

## **CHAPTER THREE**

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## **CHAPTER THREE**

### **PUBLIC PLACES AND PROPERTY**

#### **ARTICLE 1 - Construction and Repair**

##### **3.0101 Supervision**

All construction, maintenance, and repair of public streets, alleys, sidewalks, and other public ways shall be under the supervision of the City Engineer or Street Superintendent. The City Engineer or Street Superintendent shall be charged with the enforcement of all ordinance provisions – except for traffic ordinances – relating to such public places and is hereby authorized to enforce such ordinances.

##### **3.0102 Construction and Repair - Permits**

It shall be unlawful to construct, reconstruct, alter, grade, or repair any public street, sidewalk, driveway, curbs, or gutters without having first secured a permit therefore, unless said work is performed by the City contractor. Applications for such permits shall be made to the City Auditor and shall state the location of the intended pavement or repair, the extent thereof and the person or firm who is to do the actual construction work. No such permits shall be issued except where the work will conform to the ordinances of the City.

##### **3.0103 Bond**

Each applicant shall file a bond, per contract provisions, with surety to be approved by the governing body conditioned to indemnify the City for any loss or damage resulting from the work undertaken or the manner of doing the same.

##### **3.0104 Specifications**

All construction, maintenance, and repair herein shall be made in conformity with specifications laid down or approved from time to time by the governing body.

##### **3.0105 Duty of Owner to Maintain**

It shall be the duty of the owner of any property along which a sidewalk has been constructed to maintain the same in good repair and safe condition. Should any such owner fail to maintain such sidewalks, the City Engineer or Street Superintendent shall direct the owner to make such repairs as may be necessary to restore such sidewalk to a safe condition. Should the owner fail, within a reasonable time, to follow the directions of the City Engineer or Street Superintendent, the City Engineer or Street Superintendent shall report the facts to the governing body, which may then proceed as provided in chapter 40-29 of the North Dakota Century Code.

### **3.0106 Application for Permit**

An applicant for a permit hereunder shall file with the City Auditor an application showing:

1. Name and address of the owner, or agent in charge, of the property abutting the proposed work area;
2. Name and address of the party doing the work;
3. Location of the work area;
4. Attached plans or sufficient sketches showing details of the proposed alterations;
5. Estimated cost of the alterations; and
6. Such other information as the City Engineer or Street Superintendent shall find reasonably necessary to the determination whether a permit should be issued hereunder.

### **3.0107 Standards for Issuance of Permit**

The City Engineer or Street Superintendent shall issue a permit hereunder when it is determined:

1. That the work will be done according to the standard specifications of the City for public work of like character;
2. That the operation will not unreasonably interfere with vehicular and pedestrian traffic, the demand and necessity for parking spaces, and the means of ingress and egress to and from the property affected and adjacent properties; and
3. That the health, welfare, and safety of the public will not be unreasonably impaired.

### **3.0108 Sidewalks Built to Grade Specifications**

All sidewalks shall be constructed in accordance with the elevations and grade therefore to be furnished by the City Engineer and shall be constructed under the direction and supervision of the City Engineer or under the direction and supervision of the Street Superintendent. All sidewalks shall meet the following requirements:

1. All sidewalks shall be constructed of concrete.
2. All sidewalks in residential areas shall be constructed not less than five (5) feet in width and shall have a minimum slope one-fourth (1/4) inch per foot from the inside edge toward the street.
3. All sidewalks shall be of concrete and of at least four (4) inches in thickness.

4. All sidewalks shall be laid out as follows:
  - a. In locations where the right-of-way is sixty (60) feet or less the sidewalks shall be constructed on the property line.
  - b. In locations where the right-of-way is greater than sixty (60) feet the sidewalk shall be constructed eighteen (18) inches out from the property line.
  - c. In no case in the residential district shall the sidewalk be constructed adjacent to the curb unless right-of-way and topographic features require it, and then only with specific approval of the governing body.
  - d. Notwithstanding any other provision herein all sidewalks shall be set out so that they are in conformity with existing sidewalks to which they may attach.
5. All sidewalks in commercial and/or industrial districts shall be constructed from the property line to the back of the curb and the width of sidewalk shall be governed by the width of street section; provided, however, in areas where commercial development is not complete the entire sidewalk need not be constructed, a section six (6) feet in width adjacent to the curb shall be constructed thus leaving an area for structural foundations.

### **3.0109 Materials and Manner of Construction**

The City Engineer shall determine the kind and quality of material used, and the manner in which driveways, curb and gutter, relaying of block walks, and paving repairs shall be constructed.

### **3.0110 City Contractor**

The City Auditor shall receive bids for the construction of sidewalks, driveways, curb and gutter, and paving repairs as the City may find necessary to have done. Such bids shall be made upon blanks furnished by the City Engineer or Street Superintendent and shall conform to specifications filed with the City Auditor by the City Engineer or Street Superintendent and approved by the governing body.

All sidewalks, driveways, curb and gutter, and alley returns lying between the property line and the abutting street hereafter constructed within the City must conform to this Chapter, and the specifications filed with the City Engineer and approved by the governing body must specify the details with respect thereto. When any contract for the construction of sidewalks, driveways, curb and gutter, relaying of block walks, and paving repairs is about to be entered into by the City in accordance with the provisions of the laws of this state, the contractor to whom any such contract shall be awarded shall be required, before such contract is entered into, to give in addition to the contract bond required by the laws of the state of North Dakota, an additional bond in an amount to be determined by the governing body, running to the City, conditioned that said contractor shall satisfactorily comply with the specifications for construction.

## **ARTICLE 2 - Use and Care of Streets, Sidewalks and Public Places**

### **3.0201 Obstructions - Penalty**

It shall be unlawful for any person, firm, or corporation to cause, create, or maintain any obstruction of any street, alley, sidewalk, or other public way, except as may be specified by ordinance or by the City Engineer or Street Superintendent. Any person violating the provisions of this Chapter shall be guilty of an infraction and upon conviction thereof, shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).

### **3.0202 Destruction of City Property - Prohibited - Penalty**

It shall be unlawful for any firm, person, or corporation to willfully and without just cause or excuse, to injure, deface, or destroy any property owned by the City or held by the City for public use. Any person violating the provisions of this Chapter shall be guilty of an offense and be fined per fine schedule set by resolution and/or fined or penalized per state law.

### **3.0203 Encroachments**

It shall be unlawful to erect or maintain any building or structure that encroaches upon any public street or property.

### **3.0204 Openings**

It shall be unlawful to construct or maintain any opening or stairway in any public street, sidewalk, or alley without a permit from the governing body. All such lawfully maintained openings shall be guarded by a suitable strong cover or railing to be approved by the Street Superintendent or the City Engineer or the official who supervises public improvements.

### **3.0205 Wires**

It shall be unlawful to erect any poles or wires or maintain any poles or wires over any public place, street, alley, or other public way without having first secured permissions from the City governing body. Any person or company which maintains poles and wires in the streets, alleys, or other public places, shall, in the absence of provisions in the franchise concerning the subject, keep such wires and poles free from and away from any trees and shrubs in such places as far as may be possible, and keep all such trees and shrubs near such wires and poles properly trimmed, subject to the supervision of the City Engineer or Street Superintendent, so that no injury shall be done either to the poles or wires or to the shrubs and trees by their contact.

### **3.0206 Littering - Prohibited**

No person, firm, or corporation shall throw or deposit or cause to be thrown or deposited any garbage, glass, bottles, boxes, or rubbish of any kind upon any street or alley in the City.

### **3.0207 Burning**

It shall be unlawful for any person, firm, or corporation to burn any leaves, paper, rubbish, or other substances upon any of the public streets, sidewalks, or alleys in the City.

### **3.0208 Distributing Hand Bills, Etc.**

The scattering, throwing, or placing of bills, posters, advertising matter, hand bills, and other similar items on private premises, sidewalks, streets, or other public places in the City must be done in such a manner so as to prevent the items from being blown about these premises, sidewalks, streets, or other public places. Any person or entity violating the provisions of this section shall be guilty of an infraction.

### **3.0209 Heavy Vehicles**

No person, firm, or corporation shall move, or cause to be moved, over the paved streets, sidewalks, crosswalks, culverts, bridges, or viaducts, within the City, any engine, tractor, wagon, truck or other vehicle, object, or thing, which will tend to injure the paving, sidewalks, crosswalks, culverts, bridges or viaducts over which the said are transported, or any vehicle, to the wheels of which are attached bars, angle irons, or cleats which will tend to mar or deface the paving, sidewalks, culverts, bridges or viaducts, except under the direction and permission of the city council and, in addition thereto, shall pay or cause to be paid to said city, upon demand, any and all damages done to the paving, sidewalks, crosswalks, culverts bridges, or viaducts. The City by resolution adopted and made public, may establish loads limits for such period of time it may deem necessary. The provisions of this section shall not apply to state and federal highways through the City.

### **3.0210 Removal of Snow and Ice from Sidewalk**

It shall be, and hereby is declared to be, the duty of the owner or occupant of each lot in the City to remove from the sidewalk in front of or along the same, any ice or snow which forms, accumulates or obstructs such sidewalk, within twenty-four (24) hours after the ice forms or the snow ceases to fall thereon. Where the ice accumulated is of such character as to make the removal thereof practically impossible, the sprinkling of salt or sand thereon within the time specified for removal in such manner as to make such sidewalk safe for the travel of pedestrians thereon, shall be deemed a compliance with the provisions of this article.

### **3.0211 Removal of Snow and Ice by City**

In case the owner of any lot in the City refuses or neglects to remove such ice and snow from the sidewalk in front of or along a lot therein, within the same time above stated or refuses to sprinkle salt or sand on the same within the time specified for removal in such manner as to

make such sidewalk safe for travel of pedestrians thereon, the same may be removed by or under the direction of the City Engineer or Street Superintendent of the City, or salt or sand sprinkled thereon, and the necessary expenses shall be charged against the abutting property by special assessment in the manner prescribed by law.

### **3.0212 Assessments by Street Superintendent When Work is Done by City**

Whenever the Street Superintendent shall, pursuant to Section 3.0211 of this Article, remove or cause to be removed any snow or ice from any sidewalk or sidewalks along or in front of any building, grounds or premises, the Street Superintendent shall assess the cost of the same against said property, and on or before the first day of May in each year, make and file in the office of the City Auditor a list showing separately the amount chargeable and assessed against each lot and tract and stating the name of the owner of each lot or tract as known to the Street Superintendent.

### **3.0213 Snow and Ice Removal Assessments, Publication by Auditor, Hearing by City Governing Board**

The City Auditor shall give notice by publication in the official newspaper of the hearing and confirmation of such report and assessment at the regular June meeting of the City governing board, notifying all persons objecting thereto to appear and present their objections. The notice shall be published once each week for two (2) consecutive weeks, the last publication to be not less than eight (8) days before the date fixed for the hearing. At the June meeting of the City governing board or at such later meeting as the hearing and confirmation of such assessment may be adjourned to, the City governing board shall consider said assessment and shall hear any objections thereto or to any part thereof, and after revising and correcting the same, if necessary, it shall approve and confirm the list. The City Auditor shall attach to such list the City Auditor's certificate that the same is correct as confirmed by the City governing board and shall file the same in the City Auditor's office. The assessment shall be certified to the County Auditor by the City Auditor in the manner provided in section 40-24-11 of the North Dakota Century Code.

### **3.0214 Street Cleaning - Snow Removal**

Whenever, in the judgment of the governing body or the City Engineer or Street Superintendent of the City, it shall be necessary that streets, alleys, or public ways in the City shall be cleared of snow or ice or be cleaned by the use of street sweepers or other methods of cleaning such streets, or for marking for traffic purposes, the ordinances of the City regulating the parking of automobiles, trucks, and other motor vehicles shall be suspended and it shall be unlawful for any automobile, truck, or other motor vehicle to be parked or left standing between the hours hereinafter mentioned and during the period of time during which the said parking ordinances are suspended.



### **3.0215 Notice - Snow Removal or Street Cleaning**

Whenever it becomes necessary to remove snow or ice or to sweep and clean streets, or to mark streets for traffic purposes in the City there shall be designated by the City Engineer or Street Superintendent the area and streets to be cleared, cleaned, or marked and the time during which such activity will be done by the posting of such information in the area affected or some other means of public notice.

### **3.0216 Impounding Vehicles and Equipment**

Whenever any parked automobile, truck, machinery, vehicle, or equipment shall be found in any place prohibited by these restrictions, and during the hours as provided herein, the same shall be impounded by the City at a place to be provided and it shall be unlawful for any person, firm, or corporation to remove or attempt to remove any automobile, truck, machinery, vehicle, or equipment from the place where impounded without first paying the cost of such impounding.

### **3.0217 Blocking Streets**

No driver of any vehicle shall stop the same on any street, avenue, lane, or alley of the City in such a manner as to hinder or prevent other vehicles or persons from passing at all times, unless in case of absolute necessity, nor shall any driver of any vehicle stop the same at any regular crossing of said street, alley, lane, or avenue, so as to prevent the free passage of persons traveling or passing on foot.

### **3.0218 Excavations - Permit**

It shall be unlawful for any person, firm, or corporation, except public utilities which have received a franchise from the City, to tunnel under or to make any excavation in any street, alley, or other public place in the City without having obtained a permit as is herein required and complying with the provisions of this Article and the terms of any such permit.

### **3.0219 Guarding or Excavations and Openings**

It shall be unlawful for any person within the City limits to leave or keep open, uncovered, or unguarded any cellar door, pit, grating, vault, or other subterranean passage opening from, into or upon any street, alley, or sidewalk, or upon any private property if not suitably guarded.

### **3.0220 Application for Excavation Permits**

Applications for excavation permits shall be made to the City Auditor and shall describe the location of the intended excavation or tunnel, the size thereof, the purpose therefore, and the person, firm, or corporation doing the actual excavating work and the name of the person, firm, or corporation for which the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done.

### **3.0221 Fees for Excavation Permits**

The fee for excavation permits shall be set by resolution as deemed necessary.

### **3.0222 Bond - Excavations**

No excavation permit shall be issued unless and until the applicant therefore has filed with the City Auditor a bond in accordance with contract provisions, conditioned to indemnify the City for any loss, liability, or damage that may result or accrue from or because of the making, existence or manner of guarding or constructing any such tunnel or excavations. Such bond shall have as surety a corporation licensed to do business in the state as a surety company.

### **3.0223 Deposit - Excavations**

No excavation permit shall be issued unless and until the applicant therefore has deposited with the City Auditor a cash deposit or bond in the sum determined by contract provisions if pavement is involved, to insure the proper restoration of the area involved. Any balance will be returned to the applicant without interest after the excavation area is restored.

### **3.0224 Making Excavations - Notice**

It shall be unlawful to make any such excavation or tunnel in any way contrary to or at variance with the terms of the permit therefore. Proper bracing shall be maintained to prevent the collapse of adjoining ground, and in excavations, the excavation shall not have anywhere below the surface any portion which extends beyond the opening at the surface. No unnecessary damage or injury shall be done to any tree or shrub or the roots thereof.

No injury shall be done to any pipes, cables, or conduits in the making of such excavations or tunnels, and notice shall be given to the persons maintaining any such pipes, cables, or conduits or to the City or officer charged with the care thereof, which are or may be endangered or affected by the making of any such excavation or tunnel before such pipes, cables, or conduits shall be disturbed. Notice shall be given as required by chapter 49-23 of the North Dakota Century Code.

### **3.0225 Restoration of Excavations**

Any person, firm, or corporation making any excavation or tunnel in or under any public street, alley, or other public place in the City shall restore the surface to its original condition if there is no pavement there. Refills shall be properly tamped down, and any bracing in such tunnel or excavation shall be left in the ground. Any opening in a paved or improved portion of a street shall be repaired and the surface re-laid by the applicant, in compliance with the ordinances of the City and under the supervision of the Street Superintendent or City Engineer.

### **3.0226 Supervision of Excavation Work**

The Street Superintendent or City Engineer shall from time to time inspect or cause to be inspected, all excavations and tunnels being made in or under any public street, alley, or other public place in the City to see to the enforcement of the provisions of this Article. Notice shall be

given to the Street Superintendent or City Engineer at least ten (10) hours before the work of refilling any such tunnel or excavation begins.

### **3.0227 City Buildings, Equipment and Vehicles - Smoking**

Smoking is not permitted in City buildings, equipment, and vehicles, except as provided under state law.

## **ARTICLE 3. Unclaimed and Abandoned Property**

### **3.0301 Unclaimed and Abandoned Property - Defined**

Personal property left upon the streets, alleys, or other public ways in the City shall be deemed to be unclaimed or abandoned within the meaning of this article when the same is permitted to remain in any one place upon said streets, alleys, or other public ways for a period of ten (10) days or more.

### **3.0302 Seizure of Unclaimed or Abandoned Property**

Whenever any unclaimed or abandoned personal property is found upon the streets, alleys, or other public ways of the City, the same shall be seized and possession thereof taken by any police officer, Street Superintendent, or other officer of the City.

### **3.0303 Holding of Personal Property - Notice of Sale**

Abandoned personal property shall be held by the City for a period of not less than sixty (60) days after its seizure as provided herein, and after the expiration of said sixty (60) days the City Auditor shall cause notice to be published in the official newspaper of said City, said notice specifying and stating the description of the property so seized and held, the location of the place where the same was seized or taken by said City, and a further notice that said property will be sold at public auction, to the highest bidder for cash, not less than ten (10) days from and after the date of the publication of such notice and the hour, date and place where said sale will be held. If prior approval is obtained from the city governing body such unclaimed or abandoned property may be sold at a community auction provided that the Chief of Police or a police officer shall be responsible for the notice and reporting requirements of this Article.

### **3.0304 Report of Abandoned Property Sale**

At the time specified in said notice the said property shall be sold by the representative of the City or by any police officer designated by the City, at public auction to the highest bidder for cash. The city representative making the sale shall make a report thereof to the city governing body. The report shall contain the description of the property sold, the time and place of the sale, the name or names of the purchaser or purchasers, and the amount received therefore. The report shall be made under oath and subscribed by the officer making such sale and shall be filed with the City Auditor within three (3) days after the date of such sale. The officer upon filing the report shall pay to the City Auditor the proceeds of said sale.

### **3.0305 Bill of Sale - Abandoned Property**

Upon the receipt of the report as specified in section 3.0304 hereof, the City Auditor shall prepare a bill of sale of the property sold conveying the same to such purchaser and the same shall be executed by the presiding officer of the governing body and attested by the City Auditor and delivered to the purchaser.

### **3.0306 Proceeds of Sale - Abandoned Property**

The City Auditor shall retain such money as is received from such sales in a separate account for a period of six (6) months from and after the time of such sale and if proceeds of such sale are not claimed as hereinafter provided by the owner of said property, the said money shall thereupon be transferred to the general fund of the City.

### **3.0307 Redemption of Personal Property**

Any person owning such personal property seized as aforesaid, may at any time prior to the sale thereof, upon furnishing satisfactory proof of his ownership thereof to the governing body, reclaim such property upon paying the expenses incurred by the City for the seizure, storage, or advertising the sale thereof. Any person owning such property as aforesaid may at any time within six (6) months after such sale and upon making satisfactory proof to the governing body of his ownership thereof, claim the proceeds of such sale, upon payment to the City of the necessary expenses incurred by the City for the seizure, storage and sale of said property.

### **3.0308 Annual Report - Unclaimed and Abandoned Property**

The Representative of the City prior to June 1 of each year shall submit to the City Auditor a written list of all unclaimed and abandoned property held by the City which has not been sold pursuant to the provisions of this Article. The City Auditor shall bring such list to the attention of the governing body at the next regular meeting.

## **ARTICLE 4 - House Numbering**

### **3.0401 House Numbering Required**

All lots, buildings, and structures in the City shall be numbered in accordance with the following plan:

### **3.0402 Numbers of Houses**

It shall be the duty of the owner and occupants of every house in the City to have placed thereon, in a place visible from the street, figures at least two and one-half (2 ½) inches high, showing the number of the house.

## **ARTICLE 5 – Trees – Shade Tree Committee**

### **3.0501 Definitions – Street Trees and Park Trees**

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

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

### **3.0502 Establishment of a Shade Tree Committee – Terms - Compensation**

There is hereby established a Shade Tree Committee for the City which consists of five members, residents of this City, who shall be appointed by the mayor with the approval of the City governing body. The terms of committee members shall be three years, except that the term of two of the members appointed to the first committee shall be for only one year and the term of two members of the first committee shall be for two years. In the event that a vacancy occurs during the term of any committee member, a successor shall be appointed for the unexpired portion of the term. Members of the committee shall serve without compensation.

### **3.0503 Operation and Duties of the Shade Tree Committee**

The Shade Tree Committee shall choose its own officers and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business. It shall be the responsibility of the committee to study, develop, update and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan shall be presented annually to the City governing body and upon their acceptance and approval shall constitute the comprehensive tree plan for the City.

### **3.0504 Tree Care – Tree Topping**

The City shall have the right to plant, prune, maintain, and remove trees, plants, and shrubs within the lines of all streets, alleys, avenues, lanes, squares, and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The Shade Tree Committee may remove or cause or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect, or other pest. It shall be unlawful as a normal practice to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree’s crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged or certain trees under utility wires or obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the Shade Tree Committee.

### **3.0505 Review by City Governing Body**

The city governing body shall have the right to review the conduct, acts and decisions of the Shade Tree Committee. Any person may appeal from any ruling or order of the Shade Tree Committee to the city governing body, which may hear the matter and make a final decision.