

## 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 person, shall plant, or allow to grow, any tree within the sidewalk space without 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 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 the property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. 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. (*Ref. 17-557.01, 18-1720 RS Neb.*)

**§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, building, structures, or otherwise, any of the streets, alleys, or sidewalks. The public ways and property shall be considered to be obstructed when the owner or occupant of the adjacent property shall permit or suffer to remain on any premise owned or controlled by him any hedge, shrubbery, bush, or similar growth within two feet (2') adjacent to the lot line whether there is a

sidewalk abutting or adjoining such premise or not. It shall be the duty of the owners and occupants to at all times keep trimmed and pruned all such similar growth. Whenever any such growth is allowed to grow within two feet (2') of the lot line contrary to the provisions of this Article, the Governing Body may pass a resolution ordering the owner or occupant to remove such obstructions within five (5) days after having been served with a copy of said resolution by the Municipality stating that the Municipality will do so and will charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided, or shall collect the same by civil suit brought in the name of the Municipality against the said owner or occupant. It shall be the duty of an owner or occupant engaged in construction of any building or improvement upon or near the public ways and property to have all excavations or exposures of any kind protected and guarded by suitable guards or barricades by day and by warning lights at night. In the event of failure, neglect, or refusal to comply with the provisions of this Article, it shall be the duty of the Municipality to stop all work upon said buildings and improvements until suitable guards are erected and kept in the manner aforesaid. Trees and shrubs growing upon the lot line partially on public ground and partially upon the abutting property, or wholly upon the abutting property, but so close to the lot line as to interfere with the making of any public improvement or so that the roots thereof interfere with any utility wire or pipe shall be deemed an obstruction and such trees, shrubs, and roots may be removed by the Municipality pursuant to the procedure prescribed above. In the event the property owner is a nonresident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (*Ref. 17-557.01 RS Neb.*) (*Ord. No. 113, 1/4/55*)

#### **§8-105 MUNICIPAL PROPERTY; SALE AND CONVEYANCE OF REAL PROPERTY.**

(A) Except as provided in division (G) of this section, the power of the Village to convey any real property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution, directing the sale at public auction or by sealed bid of such property and the manner and terms thereof, except that such property shall not be sold at public auction or by sealed bid when:

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

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

(3) Such property consists of streets and alleys.

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

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

(D)(1) If within thirty (30) days after the third publication of the notice a remonstrance against such sale is signed by registered voters of the village equal in number to thirty percent (30%) of the registered voters of the Village voting at the last regular Municipal election held therein and is filed with the Board

of Trustees, 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 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 Board of Trustees, with the aid and assistance of the Election Commissioner or County Clerk, shall determine the validity and sufficiency of signatures on the remonstrance. The Board of Trustees shall deliver the remonstrance to the Election Commissioner or County Clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested.

(3) Upon receipt of the remonstrance, the Election Commissioner or County Clerk shall issue to the Board of Trustees 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 Board of Trustees. The Election Commissioner or County Clerk shall also compare the signer's printed name, street and number or voting precinct, and village 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 Village 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 Board of Trustees. The determinations of the Election Commissioner or County Clerk may be rebutted by any credible evidence which the Board of Trustees 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.

(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 non-registration of the signer, the Election Commissioner or County Clerk shall set forth the reason for the invalidity of the signature. If the Election Commissioner or County Clerk determines that a signer has affixed his or her signature more than once to the remonstrance and that only one person is registered by that name, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature.

(5) The Election Commissioner or County Clerk shall certify to the Board of Trustees 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 Board of Trustees within forty (40) days after the receipt of the remonstrance from the Board of Trustees. 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 Board of Trustees 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 Board of Trustees 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 Village may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of sections 18-1001 to 18-1006 RS Neb.

(F) Following (1) passage of the resolution directing a sale, (2) publishing of the notice of the proposed sale, and (3) passing of the 30-day right-of-remonstrance period, the property shall then be sold. Such sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale. *(Ref. 17-503 RS Neb.)*

(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 (3) prominent places within the Village 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. Nos. 335, 9/28/94; 370, 4/9/96; 443, 11/10/98; 537, 4/13/04)*

#### **§8-105.01 MUNICIPAL PROPERTY; SALE AND CONVEYANCE OF PERSONAL PROPERTY.**

(A) The power of the Village to convey any personal property owned by it shall be exercised by resolution directing the sale and the manner and terms of the sale. Following passage of the resolution directing the sale of property, notice of the sale shall be posted in three (3) prominent places within the Village 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 \$5,000, notice of the sale shall also be published once in a legal newspaper published in or of general circulation in the Village 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.

(B) Personal property may be conveyed notwithstanding the procedure in subsection (A) of this section when:

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

(2) Such property is being conveyed to another public agency. *(Ref. 17-503.02 RS Neb.)(Ord. No. 537, 4/13/04)*

**§8-106 MUNICIPAL PROPERTY; WEEDS.** It is hereby the duty of the Street Commissioner or his duly authorized agent to view and inspect the sidewalk space within the corporate limits for growing weeds during the growing season, and if rank and noxious weeds are found growing thereon, he shall notify the owner or occupant thereof, to cut down such weeds as close to the ground as can be practicable done and keep the weeds cut thereon in like manner during the growing season for weeds; provided, any weeds growing in excess of eight inches (8") on any sidewalk space shall be considered a violation of this

section, In the event that the owner of any lot or parcel of land abutting said sidewalk space within the Municipality is a nonresident of the Municipality or cannot be found therein the notice may be given to any person having the care, custody, or control of such lot or parcel of land. In the event that there can be found no one within the Municipality to whom notice can be given, it shall be the duty of the Utilities Superintendent or his agent to post a copy of the notice on the premise and then to cut or cause the weeds thereon to be cut as therein provided and report the cost thereof in writing to the Governing Body. The cost shall then be audited and paid by the Municipality and the amount thereof shall be assessed against the lot or parcel of land as a special tax thereon and shall be collected as are other taxes of the Municipality or may be recovered by civil suit brought by the Municipality against the owner of the parcel of land. In the event the property owner is a nonresident of the county in which the property lies, the Municipality shall, before levying any special assessment after the third (3<sup>rd</sup>) publication of the notice, such property shall not then, nor within one (1) year thereafter, be sold; and provided further, that real estate now owned or hereafter owned by the Municipality may be conveyed without consideration to the State of Nebraska or the Nebraska Armory Board for state armory sites or, if acquired for state armory sites, such property shall be conveyed strictly in accordance with the conditions of sections 18-1001 to 18-1006 RS Neb.

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

This section shall not apply to the sale of personal property if the authorizing resolution directs the sale of an item or items of personal property the total fair market value of which is less than one thousand dollars (\$1,000.00). Following the passage of the resolution directing the sale of such property, notice of such sale shall be posted in a prominent place within the Municipality for a period of not less than seven (7) days prior to the sale of such property. Such notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required. (*Ref. 17-503 RS Neb.*)

**§8-107 MUNICIPAL PROPERTY; OVERHANGING BRANCHES.** The owner or occupant of any lot, piece, or parcel of ground abutting or adjacent to any street or 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 twelve feet (12') above the surface of said street or walk. Whenever the limbs or branches of any tree or trees extend over streets or sidewalks contrary to the provisions herein so as to interfere with the lighting of the street from street lights, or with the convenience of the public using said street or side walk, 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 Utilities Superintendent 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 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 the address listed on the current tax rolls at the time such required notice was first published. (Ref. 17-557.01 RS Neb.)(Amended by Ord. No. 305, 11/30/93)

**§8-108 MUNICIPAL PROPERTY; WEED AND TREE REMOVAL; COST.** In the event that the Municipality shall cut or remove any weeds or trees pursuant to section 8-106 or 8-107 of this Code, the cost assessed shall be twenty-five dollars (\$25.00) per hour, and the minimum cost assessed shall be twenty-five dollars (\$25.00).

**§8-109 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, the 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 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 fair market value as determine 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. 371, 4/9/96)

**§8-110 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. No. 240, 1/12/88)*

**§8-111 MUNICIPAL PROPERTY; IMPROVEMENT DISTRICT; LAND ADJACENT.** Supplemental to any existing law on the subject, the 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 8-313. *(Ref. 19-2427 RS Neb.)(Ord. No. 242, 1/12/88)*

**§8-112 MUNICIPAL PROPERTY; ACQUISITION OF REAL PROPERTY; ACCESS FOR RECREATIONAL USE.**

(A) The Village shall acquire an interest in real property by purchase or eminent domain only after the Board of Trustees has authorized the acquisition by action taken in a public meeting after notice and public hearing.

(B) The Village shall provide to the public a right of access for recreational use to real property acquired for public recreational purposes. Such access shall be at designated access points and shall be equal to the right of access for recreational use held by adjacent landowners. The right of access granted to the public for recreational use shall meet or exceed such right held by a private landowner adjacent to the real property. *(Ref. 18-1755 RS Neb.)(Ord. No. 345, 3/14/95)*

**§8-113 MUNICIPAL PROPERTY; ACQUISITION OF PROPERTY; APPRAISAL.** Notwithstanding any other provision of law, 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 property appraiser. *(Ref. 13-403 RS Neb.)(Ord. No. 346, 3/14/95)*

**§8-114 MUNICIPAL PROPERTY; PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS.**

(A)(1) Except as otherwise provided in this section and sections 81-3449 and 81-3453 RS Neb., 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.

(2) This division (A) shall not apply to any public work in which the contemplated expenditure for the complete project does not exceed one hundred thousand dollars (\$100,000.00) or the adjusted dollar amount set by the Board of Engineers and Architects. *(Ref. 81-3445 RS Neb.)*

(B) The provisions of division (A) of this section regulating the practice of architecture do not apply to the following activities or other activities specified in section 81-3449 RS Neb.:

(1) Any alternation, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the buildings;

(2) A public service provider who employs a design professional performing professional services for itself;

(3) The practice of any other certified trade or legally recognized profession;

(4) 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

(5) 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. *(Ref. 81-3449 RS Neb.)*

(C) The provisions of division (A) of this section regulating the practice of engineering do not apply to the following activities, the activities specified in division (B) of this section, or the other activities specified in section 81-3453 RS Neb.:

(1) 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

(2) The construction of water wells as defined in section 46-1212 RS Neb., 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. *(Ref. 81-3453 RS Neb.)*

(D) For the purpose of this section, the Municipality is considered a public service provider if it employs or appoints an architect or a professional engineer to be in responsible charge of the Municipality's architectural or engineering work. *(Ref. 81-3423 RS Neb.)(Ord. No. 444, 11/10/98)(Amended by Ord. Nos. 467, 7/11/00; 477, 4/10/01; 554, 1/11/05; 604, 1/10/12; 654, 12/8/15)*