Council shall immediately cause such work to be done or such improve-

ment to be made, shall contract for the work or improvement and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street or alley especially benefited in such district in proportion to such benefits to pay the cost of such improvement. (Ref. 17-511 RS Neb.) (Am. by Ord. No. 96-308, 3/11/96)

§8-313 IMPROVEMENT OF STREETS ON CORPORATE LIMITS.

The Mayor and City Council shall have the power to improve any street or part thereof which divides the City's corporate area and the area adjoining the City. When creating an improvement district, including land adjacent to the City, the Council shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby. (Ref. 17-509 RS Neb.)

§8-314 IMPROVEMENT OF MAIN THOROUGHFARES.

The Mayor and City Council shall have the power, by a three-fourths vote of the Council, to create by ordinance a paving, graveling or other improvement district and to order such work done upon any federal or state highway in the City or upon a street or route designated by the Mayor and Council as a main thoroughfare that connects on both ends to either a federal or state high-way or a county road. The City Council shall contract therefor and shall have the power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby. (Ref. 17-512 RS Neb.)

Article 4 – Curb and Gutter

§8-401 CUTTING CURB.

(1) It shall be unlawful for any person to cut into any paving, curb, or sidewalk for the purpose of constructing a driveway or any other purpose whatsoever without first having obtained a written permit from the City Council therefor. Before any person shall obtain a permit, he shall inform the City Clerk of the place where such cutting is to be done, and it shall be the Street Superintendent's duty to inspect the place of entry into the paving, sidewalk, or curb, before the same is cut.

(2) Before any permit is issued by the City Council, 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. Such sum shall be set on a per-square-foot-cost-of-construction basis. The deposit shall be retained by the City for the purpose of replacing the paving, curb, or sidewalk in the event the work is done by the City. In the event the City elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the City until the work is completed to the satisfaction of the Street Superintendent or of the committee of the City Council 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 City with a good and sufficient surety or sureties to be approved by the City Council in a sum set by resolution of the City Council.

(3) 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. 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. It shall be discretionary with the City 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. The City Council may consent to the work of cutting and closing the paving to be done by the party holding such permit.

Article 5 – Trees

[Editor's Note: Article 5 was adopted by Ord. No. 204, 9/10/90]

§8-501 DEFINITIONS.

“Park trees” are herein defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names and all areas owned by the City or to which the public has free access as a park.

“Street trees” are herein defined as trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the City.

§8-502 STREET TREE SPECIES TO BE PLANTED.

The tree list attached hereto and made a part hereof by reference constitutes the official street tree species for the City. No species other than those included in this list may be planted as street trees without written permission of the City Tree Board.

§8-503 SPACING.

The spacing of street trees will be in accordance with the three species size classes listed in the tree list and no trees may be planted closer together than the following: small trees, 30 feet; medium trees, 40 feet; and large trees, 50 feet; except in special plantings designed or approved by a landscape architect.

§8-504 DISTANCE FROM CURB AND SIDEWALK.

The distance that trees may be planted from curbs or curblines and sidewalks will be in accordance with the three species size classes listed in the tree list; and no trees may be planted closer to any curb or sidewalk than the following: small trees, 4 feet; medium trees, 5 feet; and large trees, 6 feet.

§8-505 DISTANCE FROM STREET CORNERS AND FIREPLUGS.

No street tree shall be planted closer than 35 feet of any street corner, measured from point of nearest intersecting curbs or curblines. No street tree shall be planted closer than 10 feet of any fireplug.

§8-506 UTILITIES.

No street trees other than those species listed as small trees in the tree list may be planted under or within 10 lateral feet of any overhead utility wire or over or within 5 lat-

eral feet of any underground water line, sewer line, transmission line or other utility.

§8-507 PUBLIC TREE CARE.

The City shall have the right to plant, subject to section 8-507.01 herein, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to pre-serve or enhance the symmetry and beauty of such public grounds. This section does not prohibit the planting of street trees by adjacent property owners, providing that the selection and location of said trees is in accordance with sections 8-502 through 8-506 of this ordinance.

§8-507.01 PLANTING; CONSENT OF PROPERTY OWNERS.

The City Tree Board shall plant no plants, shrubs, or trees on public right-of-way without the consent of the abutting property owners. Such consent shall be in writing and shall be maintained as part of the official Tree Board records.

§8-508 TREE TOPPING.

It shall be unlawful as a normal practice for any person, firm or city department to top any street tree, park tree, or other tree on public property. "Topping" is defined as the severe cutting back of limbs to stubs larger than 3 inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes or certain trees under utility wires or other obstructions where other pruning practices are impractical may be ex-empted from this ordinance at the determination of the City Tree Board.

§8-509 PRUNING, CORNER CLEARANCE.

Every owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of 8 feet above the surface of the street or sidewalk.

§8-510 (Repealed)

§8-511 REMOVAL OF STUMPS.

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump does not project above the surface of the ground. Stump removal shall be done in a timely manner relative to the removal of the tree and shall be the responsibility of the property owner, unless said property owner had previously made application and received a written permit from the City to plant said tree(s) within a designated sidewalk space pursuant to section 8-103.

§8-512 INTERFERENCE WITH CITY TREE BOARD.

It shall be unlawful for any person to prevent, delay or interfere with the City Tree Board or any of its agents while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any street trees, park trees or trees on private grounds, as authorized in this ordinance.

§8-513 ARBORIST'S LICENSE; FEE, INSURANCE.

It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating or removing street or park trees within the City without first applying for and procuring a license. The license fee shall be paid annually in advance; provided, however, that no license shall be required of any public service company or approved arboretum volunteer or City employee doing such work in the pursuit of their public service endeavors. Such license fee shall be set by the City Council and filed in the office of the City Clerk for public inspection during office hours. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of \$1,000,000 for bodily injury and \$500,000 property damage holding the City harmless and indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavors as herein described.

Article 6 – Penal Provisions

§8-601 VIOLATION; PENALTY.

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$500.00 for each offense. A new violation shall be deemed to have been committed every 24 hours of such failure to comply. (Am. by Ord. No. 2009-007, 6/8/09)

§8-602 ABATEMENT OF NUISANCE.

Whenever a nuisance exists as defined in this Chapter, the City may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law. Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (Ref. 18-1720, 18-1722 RS Neb.)