

## **PUBLIC WAYS AND PROPERTY**

### **Article 1. Municipal Property**

§8-101 DEFINITIONS. The following definitions shall be applied throughout this Chapter. When no definition is specified, the normal dictionary usage of the word shall apply.

TERRACE. The term "terrace," 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. 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 (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.)

§8-104 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 Street Superintendent to do so; Provided, no permit for the occupancy of the terrace, 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 Street Superintendent.

§8-105 MUNICIPAL PROPERTY; WEEDS. It is hereby the duty of the Street Superintendent or his duly authorized agent to view and inspect the terrace within the corporate limits for growing weeds during the growing season, and if rank and noxious weeds are found growing thereon, he shall notify the owner or occupant thereof, to cut down such weeds as close to the ground as can be practicably done and keep the weeds cut thereon in like manner during the growing season for weeds; Provided, any weeds growing in excess of eight (8") inches on any terrace shall be considered a violation of this Section. In the event that the owner of the lot or parcel of land abutting said terrace within the Municipality is a non-resident 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 Street Superintendent or his agent to post a copy of the notice on the premise and then to cut or cause the weeds thereon to be cut as therein provided and report the cost thereof in writing to the Governing Body. The cost shall then be audited and paid by the Municipality and the amount thereof shall be assessed against the lot or parcel of land as a special tax thereon and shall be collected as are other taxes of the Municipality or may be recovered by civil suit brought by the Municipality against the owner of the parcel of land. In the event the property owner is a 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.

§8-106 MUNICIPAL PROPERTY; AWNINGS IN TER RACE, MARQUEES, BUILDING PERMITS REQUIRED. All awnings hereafter erected or suffered to remain in the terrace shall be of canvas on iron frames. All awnings shall be elevated at least eight (8') feet at their lowest part from the top of the public sidewalk and shall not project over said sidewalk to exceed three-fourths (3/4) of the width thereof. They shall be supported without posts by iron brackets or by an iron framework attached firmly to the building, so as to leave the sidewalk wholly unobstructed thereby; Provided, nothing herein shall be construed to prevent the owner of any building from constructing a substantial awning or marquee of non-combustible material

supported without posts over the terrace if located flush with the outer edge thereof and if a building permit shall have first been secured for the construction of the same. (Ref. Chapter 4, Article I, Section 1, Code 1943)

§8-107 MUNICIPAL PROPERTY; SIGNS, BILL BOARDS.

- (a) Signs. It shall be unlawful for any person, firm or corporation to place or hang any commercial or business sign or advertisement, whether illuminated or not, upon or in such manner as to project wholly or in part over any street, avenue, alley or sidewalk of the City of Wakefield, or to permit any such sign owned by them to so remain except as hereinafter provided.
- (b) Billboards. It shall be unlawful for any person to construct, erect or suffer to remain any billboard, signboard or similar structure in or upon any street space between lot lines or in or upon any alley in the City. It shall be unlawful for any person to construct, erect or suffer to remain any billboard, signboard or similar structure upon private property in the City in such manner as to prevent the ordinary use of streets or alleys adjacent thereto or as to obstruct the view of or from any residence in the City.

(Ref. Chapter 4, Article I, Section 2, Code 1943)

§8-108 MUNICIPAL PROPERTY; FLUORESCENT LIGHTING, NEON SIGNS. It shall be unlawful for any person to connect any fluorescent lighting, neon sign, or other lighting or display facility having similar load characteristics to the electrical distribution system of the City, or to permit a connection already made to continue, unless such fluorescent lighting, neon sign, or other lighting or display facility having similar load characteristics, is connected with capacitors or other auxiliaries of sufficient size to maintain a power factor of ninety (90%) per cent or more lagging, whenever such fluorescent lighting, sign or other display equipment is in operation. Each day that said fluorescent lighting, neon sign or other lighting or

display facility shall remain connected to any electrical distribution system in the City, shall be deemed and shall constitute a separate and distinct offense. (Ref. Chapter 4, Article I, Section 3, Code 1943)

§8-109            MUNICIPAL PROPERTY; AWNINGS, SIGNS, BILLBOARDS; PERMITS, INSPECTION, REMOVAL. Any person who desires to erect and maintain any awning or sign upon or projecting wholly or in part over any street, avenue, alley or sidewalk of the City or who desires to erect or construct any billboard or to suffer it to remain on private property in the City, shall file in the office of the City Clerk a written application for a permit to do so, giving full information as to size, weight and character of the sign or awning and the distance it will

project outside the lot line, together with drawings or other data showing the method of securing and fastening the same or giving general construction specifications or description of the billboard, as the case is. The City Clerk shall forthwith refer said application to the Chief of Police or the Street Superintendent and if said officials shall find that such sign is or will be of reasonable size, safe and secure, and not a menace to the public passing along such thoroughfare, that the building to which it is or will be attached is of sufficient strength and size safely to support sign, or, if a fluorescent lighting, neon sign or other lighting or display facility that it complies with Section 1-108, or, if a billboard, that it complies with Section 8-107(b), then the Chief of Police or the Street Superintendent shall endorse his findings on said application to that effect. The City Clerk shall then refer said application to the City Council at its next regular or special meeting, and said Council may direct the City Clerk to grant such permit; otherwise it shall refuse same. Any such permit shall be revocable at any time by the Council for cause. All such signs, awnings or billboards shall be inspected, under the direction of the Chief of Police or the Street Superintendent within ninety (90) days after this Municipal Code becomes effective; and said signs, awnings or billboards shall thereafter be periodically inspected under the direction of the Chief of Police or the Street Superintendent; and if it appears that any sign or awning is unsecure, unsafe or that it fails to conform with the requirements of Section 8-108, or that any billboard fails to conform with Section 8-107(b) then such sign, awning or billboard, as the case is, shall be ordered orally or by notice in writing to be made safe or removed forthwith by the person maintaining such sign, awning or billboard, and on such person's failure, refusal or neglect to comply with said order within three (3) days, it shall be the duty of the Chief of Police or the Street Superintendent to cause the awning, sign or billboard, as the case is, to be removed, and the expense of such removal shall be charged to the person refusing to comply with such order of removal and may be collected by the City from such person the same as any other debt or liability. (*Ref. Chapter 4, Article I, Section 4, Code 1943*)

**§8-110 MUNICIPAL PROPERTY; OVERHANGING BRANCHES, HEDGES, SHRUBBERY, BUSHES.** *(Repealed by Ord. No. 2-2002, 8/7/02)*

## 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 shall be cleaned within twenty-four (24) hours after the cessation of the storm. *(Ref. 17-557 RS Neb.)*

**§8-202 SIDEWALKS; MAINTENANCE.** 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, abutting on any street, avenue, or part thereof shall fail to construct or repair any sidewalk in front of 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, they shall be liable for all 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.)*

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§8-203 SIDEWALKS; REPAIR. The Street Superintendent may require sidewalks of the Municipality to be repaired. Notice to the owners of property upon which such sidewalks in disrepair are located shall require within forty-eight (48) hours from issuance of notice said owners 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 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.

§8-204 SIDEWALKS; CONSTRUCTION BY OWNER. 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, 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 Street Superintendent. There shall be placed between every curb and new sidewalk an expansion joint.

§8-205 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 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. 17-522, 17-523 RS Neb.)

§8-206 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.

§8-207 SIDEWALKS; CONSTRUCTION BY PETITION. If the owners of the record title representing more than sixty (60%) per cent 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 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.

### 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 Street Superintendent, upon the erection of any new building or buildings to assign the proper numbers to said building or buildings and give notice to the owner or owners and occupant or occupants of the same.

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

§8-303 STREETS; 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 thru 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 Street Superintendent 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 Street Superintendent.

§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 person to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk, or crossing on 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 ( $5/16$ ) of an inch in diameter inclusive of the stud-casting with an average protrusion beyond the tread surface of not more than seven sixty-fourths ( $7/64$ ) of an inch 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 protruberances 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 STREETS; CONSTRUCTION NOTICE. The Street Superintendent shall notify the owners in fee simple of real estate abutting a street, alley, or a part thereof which is to be put under contract for paving or repaving. Notice shall also be given to all gas, electric service, and telephone companies. Notice shall also be given to all consumers of gas, water, and sewer services which will be discontinued during such construction. Said notice shall be published one (1) time in a legal newspaper at least twenty (20) days prior to the beginning of such construction by the party undertaking such construction and said notice shall state at what date connections must be made and excavation completed. All gas, water, sewer, and underground connections must be made prior to the paving or repaving of the street under construction. After expiration of such time, permits for excavation will not be issued, nor will excavation be allowed, until after the completion of the pavement in said street or alley, and the formal final acceptance thereof by the proper officials of the Municipality.

§8-311 STREETS; PIPE LINES AND WIRES. Poles, wires, gas mains, pipe lines, 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, pipe lines, and wires shall at all times erect and locate their poles, wires, gas mains, pipe lines, and other appurtenances at such places and in such manner as shall be designated by the Governing Body. Such poles, wires, gas mains, pipe lines, 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, pipe lines, or other appurtenances to be removed. The Governing Body shall designate another location as closely as

possible where said poles, wires, gas mains, pipe lines, or other appurtenances, may be reset or placed. All poles, wires, gas mains, pipe lines, or other appurtenances, shall be reset, placed, or erected in such a manner that they will not interfere with the water

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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, pipe lines, or appurtenances shall be confined to the alleys of the Municipality.

§8-312 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 benefitting 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.)

§8-313 STREETS; PETITION FOR IMPROVEMENTS. Whenever a petition signed by the owners of record title representing more than sixty (60%) per cent of the front footage of the property directly abutting upon the street, streets, alley, alleys, public way, or the public grounds proposed to be improved, shall be presented and filed with the Municipal Clerk, petitioning therefor, the Governing Body shall by ordinance create a paving, graveling, or other improvement district or districts, and shall cause such work to be done or such improvement to be made, and shall contract therefor, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley, or alleys, especially benefited thereby in such district in proportion to such benefits, to pay the cost of such improvement. (Ref. 17-510 RS Neb.)

§8-314 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 (50%) per cent 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 improvement to be made, and shall contract therefor, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street, streets, alley or alleys especially benefited thereby in such district in proportion to such benefits, to pay the cost

of such improvement. (Ref. 17-511 RS Neb.)

§8-315 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 improvements upon the properties found especially benefited thereby. (Ref. 17-509 RS Neb.)

§8-316 STREETS; IMPROVEMENT OF MAIN THOROUGHFARES. The Mayor and City Council shall have the power by a three-fourths (3/4) vote of the Governing Body, to create by ordinance a paving, graveling or other improvement district and to order such work done upon any federal or state highway in the Municipality or upon a street or route, designated by the Mayor and City Council as a main thoroughfare that connects, on both ends, to either a federal or state highway or a county road. The Governing Body shall contract therefor and shall have the power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby. (Ref. 17-512 RS Neb.)

Article 4. Curb and Gutter

§8-401 CURB AND GUTTER; CUTTING CURB. 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 without first having obtained a written permit from the Municipal Clerk therefor. 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 Street Superintendent's duty to inspect the place of entry into the paving, sidewalk, or curb, before the same is cut. When cutting into any paving, it shall be the duty of the party to cut the paving under such rules and regulations as may be prescribed by the Street Superintendent or the Special Engineer, including the requirement of the installation of an expansion joint between all new driveways and curbs. When the applicant is ready to close the opening made, he shall inform the Street Superintendent, who shall supervise and inspect the materials used and the work done in closing the opening. It shall be discretionary with the Governing Body to order the Street Superintendent, 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 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 paving, curb, or sidewalk to be cut. 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 Street Superintendent. In addition to making the deposit above set forth, the applicant shall, before any permit is issued, execute a bond to the Municipality 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.

## Article 5. Excavations

**§8-501 EXCAVATIONS; PERMIT REQUIRED.** It shall be unlawful for any person, firm or corporation to excavate or dig to any substantial degree on any property within the City limits without a written permit to do so. Application for such permit shall be made to the Municipal Clerk, and it shall include the exact location where the excavation or digging will take place. The Municipal Clerk shall refer the said application to the Utilities Superintendent, if needed, to determine whether the excavation or digging will interfere with any utility poles, lines or wires.

In the event it will be necessary for any licensed excavator to interfere with any telephone poles and wires, or a gas line, the company or companies owning, using or operating the said poles, lines or wires shall upon proper notice of at least twenty-four (24) hours, be present and assist by disconnecting the said poles, lines or wires relative to the excavation. All expense of the said disconnection, removal or related work shall be paid in advance by the licensee unless such disconnection or work is furnished on different terms as provided in the company's franchise. Whenever the excavation necessitates interference with a water main, sewer main, pipes or wires belonging to the Municipality, notice in writing of the time of the said excavating operation shall be given to the various Municipal officials in charge of the Municipal utility departments who shall proceed in behalf of the Municipality, and at the expense of the excavator, to make such disconnections and do such work as is necessary.

## Wakefield Code

## Article 6. Trees

[Editor's Note: For additional provisions on trees, see Chapter 2, Section 2-209]

**§ 8-601 TREES; PURPOSE AND INTENT.** It is the purpose of this Article to promote and protect the public health, safety and general welfare by providing for the regulation of the planting, maintenance and removal of trees, shrubs and other plants within the City. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-602 TREES; APPLICABILITY.** This Article provides full power and authority over all trees, shrubs and other plants located within street rights-of-way, parks and other public places of the City and to trees, plants and shrubs located on private property that constitute a hazard or threat to the public health and/or safety. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-603 TREES; DEFINITIONS.** The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ADJACENT LANDOWNER means any private property owner whose land abuts a public right-of-way or any publicly owned land.

LARGE TREES means those attaining a mature height of forty-five (45) feet or more.

MEDIUM TREES means those attaining a mature height of thirty (30) to forty-five (45) feet.

PARK means all public parks having individual names that come under the jurisdiction of the City.

PARK TREES means trees, shrubs, bushes and all other woody vegetation in public parks having individual names that come under the jurisdiction of the City, and all areas owned by the City, or to which the public has free access as a park.

PRINCIPAL THOROUGHFARE means any street upon which trucks are not prohibited.

PROPERTY OWNER means the person owning such property.

PUBLIC NUISANCE (with respect to trees, shrubs, plants or plant parts) shall mean any tree, shrub, or plant part with an infectious disease or insect problem; dead or dying trees, shrubs, plants, or plant parts; any tree, tree limb, shrub, shrub limb, plant or plant part that obstructs street regulatory signals, traffic regulatory signs, or the free passage of pedestrians or vehicles; any tree, shrub, plant, or plant part that poses a threat to the general health and safety of the public. The following shall be declared as public nuisances under this Article:

(1) Any dead or dying tree, shrub or other plant, whether located on City-owned property or private property;

(2) Any otherwise healthy tree, shrub or other plant that harbors insects or diseases that reasonably may be expected to injure or harm any tree, shrub or other plant, whether located on City-owned property or on private property;

(3) Any tree, shrub or other plant or portion that by reason of location or condition constitutes an imminent danger to the health, safety or welfare of the general public, whether located on City-owned property or private property;

(4) Any tree, shrub or other plant or portion that obstructs the free passage of pedestrian or vehicular traffic or that obstructs a street traffic regulatory signal or sign, whether located on City-owned property or private property; and

(5) Any tree, shrub or other plant or portion that dangerously obstructs the view in the visibility triangle as determined by the public

works department, whether located on City-owned property or private property pursuant to this Article.

PUBLIC PLACES means all other grounds owned by the City.

PUBLIC TREES means all shade and ornamental trees growing on any terrace, highway or any public place, whether otherwise indicated.

SMALL TREES means those attaining a mature height of twenty (20) to thirty (30) feet.

TERRACE means that part of a street or highway lying between the property line and that portion of the street or highway usually used for vehicular traffic.

TERRACE TREES means trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, highways, avenues or other public ways within the City.

TRAFFIC REGULATORY SIGNALS means any lighted, flashing or electronic traffic signal that regulates the flow and circulation of vehicular traffic.

TRAFFIC REGULATORY SIGNS means any metal regulatory sign attached to a post or pole for the purpose of regulating the flow and circulation of vehicular traffic.

TREE TOPPING means the severe cutting back of limbs to stubs within a tree's crown to such a degree so as to remove the normal canopy and to disfigure the tree's shape.

TREES, SHRUBS AND OTHER PLANTS means all vegetation, woody or otherwise, except lawn grass and flowers less than twenty-four (24) inches in height. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-604 TREES; DISTANCE FROM CURB, CURBLINE, AND SIDEWALK.** (1) No tree may be planted closer to any curb, curblineline or sidewalk than the following distance limits:

- (A) Small trees, two (2) feet;
- (B) Medium trees, three (3) feet; and
- (C) Large trees, four (4) feet.

(2) Exceptions to planting distance from curb, curblineline or sidewalk standards may be allowed in special plantings approved by the Street Superintendent. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-605 TREES; DISTANCE FROM STREET CORNERS.** No terrace tree shall be planted within thirty (30) feet of any street corner, measured from the point of nearest intersecting curbs or curblines. Exceptions to planting a tree, shrub or other plant closer than a distance of thirty (30) feet from a street corner but not less than twenty (20) feet from the street corner may be allowed in special plantings approved by the Street Superintendent. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-606 TREES; STREET, SIDEWALK OR CORNER CLEARANCE.** (1) Every owner of any tree overhanging any street or right-of-way within the City shall properly prune or have properly pruned the branches of such tree so that the branches shall not severely obstruct the light from any street lamp or obstruct the view of any street intersection.

(2) There shall be a clearance standard space of thirteen (13) feet above any highway or street surface and eight (8) feet above any sidewalk surface. Owners of trees on private property shall remove or have removed all dead, diseased or dangerous trees, or broken or decayed limbs that constitute a hazard to the safety of the public. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-607 TREES; DISTANCE FROM FIREPLUGS.** No terrace tree, shrub or other plants shall be planted within ten (10) feet of any fireplug, so that adequate spacing and clearance is allowed in cases of an emergency. Exceptions to planting a tree, shrub or other plant

closer than a distance of ten (10) feet from a fireplug but not less than seven (7) feet from a fireplug may be allowed in special plantings approved by the Street Superintendent. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-608 TREES; DISTANCE FROM TRAFFIC REGULATORY SIGNALS AND SIGNS.** No terrace tree, shrub other plant shall be planted within twenty-five (25) feet of any traffic regulatory signal or sign in order to allow the necessary line of sight or vision of the traffic regulatory signal or sign. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-609 TREES; UTILITY OVERHEAD OR UNDERGROUND CLEARANCE.** No terrace trees other than those species listed as small trees by the City Tree Board may be planted under or within ten (10) lateral feet of any overhead utility wire or line, over or within three and one-half (3.5) lateral feet of any underground water line, sewer line, transmission line or other utility line or wire. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-610 TREES; PUBLIC UTILITY COMPANY WORK STANDARDS.** (1) Tree limbs that grow near high-voltage electric conductors or any other utility lines shall be maintained clear of such corridors by the public utility company in compliance with any applicable franchise agreements.

(2) All public utility companies shall notify the Street Superintendent, in writing, a minimum of thirty (30) days prior to any activities related to any work or acts related to the cutting, trimming, pruning, spraying, removing or otherwise treating of terrace or park trees, shrubs or other plants located on City-owned property for the purpose of maintaining safe line clearance within the City. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-611 TREES; TREE TOPPING.** It shall be unlawful for any person to top any terrace tree, park tree or any other tree on public property. Trees severely damaged by storms, other natural causes, acts of God, or certain trees under utility wires, lines or other

obstructions where other pruning practices are impractical may be exempt from this section at the determination of the Street Superintendent. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-612 TREES; PRUNING.** The City shall have the right to prune any tree, shrub or plant on private property when it interferes with the proper spread of light along the street from a streetlight or when it interferes with the proper visibility of any traffic regulatory signal or sign or sight triangle at any intersection. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-613 TREES; REMOVAL OF STUMPS.** All stumps of terrace trees removed by private parties after obtaining a permit as set forth in section 8-614 shall be removed to the surface of the ground so that the top of the stump shall not project above the surface of the ground or the grade level of the ground. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-614 TREES; ADJACENT LANDOWNER RESPONSIBILITY.** (1) No person shall plant or remove any tree on any terrace, park or other public place without first filing for the appropriate permit with the Municipal Clerk as set forth in section 8-622.

(2) The Municipal Clerk shall submit all permits for the planting or removal of any trees on any terrace, park or other public place, to the City Tree Board for its review. After examination thereof, if found to be in conformity with the requirements of this Article and all other ordinances applicable thereto, the City Tree Board shall recommend approval of the permit to the Governing Body which shall authorize the Municipal Clerk to issue a permit to the applicant.

(3) Adjacent landowners shall be responsible for all maintenance or removal of trees on any terrace immediately adjacent to their premises, except for the removal of damaged or diseased trees which shall be the responsibility of the City as hereinafter set forth in section 8-619. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-615 TREES; PUBLIC TREE CARE BY THE CITY.** The City shall have the right to cut, trim, prune, spray, remove or

otherwise treat any terrace or park trees, shrubs or other plants within the lines of streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-616 TREES; ABUSE OR MUTILATION OF PUBLIC TREES.** No person shall:

- (1) Damage, cut, carve, transplant or remove any public tree;
- (2) Attach any rope, wire, nails, advertising posters or other contrivance to any public tree;
- (3) Allow any gaseous liquid or solid substance harmful to such trees to come in contact with them; or
- (4) Set fire or permit any fire to burn when such fire or the heat of the fire will injure any portion of any public tree.

Exceptions to this section may be allowed if approved by the Street Superintendent. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-617 TREES; ORDER TO REMOVE.** The City Tree Board shall have the authority to recommend in writing to the Street Superintendent the removal of any tree or part of a tree on public or private property deemed to be in an unsafe condition or which by reason of its nature is injurious to sewer lines, electric power wires or lines, gas or natural gas lines, water lines or other public improvements, or is affected with any injurious fungus, insect or other pest. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-618 TREES; PRIVATE TREES.** (1) The City Tree Board or its designee representing the City Tree Board has the authority to enter onto private property on which there is located a tree, tree limb, shrub, shrub limb, plant or plant part that is suspected to be a public nuisance.

(2) The City Tree Board shall have the authority to recommend in writing to the Street Superintendent the removal of any dead or diseased tree, tree limb, shrub, shrub limb, plant or plant part on

private property within the City, when such tree, tree limb, shrub, shrub limb, plant or plant part constitutes a hazard or threat to life and property, or harbors insects or disease that constitute a potential threat to other trees within the City.

(3) The City Tree Board will notify in writing to the Street Superintendent of such tree, tree limb, shrub, shrub limb, plant or plant part that is suspected to be a public nuisance, all in accordance with section 8-619. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-619 TREES; NUISANCE; DEAD OR DISEASED TREES.**

(1) The removal of damaged or diseased trees located on the terraces, in the public parks and public rights-of-way shall be the responsibility of the City. The stumps of such damaged or diseased trees shall be removed by the City to within one (1) foot of the surface of the ground. Removal of the remainder of the stump to the surface of the ground shall be the responsibility of the adjacent landowner. The damaged or diseased tree removed by the City may be disposed of as the City shall determine and any monetary proceeds derived therefrom shall belong to the City.

(2) It is declared a nuisance for a property owner to permit, allow or maintain any dead or diseased trees on private property within the corporate limits of the City. For the purpose of carrying out the provisions of this section, the police shall have the authority to enter upon private property to inspect the trees on such property.

(3) Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. Within thirty (30) days after the receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing or fails to comply with the order to abate and remove the nuisance, the City may have such work done and may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied or assessed.

(4) In the event that the Municipal Clerk receives a request from an adjacent landowner for the removal of a diseased tree from the terrace and the City Tree Board, after examining the tree, finds that the tree is not diseased nor in need of removal, the adjacent landowner may request an inspection by a forester or other professional tree expert. If such inspection finds the tree to be diseased and in need of removal, the City Tree Board shall notify the Street Superintendent of the need for the tree's removal which shall be accomplished by the City. If the tree is found not to be diseased and in need of removal, the adjacent landowner may remove the tree at his own expense if the appropriate permit is first obtained. The cost of any such inspection shall be paid by the party prevailing on the question. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-620 TREES; IMMEDIATE THREAT BY A PUBLIC NUISANCE.**

(1) The City Tree Board shall have the authority to recommend in writing to the Street Superintendent the immediate abatement of any public nuisance provided that the nuisance is determined by the City Tree Board, an agent of the City Tree Board, a forester, professional tree expert, or a certified landscape contractor hired by the City Tree Board to be an immediate threat to any person or property.

(2) The Governing Body is hereby empowered to seek from any court of competent jurisdiction an order directing immediate abatement of any public nuisance. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-621 TREES; TREE PROTECTION.** Upon the discovery of any destructive or communicable disease or other pestilence that endangers the growth or health of trees, tree limbs, shrubs, shrub limbs, plants or plant parts, or threatens to spread disease or insect infestations, the Street Superintendent shall immediately cause written notice to be served upon the owner of the property upon which such diseased or infested trees, tree limbs, shrubs, shrub limbs, plants or plant parts are situated; and the notice shall require the property owner

to eradicate, remove, treat or otherwise control such condition within a reasonable time to be specified in the notice. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-622 TREES; PERMITS.** (1) No person (except the City Tree Board, an agent of the City Tree Board, a contractor hired by the City Tree Board, or the regulated public utility company and/or its authorized agents or contractors) may perform any work or acts of removing or planting terrace or park trees, shrubs or other plants within the city without first obtaining a permit to do such acts or work from the Municipal Clerk for which no fee shall be charged.

(2) Nothing in this section shall be construed as to exempt any person from the requirements of obtaining any additional permits as are required by law. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-623 TREES; INTERFERENCE.** It shall be unlawful for any person to prevent, delay or interfere with the City Tree Board, the Street Superintendent or any of its or his agents while engaging in and about the cutting, trimming, pruning, spraying, removing or otherwise treating street or park trees, shrubs or other plants either on publicly or privately owned property and grounds, pursuant to this Article. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-624 TREES; ENFORCEMENT.** The Governing Body or a designated agent representing the Governing Body has the authority and power to promulgate and enforce rules, regulations and specifications concerning the cutting, trimming, pruning, spraying, removing or otherwise treating of street or park trees, shrubs or other plants upon the right-of-way of any street, alley, sidewalk or other public place within the City. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-625 TREES; APPEAL.** (1) Any person may appeal any ruling, finding, or decision of the City Tree Board, and/or the conclusions of any inspection by a forester or other professional tree expert to the Governing Body.

(2) The Governing Body may hear the matter and make a final decision at any regular meeting or special meeting. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-626 TREES; VIOLATION AND PENALTY.** The penalty for violation of this Article shall be as provided in sections 8-701 and 8-702. (*Ord. No. 2-2002, 8/7/02*)

**§ 8-627 TREES; CLAIMS.** If a nuisance is not abated by the date specified in the notice prepared by the City to the property owner who is in violation of this Article, the City has the authority to cause the abatement of the nuisance. The reasonable cost of such abatement shall be filed as a lien against the property owner upon which the nuisance was located. In addition, the owner of the property upon which the nuisance is located shall be subject to penalties as described in section 8-626. (*Ord. No. 2-2002, 8/7/02*)

## Wakefield Code

## Article 7. Penal Provisions

**§8-701 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 a misdemeanor and upon conviction, thereof, shall be fined not more than five hundred (\$500.00) dollars for each offense, recoverable with costs. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply. *(Ref 17-505 RS Neb) (Amended by Ord. No. 7-2009, 11/11/09)*

**§8-702 ABATEMENT OF NUISANCE.** Whenever a nuisance exists as defined in this Chapter, the Municipality may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law.

Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. *(Ref. 18-1720, 18-1722 RS Neb.)*

## Wakefield Code