

Chapter 8
PUBLIC WAYS AND PROPERTY

Article 1. Municipal Property

[Editor's Note: This Article was amended in its entirety by Ordinance No. 83-7, passed May 16, 1983]

§8-101 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.*)

§8-102 MUNICIPAL PROPERTY; SALE AND CONVEYANCE. The Municipality shall have the power by ordinance to sell and convey all public squares, streets, and alleys, but not including land used for park purposes within the Municipality; Provided, a petition containing the signatures of three-fourths ($\frac{3}{4}$) of the property holders of the Municipality, has been presented to the Governing Body, and a notice of the petition has been published not less than four (4) weeks in each paper of general circulation in the Municipality. (*Ref. 17-567 RS Neb.*)

§8-103 MUNICIPAL PROPERTY; OBSTRUCTING VIEW ON CORNER LOTS; SIGHT TRIANGLE OBSTRUCTIONS.

A. Except as otherwise provided in the Waverly Municipal Code, it is hereby determined that in order to protect and preserve the public welfare and safety, it shall be unlawful for any person to install, plant, place, set out, or maintain, or to allow to be installed, planted, placed, set out, or maintained, or to permit to exist any tree, hedge, shrubbery, plant, natural growth, sign, fence, or other obstruction to the view which is higher than three feet (3') above either:

1. the top of the curb return at the applicable corner of the intersection; or,
2. the nearest paved roadway surface, where there is no curb; or,
3. the existing traveled roadway at the corner in question where there is no curb or paved roadway.

B. At intersections, a triangle measured from the point of intersection of the centerline of the streets to a point 90 feet in each direction from the intersection along such centerlines. At the intersection of major streets, the 90-foot distance shall be increased to 120 feet. No landscaping shall be planted in such areas, which will materially obstruct the view of drivers approaching the street intersection.

At intersections of a sidewalk and alley or non-residential driveway or parking lot access, a triangle whose legs extend 10 feet back from the sidewalk along the nearest edge of the alley or driveway, and 20 feet parallel to and along the back of the sidewalk back from the intersecting alley or driveway.

C. Any obstruction maintained or existing in violation of this Article shall be deemed a public nuisance and shall be removed within one hundred twenty (120) days of the effective date of this Article as provided for herein. (*Amended by Ord. #02-14, 5/20/02; 05-08, 7/18/05; 06-06, 1/3/06*)

§8-104 MUNICIPAL PROPERTY; OBSTRUCTING VIEW ON CORNER LOTS; EXCEPTIONS TO RESTRICTIONS. The restrictions imposed within §8-103 of this Code shall not apply to the following:

- A. Buildings and accessory buildings constructed prior to the original effective date of this Article. The definitions of "building" and "accessory building" found in the Waverly Zoning Ordinance, as the same may be amended from time to time and at any time, shall apply for the purposes of this Article.
- B. Public utility poles.
- C. Official traffic control devices.
- D. Locations where the contour of the ground on the original effective date of this Article is such that there can be no cross visibility at the intersection.
- E. Trees trimmed to the trunk so as to permit unobstructed cross visibility to a line at least eight feet (8') above the level of the reference point as defined in §8-103 of this Code, or trimmed to one half (½) the height of the tree, whichever is less.
- F. Coniferous trees which were planted and have grown to a height of no less than four feet (4') prior to the original effective date of this Section, when and only when, in the judgment of the Governing Body acting by motion, and on the recommendation of a representative of the Nebraska State Highway Department, the intersection at which they are situated can be safely controlled with traffic control devices, notwithstanding the presence of such trees.

§8-105 MUNICIPAL PROPERTY; OBSTRUCTION OF PUBLIC RIGHT-OF-WAY, GENERALLY. It shall be unlawful for any person to obstruct or encumber by fences, gates, signs, buildings, accessory buildings, other structures, vegetation, or otherwise, any of the streets, alleys, or sidewalks of the Municipality. Such obstructions shall be deemed a public nuisance and may, after notice, be removed by the Municipality without compensation to the property owner, and at the expense of the owner of the property involved, in accordance with the procedures set forth within this Article.

§8-106 MUNICIPAL PROPERTY; PERMITTED OBSTRUCTION OF STREET, SIDEWALK, AND ALLEY SPACE. Persons engaged in the erection, construction, reconstruction, wrecking, or repair of any building, or the construction or repair of a sidewalk along any street, sidewalk, or alley may occupy the public street, sidewalk, or alley space with such building material and equipment as long as it is necessary; Provided, that such persons shall make application to and receive a permit in writing from the Building Inspector and/or Zoning Administrator authorizing such obstruction. No permit for the occupancy of the street, sidewalk, or alley space and more than one-third (1/3) of the roadway adjacent to the real estate upon which any building is to be constructed, erected, reconstructed, wrecked, or repaired, shall be granted; and Provided further, that a suitable passage way shall be maintained within the public space included in the permit which shall be protected and lighted in the manner required by the Building Inspector and/or Zoning Administrator. *(Amended by Ord. #02-14, 5/20/02)*

§8-107 MUNICIPAL PROPERTY; SIDEWALKS; OVERHANGING BRANCHES.

The owner or occupant of any real estate abutting or adjacent to any street, sidewalk, alley, or other public way over which there extend branches of trees, shrubs, or other bushes, shall at all times keep the branches or limbs thereof trimmed to a height of not less than eight feet (8') above the surface of any sidewalk and fourteen feet (14') above the surface of any street, alley, or other public way, and shall not allow the same to interfere with the lighting from street lights of such street, sidewalk, or alley. *(Amended by Ord. No. 97-9, 11/4/97; 09-13, 11/2/09)*

§8-108 MUNICIPAL PROPERTY; NOTICE TO REMOVE OBSTRUCTIONS.

If any tree, hedge, shrubbery, planting, natural growth, sign, fence or other obstruction is installed, planted, placed, set out, maintained, or permitted to exist in violation of this Article, the Building Inspector and/or Zoning Administrator shall give to the owner of the premises upon which or adjacent to which such obstruction exists, written notice that said obstruction violates the requirement of this Article, creating a hazard to the safety of the public.

Such notice shall notify the owner or occupant that if the obstruction is not destroyed, removed, or trimmed to comply with the provisions of this Article within five (5) days from the date of the mailing of the notice, or in the event that it is not possible to determine the owner of the real estate or to locate the owner of said real estate, then and that event, within five (5) days from the date of the posting of the notice, that the Municipality shall perform the required act and shall assess the costs against the property. Such notice shall be given the owner or occupant by publication at least once in a daily newspaper in general circulation in the City of Waverly, no less than five (5) days prior to the date the obstruction is to be removed, and by postage prepaid United States Certified Mail, return receipt requested, no less than five (5) days prior to the date the obstruction is to be removed as follows:

A. In the event that the owner is a resident of the Municipality, then said notice shall be mailed to resident owner at the address of the resident property owner as listed on the current tax rolls at the time the notice is given, and, in addition, it shall be the duty of the Building Inspector or his or her agent to post a copy of the notice on the premises.

B. In the event that the owner is a non-resident of the Municipality or cannot be found therein, then said notice shall be given by postage prepaid Certified United States Mail return receipt requested, addressed to the last known address of any tenant or other person having the care, custody, or control of such real estate, and, in addition, it shall be the duty of the Building Inspector or his or her agent to post a copy of the notice on the premises.

C. In the event that the owner is a non-resident of the Municipality and there is no tenant, occupant, or other person with the Municipality to whom the notice can be given, then said notice shall be mailed to the non-resident owner at the address of the non-resident property owner as listed on the current tax rolls at the time the notice is given, and, in addition, it shall be the duty of the Building Inspector or his or her agent to post a copy of the notice on the premises.

D. In the event that it is not possible to determine the owner of the real estate or if it is not possible to locate the owner of said real estate, then it shall be the duty of the Building Inspector and/or Zoning Administrator or his/her agent to post a copy of the notice on the premises, and such posted notice shall, together with the publication required herein, be deemed sufficient notice. *(Amended by Ord. #02-14, 5/20/02)*

§8-109 MUNICIPAL PROPERTY; REMOVAL AND ASSESSMENT OF COST. In the event that any obstruction is not removed or abated by the date required within the notice given hereunder, the Governing Body may, by motion, order the obstruction removed under the direction of the Building Inspector and/or Zoning Administrator, and the costs thereof shall be chargeable to the property owner at the same rate as that set by resolution (or otherwise), for the removal of weeds. Such action shall take place at the regular or special meeting of the Governing Body and shall be placed upon the agenda thereof according to law. *(Amended by Ord. #02-14, 5/20/02)*

§8-110 MUNICIPAL PROPERTY; WEEDS. *(Repealed by Ord. 10-06, 5/17/10)*

§8-111 MUNICIPAL PROPERTY; WEEDS. *(Repealed by Ord. 10-06, 5/17/10)*

§8-112 MUNICIPAL PROPERTY; VIOLATIONS AND PENALTIES. Any person who permits a violation of this Article to remain uncorrected after service of the notice required hereunder, and after the expiration of time set by the Building Inspector and/or Zoning Administrator shall, upon conviction thereof by the court, be required to pay a fine of fifty dollars (\$50.00) for each violation and shall stand committed to jail until such fine and costs of prosecution are paid. Each day of failure to comply with the requirements of this Section, after the specified time provided herein, shall constitute a separate violation.

Any person upon whom a duty is placed by the provisions of this Article who shall fail, neglect, or refuse to perform such duty, or who shall violate any of the provisions of this Article, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined the sum of fifty dollars (\$50.00) and shall stand committed to jail until such fine and costs of prosecution are paid. Each day of failure to comply with the requirements of this Section, after the specified time provided herein, shall constitute a separate violation. *(Amended by Ord. #02-14, 5/20/02)*

§8-113 MUNICIPAL PROPERTY; ENFORCEMENT; ENTRY UPON PRIVATE PROPERTY. The Mayor, or any department or person designated by the Mayor, is charged with the enforcement of this Article, and to that end any enforcement official authorized by the Mayor may enter upon private property at reasonable hours for the purpose of determining whether there is a violation of this Article and may then, when required under this Article, enter private property for the purpose of clearing prohibited obstructions or encroachments.

§8-114 MUNICIPAL PROPERTY; VEHICLES PARKED IN SIDEWALK SPACE. It shall be unlawful for any person within a residentially zoned district to park or place, or cause to be parked or placed, any motor vehicle or trailer upon any part of the sidewalk space or that space between the curb line and the lot line that hasn't been designated for parking. *(Amended by Ord. 02-05, 2/4/02)*

Article 2. Sidewalks

§8-201 SIDEWALKS; DEFINITIONS; DUTY TO KEEP CLEAN.

- A. For the purposes of this Article, unless the context is shown to clearly intend otherwise, the following words, terms, and phrases shall be given the meaning set forth below:
1. Sidewalk shall mean a walkway, which whether paved or unpaved, and which, whether or not within a street right-of-way, is situated along or is associated with a Municipal street; Provided, that the term sidewalks shall include walkways which the Governing Body has the authority to construct or order constructed and maintained as sidewalks along or in conjunction with the Municipal streets, but which with the permission of the Governing Body are constructed outside the street right-of-way, a reasonable distance from the paved roadway, in order to protect pedestrians, and in lieu of a sidewalk with the street right-of-way.
 2. Private walkway shall mean any walkway which is situated on real estate in private ownership and which does not fall within the definition of "sidewalk" as set forth in ¶(A)(1) of this Section.
 3. Other public walkway shall mean any walkway which is situated on real estate held by the United States, the State of Nebraska, or any governmental subdivision other than the City of Waverly, Nebraska, which does not fall with the definition of "sidewalk" as set forth in ¶(A)(1) of this Section.
 4. Municipal walkway shall mean any walkway which is situated within a Municipal right-of-way or on other real estate held by the Municipality which does not fall within the definition of "sidewalk" as set forth in ¶(A)(1) of this Section.
- B. It shall be unlawful for the occupant or owners of any lot or lots within the corporate limits to allow snow, sleet, mud, ice, or other substances to accumulate on the sidewalks along or contiguous to said property or to permit any snow, sleet, ice, mud, or other substances to remain upon said sidewalk. All sidewalks within the Municipality shall be cleared of precipitation 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 ten o'clock (10:00) a.m. the following day. Whenever substances other than precipitation shall accumulate upon sidewalks, the same shall be removed within forty-eight (48) hours of accumulation after service of notice upon such owners of occupants.
- C. Municipal walkways shall be cleared by the Municipality.
- D. Responsibility for clearing private walkways and other public walkways shall rest with the persons or entities who or which hold title to such walkways, and the same shall not be subject to the provisions of this Section.*(Ref. 17-557 RS Neb.) (Amended by Ord. No. 8-200.01 4/5/82)*

§8-202 SIDEWALKS; NOTICE TO CLEAN; ASSESSMENT. Notice to remove any encroachment or substance from a sidewalk shall be made upon the owner, agent or occupant of the abutting property, said notice to demand the removal of such encroachment and/or substance. Notice may be given by personal service or by publication. In the event the property owner or occupant refuses or neglects to remove all such encroachments within: (a) twenty-four (24) hours after personal service, or (b) within five (5) days if notice is by publication, then the City may cause such encroachments and/or substances to be removed, and the cost of such removal to be paid out of the Street Fund. The Governing Body shall assess the cost of the notice and removal against such abutting property as a “special sidewalk assessment,” which shall be levied and collected as special taxes in addition to general revenue taxes, and shall be subject and shall draw interest from the date of the assessment. (*Amended by Ord. No. 07-17, 12/17/07*)

§8-203 SIDEWALKS; MAINTENANCE.

- A. Every owner of any lot, lots, or piece of land within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to said lot, lots, or pieces of land, as the case may be, in good and proper repair, and in a condition reasonably safe for travel for all travelers thereon. In the event that the owner or owners of any lot, lots, or lands, along or contiguous with any sidewalk shall fail to construct or repair any sidewalk along or contiguous with his, her, or their lot, lots, or lands, within the time and in the manner as directed and required herein after having received due notice to do so, the Municipality shall accept no liability for damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the Governing Body shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property. In the event the property owner is a non-resident of the county in which the property lies, the Municipality shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested to the last known address of the non-resident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (*Ref. 17-557.01 RS Neb.*)
- B. Municipal walkways shall be maintained by the Municipality.
- C. Responsibility for maintaining private walkways and other public walkways shall rest with the persons or entities who or which hold title to such walkways, and the same not shall be subject to the provisions of this Section. (*Amended by Ord. No. 8-200.03, 4/5/82*)

§8-204 SIDEWALKS; REPAIR.

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

- B. Municipal walkways shall be repaired by the Municipality.
- C. Responsibility for the repair of private walkways and other public walkways shall rest with the persons or entities who or which hold title to such walkways, and the same shall not be subject to the provisions of this Section. (*Amended by Ord. No. 8-200.04, 4/5/82*)

§8-205 SIDEWALKS; CONSTRUCTION BY OWNER. All new residential construction shall install sidewalks within twelve (12) months from the date of the Building Permit. 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 at the City Office. The permit shall give a description of the lot, or piece of land along which the sidewalk is to be constructed. The Building Inspector 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 Building Inspector 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 Building Inspector. (*Amended by Ord.02-05, 2/4/02*)

§8-206 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 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. (*Ref. 17-522, 17-523 RS Neb.*)

§8-207 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.

§8-208 SIDEWALKS; CONSTRUCTION BY PETITION. If the owners of the record title representing more than sixty percent (60%) 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 the 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.

§8-209 SIDEWALKS; WHERE PLACED. Sidewalks in residential areas shall be four feet (4') in width and placed on the street at the lot line. Sidewalks shall slope one fourth inch (¼") per foot toward the street and shall be placed at a grade that will not impede the flow of water to the street. Where special problems arise as to grade, or conformity with existing sidewalks, the owner shall apply to the City Council for direction in placing the sidewalk and the council may make such deviations as seem reasonable to achieve the best sidewalk system under the prevailing conditions.

Owners of property at the intersection of curb lines shall extend their sidewalks to the curb lines.

Sidewalks in the business section of the City shall be eight feet (8') in width and plumb with the curb line and shall slope one-fourth inch ($\frac{1}{4}$ ") per foot to the curb.

§8-210 SIDEWALKS; MATERIAL TO BE USED; EXTENT OF REPAIRS PERMISSIBLE. All sidewalks on either side of the streets and avenues of this City, in front of or along any lot, lots, or lands abutting upon the same, shall be constructed of cement. No person shall construct, reconstruct, or replace any sidewalk of any other material within the limits of this City. In no case shall a permit be granted where the amount of repairs in the aggregate exceeds one third ($\frac{1}{3}$) of the running feet in said walk.

§8-211 SIDEWALKS; MANNER OF CONSTRUCTION. All cement sidewalks shall be laid upon a four inch (4") bed or foundation of well compacted gravel, coal cinders, or well-tamped dirt, having a covering of at least one inch (1") of sand and having an inclination toward the gutter. All sidewalks of cement hereafter constructed shall be four inches (4") in thickness and the first three inches (3") above the foundation shall conform to the above specifications.

§8-212 SIDEWALKS; CONSTRUCTION NOT IN ACCORD WITH REGULATIONS. In case any lot owner or the owners of a piece of land within the corporate limits of this City, under notice given or otherwise, shall construct a sidewalk in violation of this Article, the officer or officers in charge of streets and highways may stop the work of such construction and order the same to be constructed in accordance with this Article and the work already done to be changed, and on the failure of such owner to change any such work, the Municipal and City Council shall forthwith change said work and the expense of the same shall be assessed and taxed to said lot and collected as if taxed, as provided by law.

Article 3. Streets

§8-301 STREETS; NAMES AND NUMBERS. The Governing Body may at any time, by ordinance, rename any street or provide a name for any new street. Buildings used for residence or business purposes and located along such streets shall retain such numbers as the Governing Body may require. It shall be the duty of the Municipal Clerk upon the erection of any new building or buildings to assign the proper numbers to said building or buildings and give notice to the owner or owners and occupant or occupants of the same.

§8-302 STREETS; CROSSINGS. The Governing Body may order and cause to be constructed, under the supervision of the Municipal official in charge of streets, such street, avenue, and alley crossings as the Governing Body shall deem necessary. When a petition for the construction of any such crossings is filed by an interested resident in the office of the Municipal Clerk, said Municipal Clerk shall refer such application to the chief street official who shall investigate and make his recommendation to the Governing Body. Action by the Governing Body on such application, whether the application is approved or rejected, shall be considered final.

§8-303 STREETS; WIDENING OR OPENING. The Governing Body shall have the power to open or widen any street, alley, or lane within the limits of the Municipality; to create, open, and improve any new street, alley, or lane; Provided, all damages sustained shall be ascertained in such manner as shall be provided by ordinance. (*Ref. 17-558, 17-559, 76-704 through 76-724 RS Neb.*)

§8-304 STREETS; EXCAVATION. It shall be unlawful for any person to make an excavation in any street or streets for any purpose whatsoever unless a written permit is issued by the chief Municipal street official authorizing such excavations.

§8-305 STREETS; DRIVING STAKES. It shall be unlawful for any person to drive any peg or stake of any kind into the pavement in any street or alley without first procuring the written consent of the chief Municipal Street official.

§8-306 STREETS; MIXING CONCRETE. It shall be unlawful for any person to mix any concrete or plastering material directly on the street pavement for any reason whatsoever.

§8-307 STREETS; HARMFUL LIQUIDS. It shall be unlawful for any person to place or permit to leak in the gutter of any street, waste gasoline, kerosene, or high lubricating oils, which damage or act as a solvent upon said streets.

§8-308 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.

§8-309 STREETS; HEAVY EQUIPMENT. It shall hereafter be unlawful for any person or persons to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing an 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 of an inch (5/16") in diameter inclusive of the stud-casting with an average protrusion beyond the tread surface of not more than seven sixty-fourths of an inch (7/64") between October 1, and April 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; 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. 39-771 RS Neb.*)

§8-310 STREET; 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 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, pipelines, or appurtenances shall be confined to the alleys of the Municipality. Streets, sidewalks sidewalk spaces, and other public property disturbed in the course of work shall be restored in a manner satisfactory to the Municipality and to a condition at least equal to that before the work commenced.

§8-311 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 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 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. 17-511, 17-524 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 therefore, 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 therefore, 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.*) (*Amended by Ord. No. 83-23, 10/11/83*)

§8-313 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 percent (50%) 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 improvements to be made, and shall contract therefore, 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.*)

§8-314 STREETS; IMPROVEMENT OF STREETS ON CORPORATE LIMITS. The Mayor and Council shall have the power to improve any street or part thereof which divides the Municipal corporate area and the area adjoining the Municipality. When creating an improvement district including land adjacent to the Municipality, the Council shall have power to assess, to the extent of special benefits, the costs of such improvement upon the properties found especially benefited thereby. (*Ref. 17-509 RS Neb.*)

§8-315 STREETS; CURB AND GUTTER; CUTTING CURB; CLOSING CUTS. 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, or to close any existing cut into any paving, curb, or sidewalk, without first having obtained a written permit from the Governing Body therefore. The maximum residential curb cut shall not exceed thirty (30) feet. Before any person shall obtain a permit, he shall inform the Municipal Clerk of the place where such cutting is to be done, and it shall be the chief street official's duty to inspect the place of entry into the paving, sidewalk, or curb, before the same is cut or closed. When cutting into any paving, curb, or sidewalk, it shall be the duty of the party to cut or close the paving, curb, or sidewalk under such rules and regulations as may be prescribed by the Governing Body; Provided that the use of jack

hammers or other similar crushing devices to cut into or remove any paving, curb, or sidewalk is prohibited. When the applicant is ready to close the opening made, he shall inform the chief street official, who shall supervise and inspect the materials used and the work done in closing the cut. It shall be discretionary with the Governing Body to order the chief street official to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit. The Governing Body may consent to the work of cutting and closing the paving, curb or sidewalk to be done by the party holding such permit. Before any permit is issued by the Governing Body, the applicant for such permit shall deposit with the Municipal Treasurer a sum set by resolution of the Governing Body for all work to be done. Such sum shall be set on a per square foot cost of construction basis. The deposit shall be retained by the Municipality for the purpose of replacing the paving, curb, or sidewalk, in the event the work is done by the Municipality. In the event the Municipality elects to require the applicant to replace the paving, curb, or sidewalk, the deposit shall be retained by the Municipality until the work is completed to the satisfaction of the chief street official or of the committee of the Governing Body on streets and alleys.

In addition to making the deposit above set forth, the applicant shall, before any permit is issued, execute a bond to the Municipality, or at the discretion of the Governing Body, demonstrate proof of insurability, with a good and sufficient surety or sureties to be approved by the Governing Body in a sum set by resolution of the Governing Body. Any unused cuts in the paving, curb, or sidewalk shall be closed by the owner of the property which would have been served by the cut as provided in this Ordinance. (*Amended by Ord. No. 90-7, 6/18/90; 02-05, 2/04/02*)

§8-316 STREETS; DEFERRAL FROM SPECIAL ASSESSMENTS. Whenever the Governing Body of a Municipality creates a paving district which includes land adjacent to the Municipality which is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments. For purposes of this Section, the terms agricultural use and agricultural use zone shall have the meaning specified in Section 77-1343 Reissue Revised Statutes of Nebraska 1943.

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

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

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

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

- A. 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
- B. Interest upon the 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.

In cases where the deferral provided by this Section is terminated as a result of a sale or transfer described in subdivision 2 or 3 of this Section the lien for assessments had interest shall attach as of the day preceding such sale or transfer. (*Ref. 19-2428 through 19-2431 RS Neb.*) (*Ord. No. 83-22, 10/17/83*)

Article 4. Municipal Cemetery

[Editor's Note: Article 4 was passed in its entirety by Ordinance No. 92-11, 8/17/92]

§8-401 MUNICIPAL CEMETERY; NAME. The name of the City cemetery shall be Rose Hill Cemetery.

§8-402 MUNICIPAL CEMETERY; BURIAL PROHIBITED IN OTHER PLACES. Burial shall be permitted only in the City cemetery, and specifically shall not be permitted in any church yard or any other place within the City.

§8-403 MUNICIPAL CEMETERY; CEMETERY TAX; ANNUAL LEVY. The Mayor and Council, for the purpose of defraying the cost of the care, management, improvement, beautification, and welfare of the City cemetery, may each year levy a tax not exceeding five and two-tenths cents (\$0.052) on each one hundred dollars (\$100.00) upon the actual value of all the taxable property in the City subject to taxation for general purposes, except intangible property, that is subject to taxation according to the laws of the State of Nebraska. Said tax shall be collected and paid to the City Treasurer as taxes for general municipal purposes are collected and paid to the City.

§8-404 MUNICIPAL CEMETERY; CEMETERY FUND GENERALLY. When collected and paid over to the City Clerk/Treasurer, all proceeds received from the Rose Hill Cemetery Association and the proceeds of the cemetery tax shall constitute and be known as the City cemetery general fund and shall be used for the general care, management, improvement, beautification, and welfare of the City cemetery and no other purpose. Such cemetery fund, and all moneys inuring thereto, shall remain in the custody of the City Clerk/Treasurer and shall be disbursed only in accordance with the provisions of this Article and applicable state law.

§8-405 MUNICIPAL CEMETERY; CEMETERY RESERVE FUND CREATED. There is hereby created a fund to be known as the cemetery reserve fund, the principal of which shall be invested by the City Clerk/Treasurer in the manner provided by law. The current income derived from the investment of these funds by the City Clerk/Treasurer will be available to the City for

current repair and operational expense of the cemetery. The principal of the cemetery reserve fund shall be held intact as an invested fund and will not be available to the City except for development and improvement of new sections of the cemetery including, but not limited to, ornamentation, capital expenditures, and site development, or for new buildings or paving in any unpaved areas in the cemetery. From and after the effective date of this ordinance, one-half (1/2) of the proceeds received from the sale of lots shall be placed in this fund. The other half of the proceeds received from the sale of lots shall be available to the City for current repair and operational expense of the cemetery. This fund is further authorized to receive money from individual bequests or endowments when the restrictions on the use of said bequests or endowments do not conflict with the purpose of this reserve fund.

§8-406 MUNICIPAL CEMETERY; PERPETUAL CARE. Perpetual care on all lots in the City cemetery shall be furnished in consideration of the purchase price of any lot purchased after August 1, 1992. The perpetual care fund created prior to such date shall be maintained as a permanent fund, invested by the City Council as authorized by law, and the income shall be used in the care, ornamentation, and maintenance of the lots and burial spaces so endowed. All other monies accruing for cemetery purposes shall be credited, allocated, kept, and disbursed by the City Treasurer through the cemetery general fund.

§8-407 MUNICIPAL CEMETERY; APPROVAL OF SERVICE CHARGES. On or before the first (1st) day of May of each year it shall be the duty of the Cemetery Superintendent to submit to the City Council, a proposed schedule of charges which shall state the amount to be charged by the Superintendent for labor or services offered in connection with the operation and maintenance of the cemetery. Thereafter and not later than the first (1st) Monday in May of each year the Mayor and Council shall approve the proposed schedule of charges, if it deems the same reasonable, or if not, it shall, itself, establish a schedule of charges and the schedule of charges as approved by the Mayor and Council shall be in full force and effect until modified or superseded as herein provided. The term "services" shall include any and all charges such as grave digging, disinterring or reintering, setting of marker foundations, planting of shrubs, and all similar activities. It shall be the duty of the Superintendent to charge and collect for services as set out in the approved schedule of charges.

§8-408 MUNICIPAL CEMETERY; PRICES FOR GRAVE SPACES. The purchase price of the lots and burial spaces in the City cemetery shall be publicly exhibited in the City offices on a map or plat therein. The City Clerk's annual report to the Mayor and Council, shall include therein, among other things, a list of the lots or burial spaces sold during the preceding year, or since the date of his/her last report, legally describing them, together with the name of the purchaser and the price received for each lot or space. Future additions to said cemetery shall likewise be platted.

§8-409 MUNICIPAL CEMETERY; LOTS; CONVEYANCE; RECORDING. The Mayor and Council may convey for predetermined sums set by the Council annually cemetery lots by certificates signed by the Mayor, and countersigned by the Clerk, under the seal of the City, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number as laid down on such map or plat, for the purpose of interment; and such certificate shall vest in the proprietor, his or her heirs and assigns, a right and fee simple to such lot for the sole purpose of interment under the regulation of the City Council.

§8-410 MUNICIPAL CEMETERY; TRANSFER OF CERTIFICATES. Transfers of certificates shall be made by surrender of the original certificates to the Cit Clerk who shall cancel the same, note such cancellation on the cemetery lot records and shall issue new certificates in lieu thereof upon receipt of the same fee for recording expense and service as in the case of the issuing original certificates.

§8-411 MUNICIPAL CEMETERY; DUPLICATE CERTIFICATES. Duplicate certificates may be issued by the City Clerk under authority of the City Council upon proof of loss or destruction of the original, upon payment of the specified fees.

§8-412 MUNICIPAL CEMETERY; PERMITS. Burial shall be permitted in the City cemetery only on presentation of the statutory burial or removal permit. Reinterments and disinterments shall require similar permits.

§8-413 MUNICIPAL CEMETERY; FISCAL RESTRICTIONS. No claim shall be allowed against cemetery funds, nor shall any warrant against said funds be issued or paid, for any service rendered in connection with the sale of or the collection of the proceeds of the sale of any lot, part of a lot or burial space in said cemetery; and it shall be unlawful for any person to accept or contract to accept any commission or fee arising out of such transaction.

§8-414 MUNICIPAL CEMETERY; PROTECTION; RULES AND REGULATIONS. The Mayor and Council may pass rules and ordinances imposing penalties and fines not exceeding one hundred dollars (\$100.00), regulating, protecting, and governing the cemetery, the owners of lots therein, visitors thereof, and trespasses therein.

§8-415 MUNICIPAL CEMETERY; LOTS; OWNERSHIP AND USE; REGULATIONS. The Mayor and Council may limit the number of cemetery lots which shall be owned by the same person at the same time. They may prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots. They may prohibit any diversion of the use of such lots and any improper adornment thereof; but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots. Rules as provided for herein shall be adopted by resolution of the Council.

§8-416 MUNICIPAL CEMETERY; APPOINTMENT. The Mayor, subject to the consent of the Council, is hereby authorized to appoint a superintendent for the cemetery.

§8-417 MUNICIPAL CEMETERY; CEMETERY SUPERINTENDENT; TERM. The Cemetery Superintendent shall serve until he/she is removed by the Mayor.

§8-418 MUNICIPAL CEMETERY; CEMETERY SUPERINTENDENT; DUTIES GENERALLY. The duties of the Cemetery Superintendent shall be the general supervision, maintenance, and care of the cemetery.

§8-419 MUNICIPAL CEMETERY; BURIAL PERMIT. All persons desiring to bury a deceased person shall first be required to file a completed death certificate the Registrar of the County before any body may be buried in the Cemetery. If it is impossible to complete the certificate of death within the legal period of time prescribed by State law, the funeral director shall notify the Registrar and obtain his written approval before the deceased person may be buried in

the cemetery. The burial permit so issued by the Registrar shall then be filed with the City Clerk. It shall be unlawful for the Cemetery Superintendent, or other person, to allow the interment of a body without first receiving such permit. The burial permit shall then be countersigned and dated by the City Clerk. The interment of any body shall be performed under the direct supervision of a licensed funeral director. Upon completion of the requirements herein, the City Clerk shall then issue a Municipal Burial Permit which shall entitle the applicant to bury a deceased person in the cemetery.

In the event that the removal of the body of any deceased person is requested, the City Clerk shall issue no permit until the applicant shall have first complied with the laws of the State of Nebraska with respect to such disinterment. (*Ref. 71-605 RS Neb.*)

§8-420 MUNICIPAL CEMETERY; LOT CURBING. It shall be hereafter unlawful for the owner of any lot to construct, maintain, or suffer to remain any curbing around any lot or burial place therein of a height greater than one inch (1").

§8-421 MUNICIPAL CEMETERY; SHRUBS AND TREES. It shall be unlawful, without the written permission of the City Council, to plant, maintain, or suffer to remain on any cemetery lot a shrub or tree attaining a height of more than four feet (4').

§8-422 MUNICIPAL CEMETERY; MONUMENTS. Persons desiring to erect monuments, tombstones, or other structures shall first procure a permit from the City Clerk.

§8-423 MUNICIPAL CEMETERY; GRAVE DEPTH. Graves shall not be less than five feet (5') deep; provided, nothing herein shall be construed to prohibit the use of mausoleums or other recognized methods of interring deceased persons if such a burial procedure is approved by the City Council. (*Amended by Ordinance No. 92-16, 10/19/92*)

§8-424 MUNICIPAL CEMETERY; DESTRUCTION OF PROPERTY. Any person who shall willfully destroy, mutilate, deface, injure, or remove any tomb, monument, or gravestone placed in the cemetery, or any fence, railing, or other work for the protection or ornamentation of the cemetery, or who shall willfully destroy, cut, break, or injure any tree, shrub, or plant shall be deemed to be guilty of a misdemeanor. (*Ref. 28-512 RS Neb.*)

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 shall be deemed guilty of a Class II Misdemeanor as defined by §6-501 of this Code. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply. (*Amended by Ord. 02-05, 2/4/02, 07-05, 5/7/07*)