

CHAPTER 8

PUBLIC WAYS AND PROPERTY

ARTICLE 1. MUNICIPAL PROPERTY

8-101 MUNICIPAL PROPERTY; DEFINITIONS. The following definitions shall be applied throughout this Chapter. When no definition is specified, the normal dictionary usage of the work shall apply: Sidewalk Space; Defined. The term "sidewalk space" as used herein shall mean that portion of a street between curb lines and adjacent property lines.

8-102 MUNICIPAL PROPERTY; MAINTENANCE AND CONTROL. The Governing Body shall have the care, supervision and control of all public highways, bridges, streets, alleys, public squares and commons within the Municipality and shall cause the same to be kept open and in repair and free from nuisances. (Ref. 17-567 RS Neb.

8-103 MUNICIPAL PROPERTY; SALE AND CONVEYANCE. (1) Except as provided in subsection (9) of this section, the power of the Municipality to convey any real and personal property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution, directing the sale of public auction or by sealed bid of such real and personal property and the manner and terms thereof, except that such real and personal property shall not be sold at public auction or by sealed bid when:

- (a) Such property is being sold in compliance with the requirements of federal or state grants or programs;
- (b) Such property is being conveyed to another public agency; or
- (c) Such property consists of streets and alleys

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

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

(4) If within thirty (30) days after the third publication of the notice, a remonstrance against such sale is signed by registered voters of the Municipality equal in number to thirty percent (30%) of the registered voters of the Municipality voting at the last regular municipal election held therein and is filed with the Governing Body, such property shall not then, nor within one (1) year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

(5) Upon the receipt of the remonstrance, the Governing Body, with the aid and assistance of the Election Commissioner or County Clerk, shall determine the validity and sufficiency of signatures on the remonstrance. The Governing Body shall deliver the remonstrance to the Election Commissioner or County Clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the remonstrance, the Election Commissioner or County Clerk shall issue to the Governing Body a written receipt that the remonstrance is in the custody of the Election Commissioner or County Clerk. The Election Commissioner or County Clerk shall compare the signature of each person signing the remonstrance with the voter registration records to determine if each signer was a registered voter on or before the date on which the remonstrance was filed with the Governing Body. The Election Commissioner or County Clerk shall also compare the signer's printed name, street and number or voting precinct, and municipal or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the Election Commissioner or County Clerk determines that the printed name, street and number or voting precinct, and municipal or post office address matches the registration records and that the registration was received on or before the date on which the remonstrance was filed with the Governing Body. The determinations of the Election Commissioner or County Clerk may be rebutted by any credible evidence which the Governing Body finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the remonstrance, the sufficiency of the remonstrance, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the remonstrance process. Upon completion of the comparison of names and addresses with the voter registration records, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name and address of each signed found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the Election Commissioner or County Clerk shall set forth the reason for the invalidity of the signature. If the Election Commissioner or County Clerk determines that a signer has affixed his or her signature more than once to the remonstrance and that only one person is registered by that name, the Election Commissioner or County Clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature. The Election Commissioner or County Clerk shall certify to the Governing Body the number of valid signatures necessary to constitute a valid remonstrance. The Election Commissioner or County Clerk shall deliver the remonstrance and the certifications to the Governing Body within forty (40) days after the receipt of the remonstrance from the Governing Body. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than twenty (20) signatures on one signature page shall be counted.

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

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

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

(9) Subsections (1) to (8) of this section shall not apply to the sale of real and personal property if the authorizing resolution directs the sale of an item or items of real and personal property, the total fair market value of which is less than five thousand dollars (\$5,000.00). Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three (3) prominent places within the Municipality for a period of not less than seven (7) days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale. Confirmation of the sale by passage of an ordinance may be required. (Ref. 17-503, 17-503.01 RS Neb.)

8-104 MUNICIPAL PROPERTY; OBSTRUCTIONS. Trees and shrubs growing upon or near the lot line or upon public ground and interfering with the use or construction of any public improvements shall be deemed as obstruction under this Article. Said trees, shrubs and their roots may be removed by the Municipality at the expense of the owner of the property upon which the tree or shrub is located should the owner fail or neglect after notice to do so. It shall be unlawful for any person, 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.)

8-105 MUNICIPAL PROPERTY; PERMITTED OBSTRUCTIONS. Persons engaged in the erection, construction, reconstruction, wrecking or repairing of any building or the construction or repair of a sidewalk along any street may occupy the public street space with such building material and equipment as long as is necessary if such persons shall make application to and receive a permit in writing from the Utilities Superintendent to do so; provided, no permit for the occupancy of the sidewalk space and more than one-third (1/3) of the roadway of the public space adjacent to the real estate on which said building is to be constructed, erected, reconstructed, wrecked or repaired shall be granted; and provided further, a suitable passageway for pedestrians shall be maintained within the public space included in the permit which shall be protected and lighted in the manner required by the Utilities Superintendent.

8-106 MUNICIPAL PROPERTY; WEEDS. It is hereby the duty of the Utilities Superintendent or his or her duly authorized agent to view and inspect the sidewalk space within the corporate limits for growing weeds during the growing season and if rank and noxious weeds are found growing thereon, he or she shall notify the owner of occupant thereof to cut down such weeds as close to the ground as can be practicably done and keep the weeds cut thereon in like manner

during the growing season for weeds. In the event that the owner of any lot or parcel of land within the Municipality is a nonresident of the Municipality or cannot be found therein, the notice may be given to any person having the care, custody or control of such lot or parcel of land. In the event that there can be found no one within the Municipality to whom notice can be given, it shall be the duty of the Utilities Superintendent or his or her agent to post a copy of the notice on the premise and then to cut or cause the weeds thereon to be cut as therein provided and report the cost thereof in writing to the Governing Body. The cost shall then be audited and paid by the Municipality and the amount thereof shall be assessed against the lot or parcel of land as a special tax thereon and shall be collected as are other taxes of the Municipality or may be recovered by civil suit brought by the Municipality against the owner of the parcel of land. In the event the property owner is a nonresident of the county in which the property lies, the Municipality shall before levying any special assessment 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. 17-563.01 RS Neb.)

8-107 MUNICIPAL PROPERTY; PUBLIC WORKS INVOLVING ARCHITECTURE OR ENGINEERING; REQUIREMENTS. (1) Except as provided in subsection two (2) of this section, the Municipality shall not engage in the construction of any public works involving architecture or engineering unless the plans, specifications, and estimates have been prepared and the construction has been observed by an architect, a professional engineer, or a person under the direct supervision of an architect, professional engineer, or those under the direct supervision of an architect or professional engineer.

(2) Subsection one (1) of this section shall not apply to the following activities:

(a) Any public works project with contemplated expenditures for the completed project that do not exceed forty thousand dollars (\$40,000.00),

(b) Any alteration, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building.

(c) Performance of professional services for itself if the Municipality appoints a municipal engineer or employs a full-time person licensed under the Engineers and Architects Regulation Act who is in responsible charge of architectural or engineering work;

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

(e) Earthmoving and related work associated with soil and water conservation practices performed on any land owned by the Municipality that is not subject to a permit from the Department of Water Resources;

(f) The work of employees and agents of the Municipality performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land-use regulations and their customary duties in utility and public works construction, operation, and maintenance;

(g) Those services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, marine operating engineers, power plant operating engineers, or manufacturers who supervise the operation of or operate machinery or equipment or who supervise construction within their own plant;

(h) The construction of municipal water wells as defined in section 46-1212 RS Neb., the installation of pumps and pumping equipment into municipal water wells, and the decommissioning of municipal water wells, unless such construction, installation, or decommissioning is required by the Municipality to be designed or supervised by an engineer or unless legal requirements are imposed upon the Municipality as a part of a public water supply; and

(i) Any other activities described in sections 81-3449 to 81-3453 RS Neb. (Ref. 81-3423, 81-3445, 81-3449 through 81-3453 RS Neb.)