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CHAPTER 8 – PUBLIC WAYS AND PROPERTY

Article 1. City Property

§8-101 CITY PROPERTY; MAINTENANCE AND CONTROL.

The City Council shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the City and shall cause the same to be kept open, in repair, and free from nuisances. (Ref. 17-567 RS Neb.)

§8-102 CITY 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 trees, shrubs and their roots may be removed by the City at the expense of the owner of the property upon which the tree or shrub is located should the owner fail or neglect to do so after notice. It shall be unlawful for any person, persons, firm, or corporation to obstruct or encumber by fences, gates, buildings, structures, or otherwise, any of the streets, alleys, or sidewalks. (Ref. 17-557.01 RS Neb.)

§8-103 CITY 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 branches of trees extend shall at all times keep the branches or limbs thereof trimmed to a height of at least eight feet above the surface of said walk and at least 14 feet above the surface of said street. Whenever the limbs or branches of any tree or trees extend over streets or sidewalks contrary to the provisions herein so as to interfere with the lighting of the street from street lights or with the convenience of the public using said street or sidewalk, the City Council at any regular or special meeting may pass a resolution ordering the owner or occupant to cut or remove said obstructions within five days after having received a copy thereof from the Street Superintendent. Such resolution shall state that the City will remove said branches and charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided if said resolution is not complied with. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the 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.)

§8-104 CITY PROPERTY; NEWSPAPER BOXES, TUBES, RECEPTACLES; PROHIBITED.

A. It is hereby found and determined by the Mayor and the City Council that:

1. The placement of newspaper boxes, tubes, receptacles, or other types of contain-

ers designed for the purpose of individual home or office delivery will interfere with the City's ability to effectively provide snow removal and other services designed for the health, welfare and safety of the citizens of Oakland, Nebraska.

2. Placement of newspaper boxes, tubes, receptacles or other types of containers designed for individual home or office delivery will detract from the beauty and overall aesthetics of the City of Oakland, Nebraska.

B. Because of the above findings and concerns on the part of the Mayor and the City Council, the placement of all newspaper boxes, tubes, receptacles or other types of containers designed for individual home or office delivery on the public right of way is prohibited.

C. Because of the above findings and concerns on the part of the Mayor and the City Council, the placement of all newspaper boxes, tubes, receptacles or other types of containers designed for individual home or office delivery currently placed on the public right of way must be removed within 30 days of the effective date of this section.

(Ord. No. 500, 8/12/96)

§8-105 CITY PROPERTY; SALE AND CONVEYANCE OF REAL PROPERTY.

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

1. Such property is being sold in compliance with the requirements of federal or state grants or programs;
2. Such property is being conveyed to another public agency; or
3. Such property consists of streets and alleys.

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

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

D. If, within 30 days after the third publication of the notice, a remonstrance against such sale is signed by registered voters of the City equal in number to 30% of the registered voters of the City voting at the last regular city election held therein and is filed with the City Council, such property shall not then, nor within one year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be

collected within the 30-day period, but the filing shall be considered timely if filed or post-marked on or before the next business day.

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

F. Upon receipt of the remonstrance, the Election Commissioner or County Clerk shall issue to the City Council a written receipt that the remonstrance is in the custody of the Election Commissioner or County Clerk, who shall compare the signature of each person signing the remonstrance with the voter registration records to determine if each signer was a registered voter on or before the date on which the remonstrance was filed with the City Council. The Election Commissioner or County Clerk shall also compare the signer's printed name, street and number or voting precinct, and city or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the Election Commissioner or County Clerk determines that the printed name, street and number or voting precinct, and city or post office address matches the registration records and that the registration was received on or before the date on which the remonstrance was filed with the City Council. The determinations of the Election Commissioner or County Clerk may be rebutted by any credible evidence which the Council finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the remonstrance, the sufficiency of the remonstrance, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the remonstrance process.

G. 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.

H. The Election Commissioner or County Clerk shall certify to the City Council the number of valid signatures necessary to constitute a valid remonstrance. The Election Commissioner or County Clerk shall deliver the remonstrance and the certifications to the City Council within 40 days after the receipt of the remonstrance from the City Council. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than 20 signatures on one signature page shall be counted.

I. Within 30 days after the receipt of the remonstrance and certifications from the Election Commissioner or County Clerk, the City Council shall hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. Following the hearing, the City Council shall vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

J. Real estate now owned or hereafter owned by the city may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of Sections 18-1001 to 18-1006 RS Neb.

K. 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.)

L. Subsections (A) through (K) of this section shall not apply to the sale of real property if the authorizing resolution directs the sale of real property having a total fair market value of less than \$5,000.00. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the City for a period of not less than seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required. (Ref. 17-503.01 RS Neb.) (Ord. No. 597, 3/8/04)

§8-106 CITY PROPERTY; SALE AND CONVEYANCE OF PERSONAL PROPERTY.

The power of the City to convey any personal property owned by it shall be exercised by resolution directing the sale and the manner and terms thereof. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the City for a period of not less than seven days prior to the sale of the property. If the fair market value of the property is greater than \$5,000.00, notice of the sale shall also be published once in a legal newspaper published in or of general circulation in the City at least seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. (Ref 17-503.02 RS Neb.) (Ord. No. 597, 3/8/04)

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 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 8:30 A.M. the following day; provided, sidewalks within the residential areas of the City shall be cleaned within 24 hours after the cessation of the storm. (Ref. 17-557 RS Neb.)

§8-202 SIDEWALKS; REPAIR.

A. The City Council may, by resolution, order the repair of a sidewalk on any lot or piece of ground within the City and may assess the expense thereof on the property in front of which such repairs are made, after having given notice of its intention to do so (1) by publication in one issue of a legal newspaper of general circulation in the City; and (2) by either causing a written notice to be served upon the occupant in possession of the property involved or to be posted upon such premises ten days prior to the commencement of such repair. (Neb. RS 17-522)

B. The notice shall:

1. State that the City Council has ordered repair of the sidewalk;
2. Contain the City's estimate of the cost of the repair;
3. Notify the property owner that he or she may, within 10 days after the date of publication of the notice, notify the City that he or she will repair the sidewalk within 30 days after such date of publication;
4. Notify the property owner that if he or she fails to so notify the City within the 10 days or, having so notified the City, fails to repair the sidewalk within the 30 days, the City will cause the sidewalk to be repaired and the expense thereof to be assessed against the property.

C. Before the City imposes any special assessments for sidewalk repair, a copy of the notice that is required to be published shall be mailed to the last-known address of all non-resident property owners as shown on the current tax rolls at the time such notice is first published. The City Clerk shall mail the notice by certified mail with return receipt requested. (Neb. RS 13-310, 13-312)

D. 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. (Neb. RS 13-314)

E. All sidewalks shall be repaired in conformity with such plans and specifications as may be approved by the City Council.

F. Assessments made under this section shall be made and assessed in the manner provided in Neb. RS 17-524.
(Amended by Ord. No. 606, 12/13/04)

§8-203 SIDEWALKS; CONSTRUCTION BY OWNER.

A. 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.

B. Said owner shall make application in writing for a permit and file such application in the office of the City Clerk. The permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed. The official in charge of sidewalks shall issue the desired permit unless good cause shall appear why said permit should be denied; provided, if it is desired to construct the sidewalk at any other than the regularly prescribed location, grade, or elevation, the city official in charge of sidewalks shall submit the application to the City Council, which shall determine whether the permit should be granted or denied. It shall be unlawful for any person to construct or cause to be constructed said sidewalk at any other location, grade, or elevation than that designated by the City. All sidewalks shall be built and constructed on the established grade or elevation and if there is no established grade, then on the grade or elevation indicated by the city official in charge of sidewalks.

§8-204 SIDEWALKS; CITY CONSTRUCTION.

A. The City Council may by resolution order the construction of a sidewalk on any lot or piece of ground within the City. Notice of the City Council's intention to construct said sidewalk shall be given by the City Clerk by publication of notice one time in a legal newspaper of general circulation in the City.

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

C. Said notice shall notify the owner of the premises of the passage of the resolution ordering him/her to construct or cause to be constructed a sidewalk within 30 days after the date of publication and further, that if he/she fails to construct the sidewalk or cause the same to be done within the time allowed, the City will cause the sidewalk to be constructed and the

cost thereof shall be levied and assessed as a special tax against the premises; provided, the notice shall contain the official estimate of the cost of said construction and no special assessment in excess of this estimate shall be assessed against the property. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the 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. 17-522, 17-523 RS Neb.)

Article 3. Streets

§8-301 STREETS; NAMES AND NUMBERS.

The City Council may at any time by ordinance rename any street or provide a name for any new street. Buildings used for residence or business purposes and located along such streets shall retain such numbers as the City Council may require. It shall be the duty of the City Zoning Administrator, 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; 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 Street Superintendent authorizing such excavations. (Ref. 17-567 RS Neb.)

§8-303 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 Street Superintendent.

§8-304 STREETS; MIXING CONCRETE.

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

§8-305 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.

Article 4. Trees

§8-401 TREES; DEFINITIONS.

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

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

"Small trees" are herein defined as trees which by their nature do not normally attain heights greater than 25 feet at maturity.

"Medium trees" are herein defined as trees which by their nature normally attain heights of from 25 feet to 45 feet at maturity.

"Large trees" are herein defined as trees which by their nature attain heights greater than 45 feet at maturity.

§8-402 TREES; SPACING.

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

§8-403 TREES; DISTANCE FROM CURB AND SIDEWALK.

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

§8-404 TREES; DISTANCE FROM STREET CORNERS AND FIREPLUGS.

No street tree shall be planted closer than 35 feet to any street corner, measured from the point of nearest intersecting curbs or curb lines. No street tree shall be planted closer than ten feet to any fireplug.

§8-405 TREES; UTILITIES.

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

§8-406 TREES; PUBLIC TREE CARE.

Subject to Section 8-408 herein, the City shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. This section does not prohibit the planting of street trees by adjacent property owners, providing that the selection and location of said trees is in accordance with Sections 8-402 through 8-405 of this article.

§8-407 TREES; PLANTING IN RIGHT-OF-WAY; CONSENT NEEDED.

The City Tree Board shall plant no trees on public rights-of-way without the consent of the adjacent property owners. Such consent shall be in writing and shall be maintained as part of the official Tree Board records.

§8-408 TREES; TREE TOPPING.

It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or other tree on public property. "Topping" is defined as the severe cutting back of limbs to stubs larger than three inches 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.

§8-409 TREES; PRUNING, CORNER CLEARANCE.

Every owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall not obstruct the light from any street lamp and there shall be a clear space of eight feet above the surface of all sidewalks, except as providing elsewhere in the Zoning Regulations.

§8-410 TREES; DEAD OR DISEASED TREE REMOVAL ON PRIVATE PROPERTY.

A. All trees that are in a diseased, dying or dead condition are declared to be a public nuisance and shall be removed by the property owner from the private property on which they are located. For the purpose of carrying out the provisions of this section, the City Police shall have the authority to enter on private property to inspect the trees thereon. In the event that the trees are diseased or dead, notice shall be given to the owner of the property by mail or personal service and such notice shall allow the said owner 20 days to remove the said tree or trees. In the event that the owner is a nonresident, notice shall be made by publication in a newspaper of general circulation, or by certified mail if the name and address is known. The person charged with the removal may enter into an agreement with the City that such work be accomplished by the City and the expense and interest shall be declared to be a lien upon such property from the time the same becomes due until paid.

B. If the owner fails, neglects or refuses to enter into such an agreement, or to remove the trees, the City may enter upon the property and proceed to direct the removal of the trees and the cost thereof shall be chargeable to the property owner. If the owner fails to reimburse the City after being properly billed, the costs shall be assessed against the property and certified by the City Clerk to the County Treasurer to be collected in the manner prescribed by law. In the event the property owner is a nonresident of the County in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

§8-411 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.

§8-412 TREES; INTERFERENCE WITH CITY TREE BOARD.

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

Article 5. Penal Provision

§8-501 VIOLATION; PENALTY.

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this chapter, set forth at full length herein or incorporated by reference, shall be deemed guilty of an offense and upon conviction thereof shall be fined not more than \$100.00 for each offense. A new violation shall be deemed to have been committed every 24 hours of such failure to comply.

