

Chapter 8

PUBLIC WAYS AND PROPERTY

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; TREES:

No person, or persons, shall plant, or allow to grow, any tree within the sidewalk space. Permissible shrubs, hedges and other vegetation may only be planted after first making a written, or verbal, application to, and receiving a written permit from the Governing Body. 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 Governing Body, be deemed to be a nuisance. When any such tree is declared to be a nuisance, the Governing Body shall order, with proper notice, the tree removed at the expense of the owner of the property adjacent to the sidewalk space upon which the tree has been unlawfully planted. If the property owner fails, or neglects, to remove, or cause to be removed, the said tree, the Governing Body shall order the same removed and assess the expense of such removal against the property adjacent to the sidewalk space wherein the tree is planted and growing. In the event the property owner is a 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. 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 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 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 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 twenty-four (24) 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 Street 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 nonresident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

§8-106 MUNICIPAL PROPERTY; 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 that property and the manner and terms of such sales, except that the property shall not be sold at public auction or by sealed bid when:

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

(2) The property is being conveyed to another public agency; or

(3) The property consists of streets and alleys.

(B) The 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 of such sales 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 petition against the sale:

(a) Conforms to Neb. RS 32-628,

(b) 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 city election held therein, and

(c) Is filed with the City Council, that property shall not then, nor within one year thereafter, be sold. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the 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 petition. The City Council shall deliver the petition to the Election Commissioner or County Clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested.

(3) Upon receipt of the petition, the Election Commissioner or County Clerk shall issue to the City Council a written receipt that the petition is in the custody of the Election Commissioner or County Clerk. The Election Commissioner or County Clerk shall compare the signature of each person signing the petition with the voter registration records to determine if each signer was a registered voter on or before the date on which the petition was filed with the 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 match the registration records and that the registration was received on or before the date on which the petition 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 finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the petition, the sufficiency of the petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process.

(4) Upon completion of the comparison of names and addresses with the voter registration records, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the Election Commissioner or County Clerk shall set forth the reason for the invalidity of the signature. If the Election Commissioner or County Clerk determines that a signer has affixed his or her signature more than once to the remonstrance and that only one 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 1 signature page shall be counted.

(6) The City Council shall, within 30 days after the receipt of the remonstrance and certifications from the Election Commissioner or County Clerk, hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. The 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 for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of Neb. RS 18-1001 through 18-1006.

(F) Following passage of the resolution directing a sale, publishing of the notice of the proposed sale, and passing of the 30-day right-of-remonstrance period, the property shall then be sold. The sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. (*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. (*Ref 17-503.01 RS Neb*) (*Amended by Ord 952, 3/12/2018; 1053, 4/08/2024*)

§8-106.01 MUNICIPAL PROPERTY; SALE AND CONVEYANCE OF PERSONAL PROPERTY:

The power of the City to convey any personal property owned by it shall be exercised by resolution directing the sale and the manner and terms thereof. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three (3) prominent places within the city for a period of not less than seven (7) days prior to the sale of the property. If the fair market value of the property is greater than \$5000, notice of the sale shall also be published once in a legal newspaper published in or of general circulation in the City and if there is no legal newspaper in or of general circulation in the municipality, then the municipality shall publish such notice or advertisement in a legal newspaper in or of general circulation in the county in which the municipality is located. If there is no legal newspaper in or of general circulation in such county, then the municipality shall publish such notice or advertisement by posting a written or printed copy thereof in each of three public places in the municipality for the same period of time the municipality is required to publish the notice or advertisement in a legal newspaper at least seven (7) days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. (*Ref 17-503.02 RS Neb*) (*Amend Ord; 952, 9/12/2018*)

§8-107 MUNICIPAL PROPERTY; ACQUISITION OF PROPERTY; CONSTRUCTION; ELECTIONS, WHEN REQUIRED:

(1) The Municipality is authorized and empowered to:

- (a) Purchase,
- (b) Accept by gift or devise,
- (c) Purchase real estate upon which to erect, and
- (d) Erect a building or buildings for an auditorium, fire station, Municipal building, or community house for housing Municipal enterprises and social and recreation purposes, and other public buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of the Municipality.

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

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

(a) Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the Municipality and if there is no legal newspaper in or of general circulation in the municipality, then the municipality shall publish such notice or advertisement in a legal newspaper in or of general circulation in the county in which the municipality is located. If there is no legal newspaper in or of general circulation in such county, then the municipality shall publish such notice or advertisement by posting a written or printed copy thereof in each of three public places in the municipality for the same period of time the municipality is required to publish the notice or advertisement in a legal newspaper. No election shall be required to approve the purchase or construction unless within thirty (30) days after the publication of the notice, a remonstrance against the purchase or construction is signed by registered voters of the Municipality equal in number to fifteen percent (15%) of the registered voters of the Municipality voting at the last regular Municipal election held therein and is filed with the Governing Body. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be considered timely if filed or postmarked on or before the next business day. If a remonstrance with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the Municipality at a general Municipal election or a special election duly called for that purpose. If the purchase or construction is not approved, the property involved shall not then, nor within one (1) year following the election, be purchased or constructed; or

(b) The Governing Body may proceed without providing the notice and right of remonstrance required in subdivision (a) of this subsection if the property can be purchased below the fair market value as determined by an appraisal, there is a willing seller, and the purchase price is less than twenty-five thousand dollars (\$25,000.00). The purchase shall be approved by the Governing Body after notice and public hearing as provided in section 18-1755 RS Neb. (*Amending Ord 952, 3/12/2018*)

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

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

Except as provided in Sections 19-2428 to 19-2431 RS Neb, the Governing Body shall have power to assess, to the extent of such benefits, the costs of such improvements upon the properties found especially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the Governing Body shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law. *(Ref 18-1751 RS Neb) (Ord 534, 10/26/87)*

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

Supplemental to any existing law on the subject, a Municipality may include land adjacent to such Municipality when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The Governing Body shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby, except as provided in section 8-312. *(Ref 19-2427 RS Neb) (Ord 535, 10/26/87)*

§8-110 MUNICIPAL PROPERTY; ACQUISITION OF REAL PROPERTY:

When acquiring an interest in real property by purchase or eminent domain, the Municipality shall do so only after the Governing Body has authorized the acquisition by action taken in a public meeting after notice and public hearing. *(Ref 18-1755 RS Neb) (Ord 651, 4/24/95)*

§8-111 MUNICIPAL PROPERTY; ACQUISITION OF PROPERTY; APPRAISAL:

The Municipality shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value of one hundred thousand dollars (\$100,000.00) or more unless an appraisal of such property has been performed by a certified real estate appraiser. *(Ref 13-403 RS Neb) (Ord 652, 4/24/95)*

§8-112 MUNICIPAL PROPERTY; PLACEMENT OF DRIVEWAY TUBE; TUBING DITCHES:

The City shall provide and place at the expense of the City one (1) twenty-foot (20') driveway tube per property as requested by the owner of the property, provided such property is within the City limits and provided further that the property owner is now in compliance and will continue to comply with all City ordinances, whether or not related to the said property for which request is made. For the purposes of this section, property shall be defined as one (1) contiguous parcel of land owned by said property owner.

If a property owner, provided such property is within the City limits, wants to tube their whole ditch, they need to have an engineered site plan for curb/gutter and storm sewer presented to the Council before said property owner will be allowed to tube their whole ditch. The expense of installing said ditch tube and obtaining an engineered site plan shall be the sole responsibility of the property owner. (*Ord 684C, 10/13/97*) (*Amended Ord 1037, 9/11/2023*)

Article 2. Sidewalks

§8-201 SIDEWALKS; OVERHANGING BRANCHES:

The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any sidewalk over which there extends the branches of trees shall at all times keep the branches or limbs thereof trimmed to the height of at least eight (8') feet above the surface of said walk. Whenever the limbs or branches of any tree or trees extend over 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 sidewalk, the Governing Body at any regular or special meeting may pass a resolution ordering the owner or occupant to cut or remove said obstructions within five (5) days after having received a copy thereof from the Street Commissioner stating that the Municipality will remove said branches and charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided, if said resolution is not complied with. In the event the property owner is a 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 17-557.01 RS Neb)*

§8-202 SIDEWALKS; KEPT CLEAN:

It shall be unlawful for the occupant of any lot or lots of the owner of any vacant lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substance to accumulate on the sidewalks or to permit any snow, sleet, ice, mud, or other substance to remain upon said sidewalk. All sidewalks within the business district shall be cleaned within five (5) hours after the cessation of a storm unless the storm or fall of snow shall have taken place during the night, in which case the sidewalk shall be cleaned before nine (9:00) o'clock A.M. the following day; provided, sidewalks within the residential areas of the Municipality shall be cleaned within twenty-four (24) hours after the cessation of the storm. *(Ref. 17-557 RS Neb.)*

§8-202.1 REGULATION OF SNOW, ICE, AND OTHER ENCROACHMENTS:

(A) The municipality shall have power to prevent and remove all encroachments, including snow, ice, mud or other obstructions, into and upon all sidewalks, streets, avenues, alleys, and other municipal property. *(Ref 17-557 RS Neb)*

(B) If the abutting property owner refuses or neglects, after five days' notice by publication or, in place thereof, personal service of such notice, to remove all encroachments from sidewalks, as provided in division (A), the municipality through the proper officers may cause such encroachments to be removed, and the cost of removal shall be paid out of the street fund. The governing body shall assess the cost of the notice and removal of the encroachment against the abutting property as a special assessment. The special assessment shall be known as a special sidewalk assessment and, together with the cost of notice, shall be levied and collected as a special assessment in addition to the general revenue taxes and shall be subject to the same penalties as other special assessments and shall draw interest from the date of the assessment. Upon payment of the assessment, the assessment shall be credited to the street fund. *(Neb RS 17-557.01) (Amended by Ord 931, 3/14/2016)*

§8-203 SIDEWALKS; MAINTENANCE:

Every owner of any lot, lots, or piece of land within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to said lot, lots, or pieces of land, as the case may be, in good and proper repair, and in a condition reasonably safe for travel for all travelers thereon. In the event that the owner or owners of any lot, lots, or lands, abutting on any street, avenue, or part thereof shall fail to construct or repair any sidewalk in front of his, her, or their lot, lots, or lands, within the time and in the manner as directed and required herein after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the Governing Body shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property. 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 17-557.01 RS Neb*)

§8-204 SIDEWALKS; REPAIR:

The Municipal official in charge of sidewalks may require sidewalks of the Municipality to be repaired. Notice to the owners of property upon which such sidewalks in disrepair are located shall require within forty-eight (48) hours from issuance of notice said owners to make arrangements to have the sidewalk repaired. Said repairs shall be completed within twenty-one (21) days after issuance of said notice. No special assessment shall be levied against the property unless said owner shall neglect or refuse to repair within the time prescribed and in the event that such owner fails to repair, the Municipality shall cause the repairs to be made and assess the property owner the expense of such repairs. In the event the property owner is a 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.

§8-205 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; REIMBURSEMENT FOR COSTS OF CONCRETE:

Any new or replacement sidewalk of portion thereof built and constructed in accordance with section 8-205 shall upon approval of the Governing Body be eligible for fifteen percent (15%) reimbursement from the Municipality for the costs of the concrete. (*Amending Ord 8-206, 7/14/03*)

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; WIDENING OR OPENING:

The Governing Body shall have the power to open or widen any street, alley, or lane within the limits of the Municipality; to create, open, and improve any new street, alley, or lane; provided, all damages sustained shall be ascertained in such manner as shall be provided by ordinance. (*Ref 17-558, 17-559, 76-704 through 76-724 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.

§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.

§8-307.01 STREETS; DRAGGING OF TREES:

It shall be unlawful for any person to drag a tree, tree branch, or other vegetation on the surface of any street or alley. (*Ord 807, 9/13/04*)

§8-308 STREETS; STREETS, ALLEYS, WALKS, MALLS, AND OTHER IMPROVEMENTS:

The governing body may grade, partially or to an established grade, change grade, curb, recurb, gutter, regutter, pave, gravel, regravell, macadamize, remacadamize, widen, or narrow streets or roadways, resurface or re-lay existing pavement, or otherwise improve any streets, alleys, public grounds, public ways, entirely or partially, and streets which divide the municipal corporate area and the area adjoining the municipality; construct or reconstruct pedestrian walks, plazas, malls, landscaping, outdoor sprinkler systems, fountains, decorative water ponds, lighting systems, and permanent facilities; and construct sidewalks and improve the sidewalk space. These projects may be funded at public cost or by the levy of special assessments on the property especially benefitted in proportion to such benefits, except as provided in Neb RS 19-2428 through 19-2431. The governing body may by ordinance create improvement districts, to be consecutively numbered, which may include two or more connecting or intersecting streets, alleys, or public ways, and may include two or more types of the improvements authorized under this section in a single district in one proceeding. All of the improvements which are to be funded by a levy of special assessment on the property especially benefitted shall be ordered as provided in Neb RS 17-510 to 17-512, except as otherwise provided in Neb RS 17-509. (*Ref 17-509 RS Neb*) (*Amended by Ord 951, 3/12/18*)

§8-309 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 benefitted 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. (*Ref17-510 RS Neb*) (*Ord 433, 10/22/79*) (*Amended by Ord 482, 11/28/83*)

§8-310 STREETS; IMPROVEMENT DISTRICTS; OBJECTIONS:

Whenever the Governing Body deems it necessary to make any improvements allowed by statute which are to be funded by a levy of special assessment on the property especially benefited, the Governing Body shall by ordinance create a paving, graveling, or other improvement district and, after the passage, approval, and publication or posting of such ordinance, shall publish notice of the creation of any such district for six (6) days in a legal newspaper of the Municipality, if a daily newspaper, or for two (2) consecutive weeks if it is a weekly newspaper. If there is no legal newspaper in or of general circulation in the municipality, then the municipality shall publish such notice or advertisement in a legal newspaper in or of general circulation in the county in which the municipality is located. If there is no legal newspaper in or of general circulation in such county, then the municipality shall publish such notice or advertisement by posting a written or printed copy thereof in each of three public places in the municipality for the same period of time the municipality is required to publish the notice or advertisement in a legal newspaper. If the owners of the record title representing more than fifty percent (50%) of the front footage of the property directly abutting on the street or alley to be improved file with the Municipal Clerk within twenty (20) days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If objections are not filed against the district in the time and manner prescribed in this section, the Governing Body shall immediately cause such work to be done or such improvement to be made, shall contract for the work or improvement, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street or alley especially benefited in such district in proportion to such benefits to pay the cost of such improvement. *(Ref 17-511 RS Neb) (Ord 433, 10/22/79) (Amended by Ords 677, 2/26/96 & 952, 3/12/2018)*

§8-311 STREETS; IMPROVEMENT OF MAIN THOROUGHFARES:

The Mayor and City Council shall have the power by a three-fourths (3/4) vote of the Governing Body, to create by ordinance a paving, graveling or other improvement district and to order such work done upon any federal or state highway in the Municipality or upon a street or route, designated by the Mayor and City Council as a main thoroughfare that connects, on both ends, to either a federal or state highway or a county road. The Governing Body shall contract therefor and shall have the power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby. *(Ref 17-512 RS Neb) (Ord 454, 10/26/81)*

§8-312 STREETS; DEFERRAL FROM SPECIAL ASSESSMENTS:

Whenever the Governing Body of a Municipality creates an improvement district as specified in section 8-109 which includes land adjacent to the Municipality which is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments. For purposes of this section, the terms agricultural use and agricultural use zone shall have the meaning specified in section 77-1343 Reissue Revised Statutes of Nebraska 1943.

Any owner of record title eligible for the deferral granted by this section shall, to secure such assessment, make application to the Governing Body of the Municipality within ninety (90) days after creation of an improvement district as specified in section 8-108. Any owner of record title who makes application for the deferral provided by this section shall notify the County Register of Deeds of such application in writing prior to approval by the Governing Body. The Governing Body shall approve the application of any owner of record title upon determination that the property (a) is within an agricultural use zone and is used exclusively for agricultural use, and (b) the owner has met the requirements of this section.

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

1. Notification by the owner of record title to the Governing Body to remove such deferral;
2. Sale or transfer to a new owner who does not make a new application within sixty (60) days of the sale or transfer, except as provided in subdivision 3 of this section.
3. Transfer by reason of death of a former owner to a new owner who does not make application within one hundred twenty-five (125) days of the transfer;
4. The land is no longer being used as agricultural land; or
5. Change of zoning to other than an agricultural zone.

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

1. The total amount of special assessments which would have been assessed against such property, to the extent of special benefits, had such deferral not been granted; and
2. Interest upon the special assessments not paid each year at the rate of six (6%) percent from the dates at which such assessments would have been payable if no deferral had been granted.

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 - 19-2431 RS Neb*) (*Ord 536, 10/26/87*)

§8-313 STREETS; VACATING PUBLIC WAYS; DEFINITIONS AND ASCERTAINING DAMAGES:

A. Special damages shall mean only those losses or damages or injuries which a property owner suffers that are peculiar or special or unique to his/her property, and which result from the Governing Body vacating such street, avenue, alley, lane or similar public ways. Special damages shall not mean those losses or damages or injuries that a property owner suffers that are in common with the rest of the City or public at large, even though those losses or damages or injuries suffered by the property owner are greater in degree than the rest of the City or public at large.

B. The Mayor shall appoint three (3) or five (5) or seven (7) disinterested residents of the Municipality to a Special Commission to ascertain the amount of special damages that the abutting property owners are entitled to receive and which resulted from the Governing Body vacating such street, avenue, alley, lane or similar public way. The appointees of the Special Commission shall be approved by the Council. Only special damages, as herein defined, shall be awarded to the abutting property owners.

C. In determining the amount of compensation to award the abutting property owners as special damages, the aforementioned Commission shall use the following rule:

The abutting property owner is entitled to recover as compensation the difference between the value of such property immediately before and immediately after the vacating of such street, avenue, alley, lane or similar public way. However, if no difference in value exists the abutting property owner is entitled to no compensation. (*Ref 17-558, 17-559 RS Neb*) (*Ord 524, 10/12/87*)

§8-314 STREETS; VACATING PUBLIC WAYS; PROCEDURE:

Whenever the Governing Body decides that it would be in the best interests of the Municipality to vacate a street, avenue, alley, lane or similar public way, the Governing Body shall comply with the following procedure:

A. Notice. Notice shall be given to all abutting property owners either by First (1st) Class mail to their last known address or if there is no known address then by publishing the notice in a newspaper that is of general circulation in the Municipality. If there is no legal newspaper in or of general circulation in the municipality, then the municipality shall publish such notice or advertisement in a legal newspaper in or of general circulation in the county in which the municipality is located. If there is no legal newspaper in or of general circulation in such county, then the municipality shall publish such notice or advertisement by posting a written or printed copy thereof in each of three public places in the municipality for the same period of time the municipality is required to publish the notice or advertisement in a legal newspaper. The content of the notice will advise the abutting property owners that the Governing Body will consider vacating such street, avenue, alley, lane or similar public way at their next regular meeting or if a special meeting is scheduled for such discussion, then the date, time and place of such meeting.

B. Consent/Waiver. The Governing Body may have all the abutting property owners sign a form stating that they consent to the action being taken by the Governing Body and waive their right of access. The signing of such form has no effect on claims for special damages, as defined in section 8-313 by the abutting property owners, but does create the presumption that the Governing Body's action was proper. However, if all the abutting property owners do not sign the consent/waiver form, the Governing Body may still proceed with vacating such street, avenue, alley, lane or similar public way under the authority granted them by sections 17-558 and 17-559 RRS Neb.

C. Ordinance. The Governing Body shall pass an ordinance that shall state essentially the following:

1. A declaration that the action is expedient for the public good or in the best interests of the Municipality.
2. A statement that the Municipality shall have an easement for maintaining all utilities.
3. A method or procedure for ascertaining special damages to abutting property owners.

D. Filing. The Clerk shall file a copy of the ordinance with the County Register of Deeds to ensure that abutting property owners can gain title to their share of the vacated street, avenue, alley, lane or similar public way and so that such land will be drawn to the attention of the County Assessor. (*Ref 17-558, 17-559 RS Neb*) (*Ord 525, 10/12/87*) (*Amending Ord 952, 3/12/2018*)

§ 8-315 STREETS; TREES:

(1) No person, or persons, shall plant or allow to grow any tree within the City street or alley right-of-way without first making a written or verbal application to and receiving permission from the City Council. No fee shall be charged for such application. Any tree planted or allowed to grow within the city street or alley right-of-way after the adoption date of this section shall be deemed to be unlawful 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 shall order, with proper notice, the tree be removed at the expense of the owner of the property adjacent to the right-of-way upon which the tree has been unlawfully planted or permitted to grow. If the property owner fails or neglects to remove, or cause to be removed, the tree, the City Council shall order the same removed and assess the expense of such removal against the property adjacent to the right-of-way wherein the tree is planted or growing. In the event the property owner is a nonresident, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

(2) Any existing tree now growing within the City street or alley right-of-way shall after the adoption date of this section be deemed to be unlawful and may at the discretion of the City Council be deemed to be a nuisance and removed or trimmed at the expense of the City. (*Ord 834, 12/11/06*)

§8-316 CITY RIGHT-OF-WAY; OVERHANGING BRANCHES:

(1) The owner of any lot, piece, or parcel of ground abutting or adjacent to any City street or alley over which there extends the branches of trees shall at all times keep the branches or limbs thereof trimmed to the height of at least sixteen (16) feet above the surface of said right-of-way. Whenever the limbs or branches of any tree or trees extend over any City right-of-way contrary to the provisions herein so as to interfere with the convenience of the public using said right-of-way, the City Council at any regular or special meeting may pass a resolution ordering the owner to cut or remove said obstructions within five (5) days after having received a copy thereof from the Street Commissioner stating that the Municipality will remove said branches and charge the costs thereof to the owner as a special assessment for improvements as herein provided, if said resolution is not complied with. In the event the property owner is a nonresident of the County in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

(2) Any existing tree failing to comply with this section after the adoption date hereof may at the discretion of the City Council be trimmed at the expense of the City. (*Ord 834, 12/11/06*)

§8-317 PROHIBITION OF MAILBOXES IN THE ZONED “TOWN CENTRAL” AREA:

No Business or Private Individual shall be permitted to erect mailboxes in the Zoned “Town Central” area downtown at any time. (*Ord 955, 2/26/2018*)

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. (*Ref 17-567 RS Neb*)

Article 5. Trees

§ 8-501 TREES; TITLE:

This Article shall be known and may be cited as the Municipal Tree Ordinance of the City of Pawnee City, County of Pawnee, State of Nebraska. (*Ord 847, 9/10/07*)

§ 8-502 TREES; DEFINITIONS:

For purposes of this Article the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LARGE TREES. Trees which by their nature normally attain heights greater than forty-five (45) feet at maturity.

MEDIUM TREES. Trees which by their nature normally attain heights of from twenty-five (25) to forty-five (45) feet at maturity.

PARK TREES. Trees, shrubs, bushes, and all other woody vegetation in public parks and all areas owned by the City, or to which the public has free access.

SMALL TREES. Trees which by their nature do not normally attain heights greater than twenty-five (25) feet at maturity.

STREET TREES. 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. (*Ord 847, 9/10/07*)

§ 8-503 TREES; TREE SPECIES TO BE PLANTED:

(1) The following species of trees, listed by common name, 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 Municipal Tree Board.

(a) Small Trees.

Redbud - Eastern
Lilac - Japanese Tree
Hawthorns
Golden Rain Tree
Cork Tree - Amur
Maple - Amur
Pear - Bradford
Plum - Purple Leaf
Crabapple - Flowering

(b) Medium Trees.

Sweet Gum
Ginkgo
Linden - Little Leaf
Linden - Redmond
Mountain Ash – European

- (c) Large Trees.
 - Ash - White
 - Ash - Green
 - Coffee Tree - Kentucky
 - Hackberry
 - Maple - Sugar
 - Maple - Norway
 - Oak - Bur
 - Oak - Northern Red
 - Honey Locust
 - Sycamore - American
 - Pagoda Tree - Japanese
 - Linden - American

(2) Any request to plant street trees other than those listed above shall be by written request to the Municipal Tree Board. Such request shall be accompanied by the written recommendation of the Pawnee County Agent's Office. The written permission of the Municipal Tree Board as to variance shall not be effective until a majority of the City Council shall have approved such variance and the City Clerk shall have endorsed upon the written permission of the Municipal Tree Board the approval of said variance by the City Council. The Municipal Tree Board shall review and approve all tree planting plans for park trees as defined in section 5-502. (*Ord 847, 9/10/07*)

§ 8-504 TREES; SPACING:

The spacing of street trees and park trees will be in accordance with the three (3) species size classes listed in sections 8-502 and 8-503, and no trees may be planted closer together than the following, except in special plantings approved by the Municipal Tree Board.

- (1) Small Trees: 30 feet;
- (2) Medium Trees: 40 feet; and
- (3) Large Trees: 50 feet.

(*Ord 847, 9/10/07*)

§ 8-505 TREES; DISTANCE FROM CURBS AND SIDEWALKS:

(1) The distance trees may be planted from curbs or curb lines and sidewalks will be in accordance with the tree species size classes listed in sections 8-502 and 8-503, and no trees may be planted closer to any curb or sidewalk than the following:

- (a) Small Trees: 2 feet;
- (b) Medium Trees: 3 feet; and
- (c) Large Trees: 4 feet.

Planting of trees between the street and sidewalk on F Street and on 7th Street, within the City, shall be forbidden except by the express written permission of the State of Nebraska, Department of Roads.

(2) Street trees shall be centered between the curb and sidewalk or aligned with existing street trees; except in special situations approved by the Municipal Tree Board. In areas with:

(a) No curbs or sidewalks, or

(b) Less than four (4) feet between the curb and sidewalk, no street trees shall be planted without written permission from the Municipal Tree Board. (*Ord 847, 9/10/07*)

§ 8-506 TREES; DISTANCE FROM STREET INTERSECTIONS, DRIVEWAYS AND ALLEYS:

No street tree or park tree shall be planted within thirty-five (35) feet of any street intersection, measured from the point of nearest intersecting curbs or curblines or within fifteen (15) feet of any driveway or alley. (*Ord 847, 9/10/07*)

§ 8-507 TREES; DISTANCE FROM UTILITY LINES:

No street trees or park trees other than those species listed as small trees in section 8-503, or species specifically approved by the Municipal Tree Board, may be planted under or within ten (10) lateral feet of any overhead utility wire, or over or within five (5) lateral feet of any underground water line, sewer fine, transmission line or other utility line, wire or main. No street tree shall be planted within ten (10) feet of any fireplug. (*Ord 847, 9/10/07*)

§ 8-508 TREES; CARE AND REMOVAL:

(1) The Municipality shall have the right to plant, prune, maintain and remove street trees or park trees within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

(2) The Municipal Tree Board may remove or cause or order to be removed any street tree or park tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest.

(3) No person or property owner shall remove any live street tree or park tree for any reason without written permission of the Municipal Tree Board. Utility companies may remove trees or parts thereof which are injurious to their utility lines at their expense upon obtaining permission for such removal or trimming from the Municipal Tree Board. This section does not prohibit the planting of street trees by abutting property owners providing that the selection and location of said trees is in accordance with sections 8-503 and 8-507. (*Ord 847, 9/10/07*)

§ 8-509 TREES; TREE TOPPING:

It shall be unlawful as a normal practice for any person, firm or Municipal 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 three (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 exempted from this Article at the determination of the Municipal Tree Board. *(Ord 847, 9/10/07)*

§ 8-510 TREES; OBSTRUCTION; REMOVAL:

(1) All trees and shrubs within the Municipality shall be pruned or removed when such trees or shrubs obstruct the light from any street lamp, 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 portion thereof shall be at least sixteen (16) feet over all streets and eight (8) feet over sidewalks.

(2) The Municipal Tree Board shall have the power and authority to prune or remove, or order to be pruned or removed, any such trees or shrubs on private property. The Municipal Tree Board shall notify in writing the owners of such trees or shrubs. Pruning or removal shall be done by said owners, at their own expense, within sixty (60) days after the date of notification. In the event of failure of owners to comply with said notice, the Municipality shall have the authority to prune or remove said trees or shrubs and assess the cost of said pruning or removal on the owner's property tax notice. *(Ord 847, 9/10/07)*

§ 8-511 TREES; DEAD OR DISEASED TREES; PRUNING, REMOVAL:

(1) All trees and shrubs within the Municipality shall be pruned or removed when such trees or shrubs constitute a hazard to life and property, or harbor insects or disease which constitutes a threat to other trees or shrubs within the City.

(2) The Municipal Tree Board shall have the power and authority to prune or remove, or order to prune or remove, any such trees or shrubs on private property. The Municipal Tree Board shall notify in writing the owners of such trees or shrubs. Pruning and removal shall be done by said owners at their own expense within sixty (60) days after the date of notification. In the event of failure of owners to comply with said notice, the Municipality shall have the authority to prune or remove said trees or shrubs and charge the cost of said pruning or removal on the owner's property tax notice. *(Ord 847, 9/10/07)*

§ 8-512 TREES; WORK ORDERED OR DONE BY THE CITY:

Written permission shall not be required for any tree, shrub or hedge planting, pruning, spraying, or removing ordered or done by the City; however, all such work shall be done in conformance with the requirements of sections 8-503 through 8-511. *(Ord 847, 9/10/07)*

§ 8-513 TREES; ABUSE OR MUTILATION:

Unless specifically authorized by the Municipal Tree Board, no person shall intentionally damage, cut, craze, transplant, or remove any street tree or park tree; attach any rope, wire, nails, advertising posters, or other contrivance to such trees; allow any gaseous, liquid, or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of such trees. The preceding restrictions do not apply to property planting, staking and guying practices. (*Ord 847, 9/10/07*)

§ 8-514 TREES; PROTECTION OF TREES:

All street trees or park trees near any excavation or construction of any building, structure or street work, shall be guarded with a substantial fence, frame or box not less than four (4) feet high and eight (8) feet square, and all construction materials, soil, or other debris shall be kept outside the barrier. No persons shall excavate any ditches, tunnels, trenches, or lay any drive within ten (10) feet of any street or park tree without first obtaining written permission from the Municipal Tree Board. No persons shall deposit, place, store or maintain upon any public property of the Municipality, any stone, brick, sand, soil, concrete or other material which may impede the free passage of water, air and fertilizer to the roots of any street tree or park tree, except by written permission of the Municipal Tree Board. (*Ord 847, 9/10/07*)

§ 8-515 TREES; STUMPS:

All stumps of street and park trees shall be removed so that the top of the stump shall not project more than six (6) inches above the surface of the ground. (*Ord 847, 9/10/07*)

§ 8-516 TREES; INTERFERENCE WITH CITY TREE BOARD:

It shall be unlawful for any person to prevent, delay or interfere with the Municipal 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 Article. (*Ord 847, 9/10/07*)

§ 8-517 TREES; REVIEW BY GOVERNING BODY:

The Governing Body of the City shall have the right to review the conduct, acts and decisions of the Municipal Tree Board. Any person may appeal any ruling or order of the Municipal Tree Board to the Governing Body who may hear the matter and make final decision. (*Ord 847, 9/10/07*)

Article 6. Penal Provision

§ 8-601 VIOLATION; PENALTY:

(1) Any person, or any person's agent or servant, who violates any of the provisions of this chapter, unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars (\$500.00) A new violation shall be deemed to have been committed every twenty-four (24) hours of failure to comply with the provisions of this chapter.

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

(b) 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 17-505, 18-1720, 18-1722 RS Neb) (Amended by Ord 756, 8/28/00)*