

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. (*Repealed by Ord. No. 437, 1/3/95*)

§8-104. MUNICIPAL PROPERTY; OBSTRUCTIONS. (*Repealed by Ord. No. 437, 1/3/95*)

§8-105. MUNICIPAL PROPERTY; SALE AND CONVEYANCE. (1) Except as provided in subsection (9) of this section, the power of the Municipality to convey any real and personal property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution, directing the sale at public auction or by sealed bid of such real and personal property and the manner and terms thereof, except that such real and personal property shall not be sold at public auction or by sealed bid when:

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

(b) Such property is being conveyed to another public agency; or

(c) Such property consists of streets and alleys.

(2) The Governing Body may establish a minimum price for such real and personal property at which bidding shall begin or shall serve as a minimum for a sealed bid.

(3) After the passage of the resolution directing the sale, notice of all proposed sales of real and personal property described in subsection (1) of this section and the terms thereof shall be published once each week for three (3) consecutive weeks in a legal newspaper published in or of general circulation in the Municipality.

(4) If within thirty (30) days after the third publication of the notice a remonstrance against such sale is signed by registered voters of the Municipality equal in number to thirty percent (30%) of the registered voters of the Municipality voting at the last regular

municipal election held therein and is filed with the Governing Body, such property shall not then, nor within one (1) year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

(5) Upon the receipt of the remonstrance, the Governing Body, with the aid and assistance of the Election Commissioner or County Clerk, shall determine the validity and sufficiency of signatures on the remonstrance. The Governing Body shall deliver the remonstrance to the Election Commissioner or County Clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the remonstrance, the Election Commissioner or County Clerk shall issue to the Governing Body a written receipt that the remonstrance is in the custody of the Election Commissioner or County Clerk. The Election Commissioner or County Clerk shall compare the signature of each person signing the remonstrance with the voter registration records to determine if each signer was a registered voter on or before the date on which the remonstrance was filed with the Governing Body. The Election Commissioner or County Clerk shall also compare the signers printed name, street and number or voting precinct, and municipal or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the Election Commissioner or County Clerk determines that the printed name, street and number or voting precinct, and municipal or post office address matches the registration records and that the registration was received on or before the date on which the remonstrance was filed with the Governing Body. The determinations of the Election Commissioner or County Clerk may be rebutted by any credible evidence which the Governing Body finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the remonstrance, the sufficiency of the remonstrance, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the remonstrance process. Upon completion of the comparison of names and addresses with the voter registration records, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the 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. The Election Commissioner or County Clerk shall certify to the Governing Body the number of valid signatures necessary to constitute a valid remonstrance. The Election Commissioner or County Clerk shall deliver the remonstrance

and the certifications to the Governing Body within forty (40) days after the receipt of the remonstrance from the Governing Body. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than twenty (20) signatures on one signature page shall be counted.

(6) The Governing Body shall, within thirty (30) days after the receipt of the remonstrance and certifications from the Election Commissioner or County Clerk, hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. The Governing Body shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

(7) Real estate now owned or hereafter owned by the Municipality may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, such property shall be conveyed strictly in accordance with the conditions of sections 18-1001 to 18-1006 RS Neb.

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

(9) Subsections (1) to (8) of this section shall not apply to the sale of real and personal property if the authorizing resolution directs the sale of an item or items of real and personal property, the total fair market value of which is less than five thousand dollars (\$5,000.00). 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 Municipality for a period of not less than 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. Confirmation of the sale by passage of an ordinance may be required. (*Ref. 17-503, 17-503.01 RS Neb.*) (*Amended by Ord. Nos. 432, 8/2/94; 472, 11/5/96; 533, 8/4/98*)

§8-106. MUNICIPAL PROPERTY; OVERHANGING BRANCHES. (*Repealed by Ord. No. 437, 1/3/95*)

§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 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. (*Ref. 17-953, 17-953.01 RS Neb.*) (*Amended by Ord. No. 473, 11/5/96*)

§8-108. MUNICIPAL PROPERTY; PERMITTED OBSTRUCTIONS. Persons engaged in the erection, construction, reconstruction, wrecking, or repairing of any building, or the construction, or repair, of a sidewalk along any street, may occupy the public street space with such building material and equipment as long as is necessary if such persons shall make application to and receive a permit in writing from the Utilities Superintendent to do so; provided, no permit for the occupancy of the sidewalk space, and more than one-third (1/3) of the roadway of the public space adjacent to the real estate on which said building is to be constructed, erected, reconstructed, wrecked, or repaired shall be granted; and provided further, a suitable passageway for pedestrians shall be maintained within the public space included in the permit which shall be protected and lighted in the manner required by the Utilities Superintendent issuing the permit. (*Ref. 17-567 RS Neb.*)

§8-109. MUNICIPAL PROPERTY; SPECIAL IMPROVEMENT DISTRICT; ASSESSMENT AND CREATION PROCEDURE. The Municipality's Governing Body may, by ordinance, create a special improvement district for the purpose of

replacing, reconstructing, or repairing an existing water line, sewer line, or any other such improvement.

Except as provided in sections 19-2428 to 19-2431 RS Neb., the Governing Body shall have power to assess, to the extent of such benefits, the costs of such improvements upon the properties found especially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the Governing Body shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law. (*Ref. 18-1751 RS Neb.*) (*Ord. No. 356, 10/6/87*)

§8-110. MUNICIPAL PROPERTY; IMPROVEMENT DISTRICT; LAND ADJACENT. Supplemental to any existing law on the subject, a Municipality may include land adjacent to such Municipality when creating an improvement as a sewer, water, water extension, or sanitary sewer extension district. The Governing Body shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby, except as provided in section 8-316. (*Ref. 19-2427 RS Neb.*) (*Ord. No. 355, 10/6/87*)

§8-111. MUNICIPAL PROPERTY; ACQUISITION OF REAL PROPERTY. When acquiring an interest in real property by purchase or eminent domain, the Municipality shall do so only after the Governing Body has authorized the acquisition by action taken in a public meeting after notice and public hearing. (*Ref. 18-1755 RS Neb.*) (*Ord. No. 447, 7/6/95*)

§8-112. MUNICIPAL PROPERTY; ACQUISITION OF PROPERTY; APPRAISAL. The Municipality shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value of one hundred thousand dollars (\$100,000.00) or more unless an appraisal of such property has been performed by a certified real estate appraiser. (*Ref. 13-403 RS Neb.*) (*Ord. No. 448, 7/6/95*)

§8-113. MUNICIPAL PROPERTY; PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS. (1) (a) Except as otherwise provided in this section and Neb. RS 81-3449 and 81-3453 ; the municipality shall not engage in the construction of any public works involving architecture or engineering unless the plans, specifications, and estimates have been prepared and the construction has been observed by an architect, a professional engineer, or a person under the direct supervision of an architect, professional engineer, or those under the direct supervision of an architect or professional engineer.

(b) This subsection (1) shall not apply to any public work in which the contemplated expenditure for the complete project does not exceed \$100,000 or the adjusted dollar amount set by the Board of Engineers and Architects.

(2) The provisions of subsection (1) of this section regulating the practice of architecture

do not apply to the following activities or the other activities specified in Neb. RS 81-3449:

- (a) A public service provider who employs a design professional performing professional services for itself;
- (b) The practice of any other certified trade or legally recognized profession;
- (c) Earthmoving and related work associated with soil and water conservation practices performed any land owned by the municipality that is not subject to a permit from the Department of Natural Resources; and
- (d) The work of employees and agents of the municipality performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land-use regulations and their customary duties in utility and public works construction, operation, and maintenance.

(3) The provisions of subsection (1) of this section regulating the practice of engineering do not apply to the following activities, the activities specified in subsection (2) of this section, or the other activities specified in Neb. RS 81-3453:

- (a) 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; and
 - (b) The construction of water wells as defined in Neb. RS 46-1212, the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells, unless such construction, installation, or decommissioning is required by the municipality to be designed or supervised by an engineer or unless legal requirements are imposed upon the municipality as a part of a public water supply.
- (4) For the purpose of this section, the municipality is considered a public service provider if it appoints a Municipal Engineer or employs a full-time person licensed under the Engineers and Architects Regulation Act who is in responsible charge of architectural or engineering work. *(Ref. 81-3423, 81-3445, 81-3449, and 81-3453 Neb. RS) (Amended by Ord. No. 569, 1/4/05; Ord. No. 611, 6/5/12)*

Article 2. Sidewalks

§8-201. SIDEWALKS; KEPT CLEAN. It shall be unlawful for the occupant of any lot or lots or the owner of any vacant lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substance to accumulate on the sidewalks or to permit any snow, sleet, ice, mud, or other substance to remain upon said sidewalk. All sidewalks within the business district shall be cleaned within five (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 eight-thirty (8:30) 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. SIDEWALKS; MAINTENANCE. (*Repealed by Ord. No. 570, 1/4/05*)

§8-203. SIDEWALKS; REPAIR. (A) The Governing Body may, by resolution, order the repair of a sidewalk on any lot or piece of ground within the Municipality 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 (1) issue of a legal newspaper of general circulation in the Municipality; and

(2) By either causing a written notice to be served upon the occupant in possession of the property involved or to be posted upon such premises ten (10) days prior to the commencement of such repair. (*Ref. 17-522 RS Neb.*)

(B) The notice shall:

(1) State that the Governing Body has ordered repair of the sidewalk;

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

(3) Notify the property owner that he or she may, within ten (10) days after the date of publication of the notice, notify the Municipality that he or she will repair the sidewalk within thirty (30) days after such date of publication;

(4) Notify the property owner that if he or she fails to so notify the Municipality within the ten (10) days or, having so notified the municipality, fails to repair the sidewalk within the thirty (30) days, the Municipality will cause the sidewalk to be repaired and the expense thereof to be assessed against the property.

(C) (1) Before the Municipality imposes any special assessments for sidewalk repair, a copy of the notice that is required to be published shall be mailed to the last-known address of all nonresident property owners as shown on the current tax rolls at the time such notice is first published. (*Ref. 13-310 RS Neb.*)

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

(3) For purposes of this division, nonresident property owner means any person or corporation whose residence and mailing address as shown on the current tax rolls is outside the boundaries of the county in which the property subject to assessment is located

and who is a record owner of the property. (*Ref. 13-314 RS Neb.*)

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

(E) Assessments made under this section shall be made and assessed in the manner provided in section 17-524 RS Neb. (*Amended by Ord. No. 570, 1/4/05*)

§8-204. 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 Utilities 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 Utilities Superintendent 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 Utilities Superintendent.

§8-205. SIDEWALKS; MUNICIPAL CONSTRUCTION. The Governing Body may, by resolution, order the construction of a sidewalk on any lot or piece of ground within the Municipality. Notice of the Governing Body's intention to construct said sidewalk shall be given by the Municipal Clerk by publication of notice one (1) time in a legal newspaper of general circulation in the Municipality.

A copy of said notice shall be personally served upon the occupant in possession of such property, or, when personal service is not possible, said notice shall be posted upon such premise ten (10) days prior to the commencement of construction. The notice required in this section shall be prepared by the Municipal Attorney in accordance with the provisions of this section. Such service shall include a form of return evidencing personal service or posting as herein required.

Said notice shall notify the owner of the premise of the passage of the resolution ordering him to construct or cause to be constructed a sidewalk within thirty (30) days after the date of publication and further that if he fails to construct the sidewalk or cause the same to be done within the time allowed, the Municipality will cause the sidewalk to be constructed and the cost thereof shall be levied and assessed as a special tax against the premise; provided, the notice shall contain the official estimate of the cost of said construction and no special assessment in excess of this estimate shall be assessed against the property. In the event the property owner is a non-resident of the county in which the

property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (Ref. 17-522, 17-523 RS Neb.)

§8-206. SIDEWALKS; CONSTRUCTION BIDS. Whenever the Municipality shall construct, widen, replace, or reconstruct any sidewalk, notice prepared by the Municipal 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 in at least one (1) issue of a legal newspaper of general circulation in the Municipality; provided, bids so invited shall be filed in the office of the Municipal Clerk within ten (10) days after the date of publication. Bids shall be opened at the next regular or special meeting of the Governing Body, and the Governing Body shall then award the work to the lowest responsible bidder. Upon approval of the work, the Governing Body may require the contractor to accept payment in certificates issued to him by the Municipal 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 lot, lots, or parcel 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. SIDEWALKS; CONSTRUCTION BY PETITION. If the owners of the record title representing more than sixty (60%) per cent of the front footage of the directly abutting property, subject to assessment for sidewalk improvements, petition the Governing Body to make the same, the Governing Body 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 Governing Body may order permanent sidewalks built in accordance with this Article upon the freeholder making, executing, and delivering to the Municipality an agreement to the effect that the petitioning freeholder 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 that the petitioner gives and grants to the Municipality 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 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.

§8-208. SIDEWALKS; DANGEROUS STAIRWAY. It shall be unlawful for any person to construct or maintain any stairway, open cellar way, open basement way, or open entrance thereto in or adjacent to any sidewalk, pavement, or street, and any such entrance is hereby declared to be a public nuisance; Provided, all existing stairways, open cellar ways, open basement ways, or open entrances thereto in said sidewalks, pavements, or streets may be permitted to remain from and after the passage, approval, and publication of this Code if said person owning or using said opening in the sidewalk, or street, shall satisfy the Utilities Superintendent that the same is properly protected by a balustrade, or coping of durable material, and shall furnish the Municipality with a bond in such amount as the Governing Body may set, for the benefit of any person who might suffer an injury or damage by reason of the use of said stairway, cellar way, or open basement way. (*Ref. 17-555 RS Neb.*)

Article 3. Streets

§8-301. STREETS; NUMBERS. All houses and lots in the City of Red Cloud shall be numbered consecutively in blocks of one hundred each north and south of First Avenue and east and west of Webster Street.

One hundred numbers shall be assigned to each block, two numbers to a lot, the even numbers to the south or east side of the several streets, and the odd numbers to the north and west side thereof.

The houses and lots in the blocks immediately north or south of Division Street shall begin from Division Street with No. 100 except that the first block north of Division Street shall start with No. 10.

In the same manner the houses and lots on the streets running east and west shall be numbered beginning with No. 100 from Webster Street.

The Utilities Superintendent shall post as many signs as the Mayor deems advisable at the street corners to designate the names of the streets.

Any lot or house owner may post the number of his house or lot in a conspicuous place thereof if numbered in accordance with the provisions of this Section. And it shall be unlawful for any person to number his house except in accordance with this Section. (*Ref. 17-567 RS Neb.*)

§8-302. STREETS; NAMES. The Governing Body may at any time, by resolution, rename any street or provide a name for any new street. (*Ref. 17-567 RS Neb.*)

§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 thru 76-724 RS Neb.*)

§8-304. STREETS; EXCAVATIONS, PERMIT, BOND. No person shall make any excavation in any street or alley, nor remove any paving or other material forming any street or improvement thereon in the City without a permit from the City Clerk, with the consent of the Utilities Superintendent, to be issued only upon a written application, which shall be filed in orderly manner and duly preserved. Such persons having received a permit shall maintain good and sufficient barricades, guards, lights, and signals as will protect the public from injury or loss and shall tamp and refill said excavation, and shall repair the damage to the surface of the pavement, if any, under the direction of the Utilities Superintendent or shall pay the cost thereof if same is done by the City. Such applicant may be required to deposit with the City Treasurer a sum sufficient to cover the cost of replacing any material removed, and in such event, it is hereby made the duty of the Utilities Superintendent to cause the said pavement or street material to be replaced, and after paying the expense thereof, the balance of the money, if any, remaining in his hands

shall be returned to the applicant. (*Ref. 17-567 RS Neb.*)

§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 Utilities Superintendent.

§8-306. 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. STREETS; EAVE AND GUTTER SPOUTS. It is hereby declared unlawful for any person to erect or maintain any dwelling house or business building within the limits of the Municipality where the said dwelling or building abuts on any sidewalk or street without providing proper guttering and eave spouts to receive the waste waters that collect on the said sidewalks and streets. All eave spouts erected on any dwelling house or business building shall be constructed to drain into the alleys, or shall be buried beneath the sidewalks and drain into the streets where it is found to be impossible to drain said eave spouts into the alley. (*Ref. 17-567 RS Neb.*)

§8-308. STREETS; HEAVY EQUIPMENT. It shall hereafter be unlawful for any person or person to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing on any unpaved street without first having protected such curb, gutter, bridge, culvert, sidewalks, crosswalk, or crossing with heavy plank sufficient in strength to warrant against the breaking or damaging of such curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing. Hereafter, it shall be unlawful to run, drive, move, operate, or convey over or across any paved street a vehicle, machine, or implement with sharp discs or sharp wheels that bear upon said pavement; with wheels having cutting edges; with wheels having lugs, any protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent, or otherwise injure or damage any pavement, gutter, or curb; Provided, where heavy vehicles, structures, and machines move along paved or unpaved streets the Municipal Police are hereby authorized and empowered to choose the route over which the moving of such vehicles, structures, or machines will be permitted and allowed. Nothing in this Section shall be construed to apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths (5/16) of an inch in diameter inclusive of the stud-casting with an average protrusion beyond the tread surface of not more than seven sixty-fourths (7/64) of an inch between November 1, and March 15; Provided, that school buses and emergency vehicles shall be permitted to use metal or metal-type studs all year; it shall be permissible to use farm machinery with tires having protuberances which will not injure the streets. It shall be permissible to use a rubber tired crane with a fixed load when such vehicle will be transported on a state highway or on any road within the corporate limits of the Municipality, the Municipality in which the crane is intended to be transported has

authorized a one-day (1) permit for the transportation of the crane and specified the route to be used and the hours during which the crane can be transported, such vehicle is escorted by another vehicle or vehicles assigned by the Municipality, and such vehicle's gross weight does not exceed the limits set out in 39-6,180(10) RS Neb. and it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide or skid. (*Ref. 39-6,131 RS Neb.*)

§8-309. STREETS; CONSTRUCTION NOTICE. The Utilities 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 (1) time in a legal newspaper at least twenty (20) days prior to the beginning of such construction by the party undertaking such construction and said notice shall state at what date connections must be made and excavation completed. All gas, water, sewer, and underground connections must be made prior to the paving or repaving of the street under construction. After expiration of such time, permits for excavation will not be issued, nor will excavation be allowed, until after the completion of the pavement in said street or alley, and the formal final acceptance thereof by the proper officials of the Municipality.

§8-310. STREETS; PIPE LINES 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 Municipality. Application for location of the above shall be made to the Utilities Superintendent in writing. Approval by that body 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 their poles, wires, gas mains, pipe lines, and other appurtenances at such places and in such manner as shall be designated by the Utilities Superintendent. Such poles, wires, gas mains, pipe lines, and other appurtenances, shall be removed or relocated by said companies at their own expense when requested to do so by the Utilities Superintendent. Any such relocation shall be ordered by resolution of the Governing Body and the Municipal Clerk shall notify any and all companies affected. Said companies shall, within twenty-four (24) hours after receiving notice, at their own expense, cause the poles, wires, gas mains, pipe lines, or other appurtenances to be removed. The Governing Body shall designate another location as closely as possible where said poles, wires, gas mains, pipe lines, or other appurtenances, may be reset or placed. All poles, wires, gas mains, pipe lines, or other 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 Municipality.

§8-311. STREETS; PETITION FOR IMPROVEMENTS. Whenever a petition signed by the owners of record title representing more than sixty (60%) per cent of the front footage of the property directly abutting upon the street, streets, alley, alleys, public way, or the public grounds proposed to be improved, shall be presented and filed with the Municipal Clerk, petitioning therefor, the Governing Body shall by ordinance create a paving, graveling, or other improvement district or districts, and shall cause such work to be done or such improvement to be made, and shall contract therefor, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley, or alleys, especially benefited thereby in such district in proportion to such benefits, to pay the cost of such improvement. The Governing Body shall have the discretion to deny the formation of the proposed district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the Governing Body should deny a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties. *(Ref. 17-510 RS Neb.)*

§8-312. STREETS; IMPROVEMENT DISTRICTS, OBJECTIONS. Whenever the Governing Body shall deem it necessary to make any improvements allowed by statute, the Governing Body shall by ordinance create a paving, graveling, or other improvement district or districts, and after the passage, approval, and publication or posting of such ordinance, shall publish notice of the creation of any such district or districts for six (6) days in a legal newspaper of the Municipality, if a daily newspaper, or for two consecutive weeks, if the same be a weekly newspaper. If the owners of the record title representing more than fifty (50%) per cent of the front footage of the property directly abutting on the street, streets, alley, or alleys to be improved, shall file with the Municipal Clerk within twenty (20) days after the first publication of said notice, written objections to the creation of such district or districts, said improvements shall not be made as provided in said ordinance; but said ordinance shall be repealed. If said objections are not filed against the district in the time and manner aforesaid, the Governing Body shall forthwith cause such work to be done or such improvement to be made, and shall contract therefor, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley or alleys especially benefited thereby in such district in proportion to such benefits, to pay the cost of such improvement. *(Ref. 17-511 RS Neb.)*

§8-313. STREETS; DRIVEWAY APPROACHES. The Utilities Superintendent may require the owner of property served by a driveway approach constructed or maintained upon the street right-of-way to repair or replace any such driveway approach which is cracked, broken, or otherwise deteriorated to the extent that it is causing or is likely to cause damage to or interfere with any street structure including pavement or sidewalks.

The Municipal Clerk shall give the property owner notice by registered letter or certified mail, directed to the last-known address of such owner or the agent of such

owner, directing the repair or replacement of such driveway approach. If within thirty (30) days of mailing such notice the property owner fails or neglects to cause such repairs or replacements to be made, the Utilities Superintendent may cause such work to be done and assess the cost upon the property served by such approach. (*Ref. 18-1748 RS Neb.*)

§8-314. 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 Village 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 Village or public at large.

B. The Chairperson 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 Board of Trustees. 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. No. 341, 10/7/86*)

§8-315. 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. 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 8-314 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. No. 342, 10/7/86*)

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 Utilities Superintendent therefor. Before any person shall obtain a permit, he shall inform the Utilities Superintendent of the place where such cutting is to be done, and it shall be the Utilities Superintendent's duty to inspect the place of entry into the paving, sidewalk, or curb, before the same is cut. When cutting into any paving, it shall be the duty of the party to cut the paving under such rules and regulations as may be prescribed by the Governing Body. When the applicant is ready to close the opening made, he shall inform the Utilities Superintendent, 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 Utilities Superintendent to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit. The Utilities Superintendent 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 Utilities Superintendent, 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 Utilities Superintendent. 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 Utilities Superintendent in a sum set by resolution of the Governing Body. (Ref. 17-567 RS Neb.)

Article 5. Trees

[Editor's Note: This Article was adopted in its entirety by Ordinance No. 437, passed January 3, 1995.]

§8-501. TREES; PURPOSE/INTENT. It is the purpose of the Article to promote and protect the public health, safety, and general welfare along public property ways and parks by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the City.

§8-502. TREES; DEFINITIONS.

A. STREET TREES. "Street trees" are defined as trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets and avenues within the City.

B. PARK TREES. "Park trees" are defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the Municipality, or to which the public has free access as a park.

C. COMMUNITY FOREST. "Community Forest" is herein defined as all street and park trees as a total resource.

D. SMALL TREES. "Small trees" are herein defined as trees which by their nature do not normally attain heights greater than twenty-five (25') feet at maturity.

E. MEDIUM TREES. "Medium trees" are herein defined as trees which by their nature normally attain heights of from twenty-five to forty-five feet (25' to 45') at maturity.

F. LARGE TREES. "Large trees" are herein defined as trees which by their nature attain heights greater than forty-five feet (45') at maturity.

§8-503. TREES; STREET SPECIES TO BE PLANTED. The City of Red Cloud, Webster County, Nebraska shall maintain an extensive list of recommended trees for planting in public areas. The purpose of this listing will be to maintain diversity in the total tree population. This list shall be available to residents of the City upon request to aid in the selection of trees for private and public properties. The list of recommended trees shall be updated periodically to reflect new developments or species that will affect the population of the community forest. The list of desirable trees for planting along streets will be classified according to size: small, medium, and large. A list of trees not suitable for planting in public areas will also be created and enforced by the Tree Board.

§8-504. TREES; DISTANCES AND CLEARANCES FOR PLANTING. (1) The spacing of Street Trees will be in accordance with the three size classes listed in the tree list and no trees may be planted closer together than the following: Small trees, thirty feet (30'); medium trees, forty feet (40'); and large trees, fifty feet (50'); except in special plantings designed or approved by a landscape architect.

(2) The distance trees may be planted from curbs or curblines and sidewalks will be in accordance with the three size classes listed in the tree list and no trees may be planted closer to any curb or sidewalk than the following: Small trees, two feet (2'); medium trees, three feet (3'); and large trees, four feet (4').

(3) No street tree shall be planted closer than thirty-five feet (35') of any street corner, measured from the point of nearest intersecting curbs or curblines. No street tree shall be planted closer than ten feet (10') of any fireplug.

(4) No street trees other than those species listed as small trees in the tree list may be planted under or within ten lateral feet (10') of any overhead utility wire, or over or within five lateral feet (5') of any underground water line, sewer line, transmission line or other utility.

§8-505. TREES; PUBLIC TREE CARE. (1) The City shall have the right to plant, prune, maintain, and remove trees, plants and shrubs within the right-of-way bounds of all streets, alleys, lanes, squares, and public grounds, as may be necessary to insure the public safety or to preserve or enhance the symmetry and beauty of such public grounds.

(2) The City may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to electric power lines or other public improvements, or is seriously affected with any fatal disease. No compensation is necessary or will be paid for tree removal or damage to street trees.

(3) This section does not prohibit the planting of street trees or the performance of normal care of street trees by adjacent property owners providing that the selection and location of said trees is in accordance with sections 8-503 and 8-504 of this ordinance.

§8-506. TREES; 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 three inches (3") in diameter within the tree's crown to such a degree 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 City Tree Board.

§8-507. TREES; CLEARANCE OVER STREETS AND WALKWAYS.

(1) Clearance over streets and walkways shall be the responsibility of the abutting property owner. A clearance of ten feet (10') must be maintained over walkways and a clearance of fifteen feet (15') must be maintained over streets and alleys. Property owners are responsible for trees on their own property as well as trees on the public way that abuts their property.

(2) Upon discovery of any tree in violation of the above clearance requirements, the City shall notify the property owner of such violation in writing. The resident property owner shall have ten (10) days from the date of receipt of such notice to remedy the violation. In the event that the owner is a non-resident, notice shall be made by publication

in a newspaper of general circulation, or by mail if the name and address is known, non-resident owner shall have thirty (30) days from the date of receipt of such notice to remedy the violation. If the resident property owner fails to remedy the violation within ten (10) days, or a non-resident property owner fails to remedy the violation in thirty (30) days, the City shall have the right to prune, trim, or otherwise cause the tree to meet the clearance requirements. The cost thereof shall be assessed upon the property owner. If the owner fails to reimburse the Municipality after being properly billed, the cost shall be collected in accordance with section 8-514. *(17-555, 18-1720, 28-1321 RS Neb.)*

§8-508. TREES; OBSTRUCTIONS; PRUNING, REMOVAL. (1) All trees and shrubs within the City, both public and private, shall be pruned or removed where 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.

(2) All shrubs and hedges defined as street trees in this Article shall be kept trimmed by the abutting property owner at least two feet (2') back from all curbs, sidewalks, driveways or alleys; and the same shall at all times be kept trimmed to a height not greater than thirty inches (30") above the top of the curb unless the City Tree Board, for other than corner lots, determines that a greater height would not constitute a hazard to pedestrian or vehicular traffic.

(3) The City 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 City 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 City shall have the authority to prune or remove said trees or shrubs and assess the cost of said pruning or removal to the property owner. If the owner fails to reimburse the Municipality after being properly billed, the cost shall be collected in accordance with section 8-514. *(17-555, 18-1720, 28-1321 RS Neb.)*

§8-509. TREES; DEAD, DISEASED, OR HAZARDOUS TREE REMOVAL ON PRIVATE PROPERTY. The City shall have the right to cause the removal of any dead, diseased, or hazardous trees on private property within the City, when such trees constitute a hazard to life and property, or harbor insects or disease that constitute a potential threat to other trees within the City. The City Tree Board will notify in writing the owner of such trees. Removal shall be done by said owners at their own expense within sixty (60) days after the date of service of notice. In the event that the owner is a non-resident, notice shall be made by publication in a newspaper of general circulation, or by mail if the name and address is known. In the event of failure of owners to comply with such provisions, the City shall have the authority to remove such trees. If the owner fails to reimburse the Municipality after being properly billed, the cost shall be collected in accordance with section 8-514. *(17-555, 18-1720, 28-1321 RS Neb.)*

§8-510. TREES; 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 shall not project above the surface of the ground.

§8-511. TREES; ABUSE OR MUTILATION. (1) Unless specifically authorized by the City Tree Board, no person shall intentionally damage, cut, carve, 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 that 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 proper planting, staking and guying practices.

(2) It shall be unlawful for any person to purposely or carelessly, and without lawful authority, cut down, carry away, injure, break down, or destroy any fruit, ornamental, shade or other tree or trees standing or growing on any land belonging to another person or persons or on any public; land in the corporate limits. Any public service company desiring to trim or cut down any tree, except on property owned and controlled by them, shall make an application to the Tree Board to do so, and the written permit of the Tree Board in accordance with their decision to allow such an action shall constitute the only lawful authority on the part of the company to do so.

§8-512. TREES; PROTECTION. (1) 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 feet (4') high and eight feet (8') square, and all construction materials, soil or other debris shall be kept outside the barrier.

(2) No person shall excavate any ditches, tunnels, trenches or lay any drive within ten feet (10') of any street or park tree without first obtaining written permission from the City Tree Board.

(3) No person shall deposit, place, store or maintain upon any public property of the Municipality, any stone, brick, sand, soil, concrete or other material that 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 City Tree Board.

§8-513. TREES; TREE SERVICE REGISTRATION. Persons or firms engaged in the business or occupation of pruning, treating or removing any street tree, park tree or other privately owned tree must be registered at the City office. Criteria for registration includes physical evidence of liability insurance, workmen's compensation and a valid EPA certified pesticide applicator license number. No registration shall be required by any public employee doing such work in the pursuit of their public service endeavors.

§8-514. TREES; COLLECTION OF COSTS. The person charged with the removal and burning may enter into an agreement with the Municipality that such work be

accomplished by the Municipality and the expense and interest shall be declared to be a lien upon such property from the time the same becomes due until paid. If the owner fails, neglects, or refuses to enter into such an agreement, or to remove the trees, a representative of the Tree Board may enter upon the property and proceed to direct the removal and burning of the trees and the cost thereof shall be chargeable to the property owner. If the owner fails to reimburse the Municipality after being properly billed, the costs shall be assessed against the property and certified by the Municipal Clerk to the County Treasurer to be collected in the manner prescribed by law. 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.

§8-515. TREES; PENALTY. Any person violating any provision of this ordinance shall be subject to a fine of not less than twenty-five dollars (\$25.00) and not more than two hundred fifty dollars (\$250.00), payable to the City of Red Cloud, Webster County, Nebraska.

Article 6. Penal Provision

§8-601. VIOLATION; PENALTY. *(Repealed by Ord. No. _____, 1-08-05. See §12-101)*