

## Chapter 8

### PUBLIC WAYS AND PROPERTY

#### Article 3. Streets

**§8-301 STREETS; NAMES AND NUMBERS.** The Governing Body may at any time, by resolution, 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 Utilities Superintendent, upon the erection of any new building or buildings to assign the proper numbers to said building or buildings and give notice to the owner or owners and occupant or occupants of the same.

**§8-302 STREETS; CROSSINGS.** The Governing Body may order and cause to be constructed, under the supervisions of the Utilities Superintendent, 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 Superintendent 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; 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 Utilities Superintendent authorizing such excavations.

**§8-304 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.

**§8-305 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.

**§8-306 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 of said street or alley, and the formal final acceptance thereof by the proper officials of the Municipality.

**§8-307 STREETS; PIPELINES AND WIRES.** Poles, wires, gas mains, pipelines, 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

Governing Body 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, pipelines, and wires shall at all times erect and locate their poles, wires, gas mains, pipelines, and other appurtenances at such places and in such manner as shall be designated by the Governing Body. Such poles, wires, gas mains, pipelines, and other appurtenances, shall be removed or relocated by said companies at their own expense when requested to do so by the Governing Body. 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, pipelines, or other appurtenances to be removed. The Governing Body shall designate another location as closely as possible where said poles, wires, gas mains, pipelines, or other appurtenances, may be reset or placed. All poles, wires, gas mains, pipelines, or other appurtenances, shall be reset, placed, or erected in such a manner that they will not interfere with water system; sewerage system; poles, wires, and mains of any public utility; adjacent buildings; or with travel on public ways and property. Whenever possible, all pole lines, wires, gas mains, pipelines or appurtenances shall be confined to the alleys of the Municipality.

**§8-308 STREETS; CONSTRUCTION ASSESSMENT.** To defray the costs and expenses of street improvements, as may be authorized by law, the Governing Body shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, abutting upon, or especially benefiting from, the street, avenue, alley, or sidewalk in whole or in part opened, widened, curbed, curbed and guttered, graded, paved, repaired, graveled, macadamized, parked, extended, constructed, or otherwise improved or repaired. The Governing Body sitting as the Board of Equalization shall review all such improvements in accordance with the procedure provided by law. All special assessments shall be made by the Governing Body at a regular or special meeting by resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements and the amount charged against the same. The vote shall be recorded in the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in some legal newspaper published, or of general circulation, in the Municipality at least four (4) weeks before the same shall be held. In lieu of such aforementioned notice, personal service may be had upon the persons owning or occupying the property to be assessed. Such assessments shall be known as “special assessments for improvements” and with the cost of notice shall be levied and collected as a special tax in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other Municipal taxes and shall be certified to the County Clerk by the Municipal Clerk forthwith after the date of levy, for collection by the Treasurer of said County unless otherwise specified. After it shall become delinquent said assessment shall draw interest at the legal interest rate per annum. In the event the property owner is a nonresident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (*Ref. 17-511, 17-524 RS Neb.*)

**§8-309 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 no legal newspaper is published in the Municipality, the publication shall be in a legal newspaper of general circulation in the Municipality. 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.)(Amended by Ord. No. 372, 4/9/96)*

**§8-310 STREETS; IMPROVEMENT OF STREETS ON CORPORATE LIMITS.** The Chairman and Board of Trustees shall have the power to improve any street or part thereof which divides the Municipality corporate area and the area adjoining the Municipality. When creating an improvement district including land adjacent to the Municipality, the Board of Trustees shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby. *(Ref. 17-509 RS Neb.)*

**§8-311 STREETS; IMPROVEMENT OF MAIN THOROUGHFARES.** The Chairman and Board of Trustees 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 Chairman and Board of Trustees 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.)*

**§8-312 STREETS; PETITION FOR IMPROVEMENTS.** Whenever a petition signed by the owners of record title representing more than sixty percent (60%) of the front footage of the property directly abutting upon the street, streets, alley, alleys, public way, or the public grounds proposed to be improved, shall be presented and filed with the 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.)*

**§8-313 STREETS; DEFERRAL FROM SPECIAL ASSESSMENTS.**

(A) Whenever the Governing Body of a Municipality creates an improvement district as specified in section 8-110 which includes land adjacent to the Municipality which is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments. For purposes of this section, AGRICULTURAL USE means the use of land as described in 77-1359 RS Neb., so that incidental use of the land for nonagricultural or nonhorticultural purposes shall not disqualify the land and AGRICULTURAL USE ZONE means designation

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

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

- (1) Is within an agricultural use zone and is used exclusively for agricultural use, and
- (2) The owner has met the requirements of this section.

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

- (1) Notification by the owner of record title to the 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 subsection 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.

(D) Whenever property which has received a deferral pursuant to this section becomes disqualified for such deferral, the owner of record title of such property shall pay to the 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 special assessments not paid each year at the rate of six percent (6%) from the dates at which such assessments would have been payable if no deferral had been granted.

(E) In cases where the deferral provided by this section is terminated as a result of a sale or transfer described in subdivision (B) or (C) of this section the lien for assessments and interest shall attach as of the day preceding such sale or transfer. *(Ref. 19-2428 through 19-2431 RS Neb.)(Amended by Ord. No. 245, 1/12/88)*

**§8-314 STREETS; DRIVEWAY APPROACHES.** The Street Commissioner may require the owner of property served by a driveway approach constructed or maintained upon the street right-of-way to repair or replace any such driveway approach which is cracked, broken, or otherwise deteriorated to the extent that it is causing or is likely to cause damage to or interfere with any street structure including pavement or sidewalks.

The Municipal Clerk shall give the property owner notice by registered letter or certified mail, directed to the last-known address of such owner or the agent of such owner, directing the repair or replacement of such driveway approach. If within thirty (30) days of mailing such notice the property owner fails or

neglects to cause such repairs or replacements to be made, the Street Commissioner may cause such work to be done and assess the cost upon the property served by such approach. (Ref. 18-1748 RS Neb.)

**§8-315 STREETS; VACATING PUBLIC WAYS.**

(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 or her property and which result from the Board of Trustees vacating a street, avenue, alley, lane, or similar public way. 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) Whenever the Board of Trustees decides that it would be in the best interest of the Village to vacate a street, avenue, alley, lane, or similar public way, the Board of Trustees shall comply with the following procedure:

(1) *Notice.* Notice shall be given to all abutting property owners either by first 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 Village. The content of the notice shall advise the abutting property owners that the Board of Trustees will consider vacating such street, avenue, alley, lane, or similar public way at its next regular meeting or, if a special meeting is scheduled for such discussion, then that date, time, and place of such meeting.

(2) *Consent; waiver.* The Board of Trustees may have all the abutting property owners sign a form stating that they consent to the action being taken by the Board of Trustees and waive their right of access. The signing of such form shall have no effect on claims for special damages by the abutting property owners but shall create the presumption that the Board of Trustees' action was proper. If the abutting property owners do not sign the consent/waiver form, the Board of Trustees may still proceed with vacating the street, avenue, alley, lane, or similar public way under the authority granted by sections 17-558 and 17-559 RS Neb.

(3) *Ordinance.* The Board of Trustees shall pass an ordinance that includes essentially the following provisions:

(a) A declaration that the action is expedient for the public good or in the best interest of the Village;

(b) A statement that the Village will have an easement for maintaining all utilities;

(c) A method or procedure for ascertaining special damages to abutting property owners.

(C) The Chairperson shall appoint three (3) or five (5) or seven (7) disinterested residents of the Village 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 Board of Trustees vacating the 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 shall be awarded to the abutting property owners.

(D) In determining the amount of compensation to award the abutting property owners as special damages, the commission shall use the following rule:

An abutting property owner is entitled to recover as compensation the different between the value of the property immediately before and immediately after the vacating of such street,

avenue, alley, lane, or similar public way. If no difference in value exists, the abutting property owner is entitled to no compensation. *(Amended by Ord. No. 502, 5/13/02)*

**§8-316 STREETS; VACATING PUBLIC WAYS; PROCEDURE.** *(Repealed by Ord. No. 502, 5/13/02)*

**§8-317 STREETS AND ALLEYS; OPENING, WIDENING, IMPROVING, OR VACATING.**

(A)(1) The Municipality shall have power to open, widen, or otherwise improve or vacate any street, avenue, alley, or lane within the limits of the Municipality and also to create, open, and improve any new street, avenue, alley, or lane.

(2) All damages sustained by the citizens of the Municipality, or by the owners of the property therein, shall be ascertained in such manner as shall be provided by ordinance. Whenever any street or alley is vacated, the same shall revert to the owners of the abutting real estate, one-half on each side thereof and become a part of such property unless the city or village reserves title in the ordinance vacating such street or alley. If title is retained by the city or village, such property may be sold, conveyed, exchange, or leased upon such terms and conditions as shall be deemed in the best interests of the city or village.

(3) When a portion of a street, avenue, alley, or lane is vacated only on one side of the center thereof, the title to such land shall vest in the owner of the abutting property and become a part of such property, unless the village reserves title in the ordinance vacating such street or alley. If the title is retained by the village, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interest of the village.

(4) When the Municipality vacates all or any portion of a street, avenue, alley, or lane, the Municipality shall, within thirty (30) days after the effective date of the vacation, file a certified copy of the vacating ordinance with the Register of Deeds for the county in which the vacated property is located to be indexed against all affected lots.

(5) The title to property vacated pursuant to this section shall be subject to the following:

(a) There is reserved to the village the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

(b) There is reserved to the village, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times. *(Ref. 17-588 RS Neb.)*

(B) The Municipality shall have power to create, open, widen, or extend any street, avenue, alley, off-street parking area, or other public way, or annul, vacate, or discontinue the same. *(Ref. 17-559 RS Neb.)(Ord. No. 501, 5/13/02)*