

CHAPTER 18

PUBLIC WAYS AND PLACES

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ARTICLE 18-01

STREETS AND ALLEYS

Section	
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18-0101. Elevations--Determination.--Streets and alleys and their elevations, as established in the past by the city, shall be considered as permanent; and all references to past elevations and all future elevations as established from now on should be referred to and based on the United States Geological Survey elevations as established in 1917.

Source: 1965 Rev. Ord. 18-0101, 1619 (1974).

18-0102. Building and house numbers.--It shall be the duty of the owner, owners, or occupants of any building or buildings in the city fronting upon any street or avenue therein to place and keep in a conspicuous place on the front of such building or buildings the proper house number

or house numbers thereof.

Source: 1965 Rev. Ord. 18-0102, 1619 (1974).

18-0103. Naming and numbering streets and avenues.--The names of the streets and avenues to the city shall be those designated in the official street name map as adopted by the board of city commissioners and on file in the office of the city auditor.

Source: 1965 Rev. Ord. 18-0103, 1619 (1974).

18-0104. Lighting of streets, alleys and public buildings.--The board of city commissioners shall have authority to, and shall, provide for the lighting of streets, avenues, alleys, public places and public buildings within the city by contract or such other arrangement as it may deem necessary or best.

Source: 1965 Rev. Ord. 18-0104, 1619 (1974).

18-0105. Alleys--Nuisance--Cleaning and maintenance-- Assessment of costs.--Any alley in the city of Fargo which is not graded, maintained and kept free from filth, garbage, rubbish and all noxious weeds shall be deemed to be a nuisance.

The owner or occupant of any building or grounds within the city adjacent to any alley shall keep such alley free from filth, garbage, rubbish and all noxious weeds. Such owner or occupant may, in his discretion and at his expense, grade and maintain such alley, or may request that the city perform such grading and maintenance work.

If said owner or occupant shall refuse or fail to keep such alley free from filth, garbage, rubbish and all noxious weeds, or if he shall fail to grade and maintain, or request that the city grade and maintain, such alley, the city of Fargo may grade, maintain and clean, or cause to be graded, maintained and cleaned, such alley, and the necessary costs and expenses thereof shall be chargeable to and assessed against, and shall be a lien upon, the property and premises adjacent to said alley.

The responsibility of the owner or occupant of property adjacent to an alley shall not include responsibility for snow removal and the costs thereof may not be assessed against any adjoining property.

Source: 1965 Rev. Ord. 18-0105, 1619 (1974).

18-0106. Street paving--Standards--Costs to be assessed.-- Street paving in the city of Fargo shall be constructed and the costs assessed therefor in accordance with the following:

- A. Street widths shall be based upon the traffic needs of each individual street and shall be determined by the city engineer, subject to the approval of the board of city commissioners.
- B. The design standards for any street, including pavement type and thickness, shall be based upon the needs of traffic and shall be determined by the city engineer, subject to the approval of the board of city commissioners.
- C. The cost of street paving shall be assessed against property which is benefited, in accordance with the provisions of chapters 40-22 through 40-27 of the North Dakota Century Code.

Source: 1965 Rev. Ord. 18-0106, 1619 (1974), 1775 (1977), 2444 (1989).

18-0107. Alley paving--Standards--Costs to be assessed.-- Alley paving in the city of Fargo shall be constructed and the costs assessed therefor in accordance with the following:

- A. Width of alley paving shall be based upon the platted width of each individual alley and shall be determined by the city engineer, subject to the approval of the board of city commissioners.
- B. The design standards for any alley, including pavement type and thickness, shall be based upon the needs of traffic and shall be determined by the city engineer, subject to the approval of the board of city commissioners.
- C. The cost of alley paving shall be assessed against adjoining property owners in accordance with the provisions of chapters 40-22 through 40-27 of the North Dakota Century Code.

Source: 1965 Rev. Ord. 18-0107, 1619 (1974).

18-0108. Street and alley paving--Fund established.--There is hereby created a fund to be known as the "permanent street improvement fund". All sums in excess of \$570,000 which are returned to the city of Fargo from the state of North Dakota as the city's share of "jackpotted" highway funds and repayments to the city in lieu of personal property tax, shall be placed in such "permanent street improvement fund". The maximum amount to be placed in said fund in any fiscal year shall be \$150,000. This fund shall be used to defray street and alley improvement costs which are not assessed against benefited property owners, and to pay the city's share of street and alley improvement costs which exceed assessable amounts as provided in §§ 18-0106 and 18-0107 hereof.

Source: 1965 Rev. Ord. 18-0108, 1619 (1974).

ARTICLE 18-02

CONSTRUCTION OF SIDEWALKS AND DRIVEWAYS

Section

- 18-0201 Scope of article.
- 18-0201.1 Duty of property owners to construct and maintain sidewalks.
- 18-0202 License necessary to construct, reconstruct, and repair sidewalks and driveways.
- 18-0203 Contractor's license--Fee--Expiration date.
- 18-0204 Bond of licensee--Repealed.
- 18-0205 Name stamp required of licensee.
- 18-0206 Construction subject to inspection--Request by licensee.
- 18-0207 Sidewalk construction--Permit required--Fees.
- 18-0208 Contract for construction of sidewalks--Bids-- Specifications.
- 18-0209 Qualifications of contractor.
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- 18-0212 City sidewalk contract--Scope of work.
- 18-0213 Contractor to be responsible until sidewalk completed.
- 18-0214 Failure of contractor to fulfill conditions.
- 18-0215 Width of sidewalks.
- 18-0216 City sidewalks--Driveways--Construction specifications.
- 18-0217 Materials in general.
- 18-0218 Construction methods.
- 18-0219 Excavation for sidewalks and driveways.
- 18-0220 Removal of old sidewalks.
- 18-0221 Removal of curbs for driveways.
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- 18-0226 Side fill required.
- 18-0227 Contraction joints.
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- 18-0229 Expansion joints.
- 18-0230 Concrete finishing.
- 18-0231 Stamping.
- 18-0232 Curing of concrete.
- 18-0233 Protection of work.
- 18-0234 Measurement and payment on city contract.
- 18-0235 Penalty.

18-0201. Scope of article.--This article shall govern all construction of all sidewalks, sidewalk approaches, alley returns, and driveways within the city of Fargo.

Source: 1952 Rev. Ord. 1152 (1963).

18-0201.1. Duty of property owners to construct and maintain sidewalks.--Notwithstanding the provisions of 40-29-02 of the North Dakota Century Code, the duty to construct, reconstruct and maintain sidewalks in the city of Fargo shall be as follows:

- A. Except as hereinafter provided in subsection (E) of this section, the original owner of any building constructed in the city of Fargo shall construct sidewalks along the street or avenue in accordance with the requirements of this article; or shall petition the city in writing, to construct such sidewalks and to assess the cost thereof against the adjoining property. The form of the petition shall be as provided by the city finance office.
- B. Construction of sidewalks, or submission of a petition as hereinabove provided, shall be a prerequisite to the issuance of a certificate of occupancy for any building constructed in the city of Fargo.
- C. The owner of any lot or parcel of land adjoining any street or avenue in the city of Fargo shall reconstruct and maintain in good repair such sidewalks

along the street or avenue as have been previously constructed and shall construct such sidewalks when so ordered by resolution of the board of city commissioners.

- D. Such sidewalks shall be constructed in accordance with all of the requirements of this article. Notice of such order to construct, reconstruct or repair shall be given in accordance with §40-29-03 of the North Dakota Century Code.
- E. The board of city commissioners may, for good cause shown, waive the requirement for sidewalks; provided, that such waiver may not be granted for any property which is unplatted. Petitions for sidewalk waivers will be submitted and processed as follows:
 - 1. A written petition, signed by a majority of the owners of property within the area for which the waiver is requested, shall be submitted to the planning office. The form of the petition shall be approved and furnished by the planning office.
 - 2. The petition shall be submitted to the planning commission at its next regular meeting for consideration and recommendations; provided, that such petition may be submitted and considered by the planning commission simultaneously with the request for approval of a plat of the area for which the sidewalk waiver is requested.
 - 3. The planning commission, after consideration of the petition, shall forward its determination and recommendation to the board of city commissioners.
 - 4. The board of city commissioners shall consider the petition and the recommendation of the planning commission, in making its final decision on the petition.
 - 5. A waiver of the requirement for sidewalks shall not constitute a waiver of the requirement to provide sufficient right-of-way to accommodate sidewalks in the future, in the event the waiver is rescinded pursuant to paragraph (F) of this section.
 - 6. Appropriate guidelines regarding the necessity for sidewalks shall be developed and incorporated in the subdivision regulations for the city of Fargo.
- F. A waiver of the requirement for sidewalks which is granted pursuant to subsection (E) of this section shall be rescinded as follows:
 - 1. Upon submission of a petition signed by a majority of the owners of property located within the area which is the subject of the waiver.
 - 2. If the city determines that sidewalks in the area are necessary and that rescission of the previously granted waiver is in the public interest; provided, that such waiver shall not be

rescinded by the city, except on recommendation of the planning commission, after public hearing on the proposed rescission. Notice of the hearing shall be given by publication in the official newspaper, or by mail addressed to the residents in the affected area.

Source: 1965 Rev. Ord. 18-0201.1, 1393 (1971), 2527 (1990), 2704 (1994).

18-0202. License necessary to construct, reconstruct, and repair sidewalks and driveways.--No person shall construct, reconstruct, or repair sidewalks or driveways within the city without first procuring a license from the city auditor to engage in such work.

Source: 1965 Rev. Ord. 18-0202, 1461 (1973).

18-0203. Contractor's license--Fee--Expiration date.--If a license to construct, reconstruct, and repair sidewalks and driveways is granted by the board of city commissioners, the person applying shall pay to the city treasurer the required fee, which shall be established by resolution of the board of city commissioners. Such license shall expire one year from the date thereof.

Source: 1965 Rev. Ord. 18-0203, 1461 (1973), 1505 (1973).

18-0204. Bond of licensee.--No license shall be granted by the city auditor unless such person shall have given a bond in the sum of \$25,000 with good and sufficient surety therefor, approved by the city auditor and the city attorney, conditioned, among other things, that said licensee will save harmless the city of Fargo and the owner of the property adjacent to the street or avenue where the sidewalk is constructed, from damages caused by reason of any negligence or faulty work by any person or any employee of such person, and that the material used and the work done in the construction of said sidewalks shall be strictly in accordance with the requirements of this article.

Source: Repealed by Ord. No. 2397, effective February 22, 1988, re-enacted by Ord. No. 2527, (1990).

18-0205. Name stamp required of licensee.--Sidewalk construction licensees shall be required to have a stamp which shall be used to imprint the contractor's name and year of construction into the constructed sidewalk. Said stamp shall consist of letters one and one-quarter inches high and of sufficient depth to imprint to the depth of one-eighth inch into the fresh concrete.

Source: 1952 Rev. Ord. 1152 (1963).

18-0206. Construction subject to inspection--Request by licensee.--Licensee shall request an inspection by the city engineer after having constructed the forms and placed and compacted the subbase and before the placing of any concrete. The city engineer shall be given four working hours in which to make said inspection. Concrete shall not be placed until the work has been approved.

Source: 1952 Rev. Ord. 1152 (1963).

18-0207. Sidewalk construction--Permit required--Fees.--All public sidewalks constructed within the city must be built on the line and grade set by the city engineer; and every person, firm, or corporation shall, before undertaking any sidewalk construction, reconstruction, or repair, request

line and grade and obtain from the city engineer a written permit for each separately owned piece of property, and pay the required fee, which shall be established by resolution of the board of city commissioners.

No permits shall be required for sidewalks constructed or reconstructed under a city contract since the city order will serve as the permit.

Source: 1965 Rev. Ord. 18-0207, 1505 (1973).

18-0208. Contract for construction of sidewalks--Bids--Specifications.--Each year, before the beginning of the construction season, the city auditor shall receive bids for the construction or reconstruction of such city sidewalks as the city may find necessary to construct. Such bids shall be made upon proposals furnished by the city engineer and shall conform to specifications filed with the city auditor by the city engineer and approved by the board of city commissioners.

Source: 1952 Rev. Ord. 1152 (1963).

18-0209. Qualifications of contractor.--Any contractor bidding on the city contract for the construction of sidewalks must (1) have a sidewalk builder's license, and (2) hold a North Dakota general contractor's license.

Source: 1952 Rev. Ord. 1152 (1963).

18-0210. Bond to accompany contract.--When any contract for the construction of sidewalks 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 §§ 48-01-01 to 48-01-04, inclusive, of the North Dakota Century Code, a bond in an amount to be determined by the board of city commissioners, running to the city of Fargo, conditioned that said contractor shall maintain and keep in good repair for a period of two years all sidewalks so constructed by such contractor under the terms of such contract, and that in case of default on the part of such contractor to so maintain and keep such sidewalks in good repair for the said period of two years, or in case such sidewalks shall within such time begin to crumble or disintegrate or become cracked and broken to such an extent that, in the opinion of the city engineer, the same is not a satisfactory compliance with the specifications for the construction thereof, then the city engineer may direct that such sidewalk be immediately repaired or re-laid, in whole or in part, as he shall deem best, and the contractor immediately shall cause the same to be repaired or re-laid; and in the case of the contractor's neglect, refusal, or failure so to repair or re-lay the same, the city, at any time within said two-year period or thereafter, may cause the same to be repaired or re-laid and the cost thereof, whether done by the city directly or through a contract, may be recovered against said contractor and the surety upon such bond.

Source: 1952 Rev. Ord. 1152 (1963).

18-0211. City sidewalk contract controlled by city engineer.--The contractor shall report to the city engineer for the purpose of receiving orders with reference to any work under the contract and for accurate information on the location of sidewalks; and the contractor shall not begin work

until so informed and until he has in his possession a written order for said work.

He shall begin work within five days of receipt of such orders and shall complete said work in a continuous operation insofar as possible.

The contractor shall notify the city engineer before beginning work upon each sidewalk ordered.

Source: 1952 Rev. Ord. 1152 (1963).

18-0212. City sidewalk contract--Scope of work.--The city sidewalk contract shall include the construction, reconstruction, and repair of all sidewalks, sidewalk approaches, alley returns, and crossings deemed necessary by the board of city commissioners.

The contractor must report all obstructions to the sidewalk, water stop boxes, poles, hydrants, etc. He must use, throughout the work, materials and workmanship approved by the city engineer. The decision of the city engineer as to the manner in which the work shall be executed and the quality of the work and material shall be final and conclusive.

When the work is completed the contractor must immediately remove all surplus material, whether old or new, and leave the sidewalk, gutter, and roadway free and unobstructed.

Source: 1952 Rev. Ord. 1152 (1963).

18-0213. Contractor to be responsible until sidewalk completed.--The contractor shall have charge of and be responsible for the entire work until its completion and acceptance.

Properly skilled workmen only shall be employed on the work; and the contractor shall dismiss any employee who may, in the opinion of the city engineer, be negligent of his duty or who performs his work in an improper manner.

The contractor shall, at all times, either be on the work himself or have a competent foreman there who must have all powers of the contractor and to whom orders, instructions, and directions may be given.

The contractor shall not subcontract or assign any of the work under any contract made pursuant to this article without the written permission of the city engineer.

The contractor shall be responsible for bringing to grade and checking for usability all stop boxes within sidewalk line. Information on locations of stop boxes may be obtained from the city water department.

Source: 1952 Rev. Ord. 1152 (1963).

18-0214. Failure of contractor to fulfill conditions.--The finished sidewalk must not be used until, in the opinion of the city engineer, it has set sufficiently to receive travel.

The city engineer shall have the power to condemn any material or work not in accordance with this article and his instructions and orders, and any material or work condemned shall be removed at once by the contractor and properly replaced at his own expense.

In case the contractor shall neglect or refuse to remove any rejected material or work or to replace the same with proper material or work, such material or work shall be removed and replaced by the city engineer at the contractor's expense, and the cost of any such removal and replacement shall be deducted from any money that may be due, or may become due, the contractor from the city.

Source: 1952 Rev. Ord. 1152 (1963).

18-0215. Width of sidewalks.--All sidewalks constructed or reconstructed in the city shall be no less than four and one-half feet in width, provided that:

- A. No sidewalk shall be reconstructed of a width less than that existing prior to reconstruction.
- B. Should the occupancy of a commercial property change so as to substantially increase the pedestrian traffic, or should the existing pedestrian traffic pattern warrant, the city engineer shall require the sidewalk to be widened to conform with the sidewalks in the surrounding area.

Source: 1952 Rev. Ord. 1152 (1963).

18-0216. City sidewalks--Driveways--Construction specifications.--All city sidewalks shall be a minimum of four inches thick except within driveways where the sidewalk shall be of the same thickness as the driveway. Sidewalks over vaults or other openings shall be constructed to carry a load of not less than 250 pounds per square foot. No concrete tile shall be used in the construction or reconstruction of any city sidewalks.

All driveways shall conform to design specifications available at the office of the city engineer and shall be constructed of air-entrained Portland cement concrete. All residential driveways shall be 6 inches thick, shall be no less than 9 feet nor more than 30 feet wide at the sidewalk line, and shall be located so as to provide access to a parking space within the property to be served. Provided, however, that such residential driveways may, upon approval of the city engineer, be constructed to a maximum width of 36 feet or one-half the width of the lot, whichever is less. As to residences which satisfy the requirements of §20-0506B (Alternative Residential Development Options - Attached Housing), driveways may, upon approval of the city engineer, be constructed to a maximum width of fifty-five percent (55%) of the lot width, provided that in no event may a driveway serving two attached housing units exceed forty feet (40') in width. All industrial driveways shall be 7 inches thick and shall be no more than 40 feet in width at the sidewalk line. Provided, however, that such industrial driveways may, upon approval of the city engineer, be constructed to a maximum width equal to one-half of the width of the lot. Said driveways shall meet the requirements of Section 20-0702 of the Fargo Municipal Code (Land Development Code), but in no event shall the driveway be less than fifteen feet from any block corner and the location shall be approved by the city of Fargo engineering department. Except as stated herein, in no case shall the aggregate width of driveways into a property exceed one-half the width of that property.

Source: 1965 Rev. Ord. 18-0216, 1486 (1973), 1720 (1976), 2527 (1990), 4043 (2000), 4052 (2000).

18-0217. Materials in general.--The city engineer shall retain the right to accept or reject any of 11 materials which do not comply with the following specifications:

Materials, Cement. All cement in any construction covered by this article shall be Portland cement and shall conform in all respects to the requirements of the standard specifications for Portland Cement D150 or air-entraining Portland Cement D175 adopted by the American Society

for Testing Materials. If Portland cement is not of the air-entraining type, an approved air-entraining agent shall be added to produce an air content of 4% to 6%.

Materials, Fine Aggregate. Fine aggregate shall conform to ASTM Standard Specification C-33-57 and shall have the following gradation:

Passing 3/8" screen -----	100%
Passing # 4 screen -----	95-100%
Passing # 8 screen -----	80-100%
Passing #16 screen -----	50-85%
Passing #30 screen -----	25-60%
Passing #50 screen -----	10-30%
Passing #100 screen -----	2-10%

Materials, Coarse Aggregate. Coarse aggregate shall conform to ASTM Standard Specification C-33-57 and shall have the following gradation:

Passing #1 screen -----	100%
Passing 3/4" screen -----	90-100%
Passing 3/8" screen -----	20-55%
Passing #4 screen -----	10%
Passing #8 screen -----	0-5%

Concrete. The proportions of the concrete mix shall be approved by the city engineer and shall be such as to produce a concrete of a minimum of 3,000 pounds compressive strength at 28 days.

Materials, Reinforcement. Deformed reinforcement bars shall conform to the standard specifications for billet steel concrete reinforcement, bars, intermediate grade, of the American Society for Testing Materials. Wire mesh reinforcement shall conform to the standard specifications for welded steel wire fabric for concrete reinforcement of the American Society for Testing Materials.

Materials, Expansion. Expansion joint materials shall conform to ASTM Standard Specification D5-544-49 Type 5. It shall be one-half inch in thickness and shall have a width equal to the full depth of the slab in which it is to be used.

Materials, Fill. Fill used for subbase under concrete shall be of a well-graded granular material with 100% passing a 1 inch screen and not more than 10% passing the 200 screen. Fill placed against the sides of the sidewalk shall be of the best available black dirt.

Source: 1952 Rev. Ord. 1152 (1963), 2527 (1990).

18-0218. Construction methods.--Prior to construction or reconstruction of any sidewalk construction of any driveway where no sidewalk exists, the sidewalk builder shall request the city engineer to set line and grade for the construction. Where necessary, line stakes consisting of 2x2 inch hubs tacked for line will be placed on each property corner and at intervals, between said corners. Said stakes will be offset on the property side of the sidewalk at some even distance as marked on a guard stake set beside the line stake. Elevation for the high edge of the sidewalk will be indicated by the top of a 1x2 inch stake set along the hub line. The top of said grade stakes will be

marked with a blue lumber crayon. The edge of the sidewalk furthest from the property line shall be lower than the high side by the rate of ¼ inch per foot of sidewalk width.

Source: 1952 Rev. Ord. 1152 (1963).

18-0219. Excavation for sidewalks and driveways.--The excavation for sidewalks and driveways shall be performed in such manner as to leave any finished lawns and boulevards in good condition and so as to protect any trees or shrubs adjacent to the work. The excavation shall be to a minimum depth of 2 inch below the bottom of the slab to be poured. In the event that no excavation is required, any sod or vegetation within the sidewalk line shall be removed. No sidewalk subbase shall be constructed on any surface which is sloping to such a degree as to cause a future sliding or shifting of the finished work. Such slopes shall be benched or excavated to a horizontal plane before subbase is constructed.

Excavated material not used at the site of the construction and not desired by the property owner shall be disposed of as directed by the city engineer.

Source: 1952 Rev. Ord. 1152 (1963).

18-0220. Removal of old sidewalks.--Concrete from walks, crossings, or alley returns removed for purpose of a new construction shall be deposited only at such places as are designated by the city engineer. The old sidewalk shall not be left in place under the new sidewalk.

Source: 1952 Rev. Ord. 1152 (1963).

18-0221. Removal of curbs for driveways.--Existing curbs shall be removed for construction of driveways. On concrete streets a saw cut shall be made 6 inches out from and parallel to the face of the curb. The curb shall be sawed at either side of the driveway and the entire curb and gutter shall be removed to a vertical edge, leaving the reinforcing steel exposed. On asphalt streets having curb and gutter sections, the entire curb and gutter section shall be removed. On streets having separate curbs, the entire curb shall be removed to the full depth.

Source: 1952 Rev. Ord. 1152 (1963).

18-0222. Preparation of subgrade.--All soft spongy spots or other unsuitable material shall be removed and replaced with suitable material and the subgrade shall be compacted to a firm uniform surface.

Source: 1952 Rev. Ord. 1152 (1963).

18-0223. Forms.--The forms used in construction shall be of wood or metal, straight and free of warp, and of sufficient strength to resist springing during the process of depositing concrete against them. If of wood, they shall be of two-inch plank except for sharply curved sections where they may be of flexible material approved by the city engineer; if of metal, they shall be of approved section and shall have a flat surface on top. The forms shall be of a depth equal to the depth of the sidewalk. They shall be securely staked, braced, held firmly to the required line and grade, and shall be sufficiently tight to prevent leakage of mortar. All forms shall be thoroughly cleaned and oiled or wetted before concrete is placed against them.

Source: 1952 Rev. Ord. 1152 (1963).

18-0224. Preparation of subbase.--The subbase material shall be placed between the forms and compacted to a firm surface by means of an approved hand tamper or vibratory compactor, then screed off to the proper grade. Wetting down of the fill material to obtain compaction will not be sufficient.

Source: 1952 Rev. Ord. 1152 (1963).

18-0225. Placing of concrete.--The subbase shall be sprinkled immediately before the placing of the concrete. The concrete shall be placed on the moist subbase and spread uniformly to the required depth with as little handling as possible and shall be spaded next to the forms to prevent voids and honeycombed surfaces.

Source: 1952 Rev. Ord. 1152 (1963).

18-0226. Side fill required.--The contractor shall be required to backfill against sides of the sidewalk to the top of the walk and sloping away from the walk at a grade no steeper than four to one.

Source: 1952 Rev. Ord. 1152 (1963).

18-0227. Contraction joints.--Contraction joints shall be constructed so as to divide the sidewalk into square slabs the greatest horizontal dimension of which shall not exceed six feet. The contraction joints shall be cut with a pointed trowel to the entire depth of the slab and edged to a radius of one-half inch. Joints may also be made by sawing to a depth of not less than one-third the depth of the slab and said sawing shall be done within 72 hours after placing of concrete.

Source: 1952 Rev. Ord. 1152 (1963).

18-0228. Reinforcing steel.--Two three-eighths-inch deformed reinforcing bars shall be placed longitudinally for the full length of the sidewalk and tied to the transverse bars. One three-eighths-inch deformed reinforcing bar will be placed one foot on either side of any and all contraction and expansion joints. The length of said bar shall be six inches shorter than the width of the slab in which it is placed. Welded wire mesh may be used in any sidewalk wider than six feet. Said wire shall be cut into panels six inches smaller than the slab in which it is to be placed and shall not extend through any contraction or expansion joints. Welded wire mesh shall be 6x6 inches - #10 x #10 or heavier.

Two additional three-eighths-inch deformed reinforcing bars at least ten feet long shall be placed in sidewalks across sewer and water trenches.

All reinforcement shall be accurately placed at one-half the depth of the slab.

Source: 1952 Rev. Ord. 1152 (1963), 2527 (1990).

18-0229. Expansion joints.--Expansion joints shall be placed at intervals not to exceed 50 feet, provided, however, that an expansion joint shall be placed at every property corner. An expansion joint shall be placed along existing curbs abutting the sidewalk.

Source: 1952 Rev. Ord. 1152 (1963).

18-0230. Concrete finishing.--Immediately after placing, the concrete shall be floated down

to a uniformly dense surface. The finished sidewalk shall have a slightly rough but uniform wood-float finish.

Source: 1952 Rev. Ord. 1152 (1963).

18-0231. Stamping.--The contractor shall stamp the name of his firm into the fresh concrete on either side of all expansion joints.

Source: 1952 Rev. Ord. 1152 (1963).

18-0232. Curing of concrete.--Concrete shall be cured by covering as soon as practicable with waterproof paper, plastic film, or wet burlap or by spraying thoroughly with an approved curing compound.

Source: 1952 Rev. Ord. 1152 (1963).

18-0233. Protection of work.--The contractor shall erect suitable barriers, protected by warning lights at night, around the work to protect the work and the public.

Crossings and driveways shall be closed to traffic for a minimum of seven days. Sidewalks shall be closed to pedestrian traffic for a minimum of 24 hours.

Source: 1952 Rev. Ord. 1152 (1963).

18-0234. Measurement and payment on city contract.--At the completion of each sidewalk constructed on city order, the contractor shall measure the material and work involved, shall complete the estimate form provided, and shall forward the duplicate to the city engineer for verification and payment.

Source: 1952 Rev. Ord. 1152 (1963).

18-0235. Penalty.--Every person, firm, or corporation violating any of the provisions of this article shall upon conviction not to exceed \$500 or by imprisonment not to exceed 30 days, or both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof. Each separate occurrence and each day any person, firm, or corporation shall violate any of the provisions of this article shall constitute a separate offense.

Source: 1965 Rev. Ord. 18-0235, 1752 (1976).

ARTICLE 18-03

USE AND CARE OF STREETS AND SIDEWALKS

Section

- 18-0301 Removal of snow and ice from sidewalks.
- 18-0302 Riding or driving on sidewalk prohibited.
- 18-0303 Regulating movement of tractors and heavy vehicles on pavement--Repealed.
- 18-0304 Sale of merchandise from stands on streets prohibited.
- 18-0305 Selling on streets restricted.
- 18-0306 Amusements on streets prohibited.
- 18-0307 Limited use of sidewalks in Central Business District allowed.
- 18-0308 Definitions.
- 18-0309 Pedestrian signs.
- 18-0310 Performers of sidewalk entertainment.
- 18-0311 Pushcarts.
- 18-0312 Outdoor merchandise areas.
- 18-0313 Outdoor dining areas.
- 18-0314 Community events and festivals.
- 18-0315 Planning director to issue permits.
- 18-0316 Application.
- 18-0317 Encroachment agreements.

18-0301. Removal of snow and ice from sidewalks.--The owner or occupant of any building or grounds within the city fronting upon or adjoining any street, when a sidewalk exists, shall clear the sidewalk in front of or adjoining such building and grounds or unoccupied lot or building, as the case may be, of snow and ice to the width of such sidewalk on or before nine o'clock p.m.

If the owner or occupant shall refuse or fail to remove such snow and ice by nine o'clock p.m. of each day and cause the sidewalk to be kept clear of snow and ice, the director of public works may remove, or cause to be removed, all snow and ice from the sidewalks along or in front of any buildings, grounds or premises, and the necessary costs and expenses of such removal of snow and ice by the director of public works shall be chargeable and assessed against, and shall be a lien upon such premises. Assessment of costs and expenses shall be in accordance with article 3-17 of the Fargo Municipal Code.

Source: 1952 Rev. Ord. 18-0301, 2692 (1994).

18-0302. Riding or driving on sidewalk prohibited.--No person shall ride, drive, place, push, draw, or back any horse or other animal, wagon, car, automobile, or other vehicle or heavy object upon or over or across any sidewalk except at a regular crossing or concrete driveway or where alleys intersect the streets. The occupant of any yard, lot, or warehouse may have access across the sidewalk by placing in front of the yard, lot, or warehouse, at his expense, with the consent of the city engineer, a temporary bridge or carriageway over the sidewalk, gutter, and curbing in such

manner as will preserve the same from injury.

Source: 1952 Rev. Ord. 18-0302.

18-0303. Regulating movement of tractors and heavy vehicles on pavement.--Repealed by omission.

Note: This section is repealed by omission from the 1965 Revised Ordinance. The subject matter of this section is covered in 8-0921.

18-0304. Sale of merchandise from stands on streets prohibited.-- Except as authorized under sections 18-0307 through 18-0317 herein, it shall be unlawful for any person, firm, or corporation to set up any stand or wagon upon any of the streets, alleys, sidewalks, crosswalks, or public grounds within the city for the purpose of selling therefrom, or exposing for sale, any meats, provisions, refreshments, or any goods or merchandise whatsoever.

Source: 1952 Rev. Ord. 18-0304, 4378 (2004).

18-0305. Selling on streets restricted.-- Except as authorized under sections 18-0307 through 18-0317 herein, no person, persons, firm, or corporation shall sell, offer, or expose or sale at any point upon any of the streets, alleys, sidewalks, crosswalks, or public grounds within the city any goods, wares, or merchandise whatsoever contrary to the provisions of articles 25-5 and 25-7 of chapter 25.

Source: 1952 Rev. Ord. 18-0305, 4378 (2004).

18-0306. Amusements on streets prohibited.--No person shall, upon any street or alley within the city, take part in any game of ball, nor shall any person, upon any such street or alley, take part in any game of tossing ball or flying kite, or any other game or play, so as to impede or endanger public travel thereon.

Source: 1952 Rev. Ord. 18-0306.

18-0307. Limited use of sidewalks in Central Business District allowed.--Except as allowed under the provisions of this article 18-03 for locations within the Central Business District, it shall be unlawful for any person to sell, offer for sale, exhibit or any goods, wares, merchandise, mechanical devices, animals or any article of any kind whatsoever, by whatever name called, upon any public street, sidewalk, square, avenue or alley within the corporate limits of the city.

A. None of the requirements of this article for permits or encroachment agreements shall apply to outdoor dining areas or outdoor merchandise areas which are otherwise allowed under the community events and festivals permit set forth in section 18-0314.

B. Permits issued for pushcarts and outdoor merchandise areas under the provisions of this article shall be temporarily suspended at locations designated for the community events and festivals permitted under section 18-0314 of this code. Permit holders may, however, apply to continue their operation during the community event or festival pursuant to the procedures set up by the community

event or festival permit holder. Permits issued for outdoor dining areas shall not be temporarily suspended in areas designated for a community event or festival.

- C. The authority granted to Sidewalk Performers under this article shall be temporarily suspended at locations designated for community events and festivals permitted under section 18-0314 of this code. Sidewalk Performers may, however, apply to continue their operation during the community event or festival pursuant to the procedures set up by the community event or festival permit holder.

Source: 4379 (2004).

18-0308. Definitions.--The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

- A. "Central Business District" shall mean an area within the following boundaries:
1. On the north by 6th Avenue North;
 2. On the east by the Red River of the North;
 3. On the south by 1st Avenue South; and,
 4. The westerly boundary shall be Roberts Street from 6th Avenue North to 1st Avenue North, 9th Street from 1st Avenue North to Northern Pacific Avenue and 8th Street from Northern Pacific Avenue to 1st Avenue South.
 5. In addition to the area defined by the foregoing boundaries the Central Business District shall include 7th and 8th Streets South, to 2nd Avenue South.

For purposes of defining this boundary, the sidewalk on both sides of the streets, above-named, shall be included within the Central Business District.

B. "Grilling" shall mean the cooking of raw animal products such as meat, poultry or fish on a flat top or charbroil style high-heat surface designed for such purpose, but does not include smoking, deep-fat frying, wok or skillet-style cooking, barbecuing/ rotisserie-style cooking or any other type of cooking.

C. "Grilling pushcart" shall mean a pushcart that includes equipment for grilling.

D. "Merchandise" shall include, but is not limited to, plants, flowers, wearing apparel, jewelry, ornaments, art work, household or office supplies, food or beverages of any kind, whether or not for immediate consumption, or other goods or wares.

E. "Outdoor dining area" shall mean an area in front of or adjacent to a business maintaining a restaurant or limited restaurant license issued by the city health department and located on a public sidewalk whereon tables, chairs or benches are placed for purposes of serving food and/or alcoholic beverages.

F. "Outdoor merchandise area" shall mean an area in front of or adjacent to a retail business where merchandise is located on a public sidewalk for the purpose of displaying, exhibiting, selling or offering for sale merchandise.

G. "Pedestrian way" shall mean the area of sidewalk adjacent to the property line and extending therefrom to the edge of the curb or for a distance of ten (10) feet, whichever is

narrower.

H. "Planning Director" shall mean the department head of the Department of Planning and Development of the city of Fargo.

I. "Pushcart" shall mean a wheeled cart which may be moved by one person without the assistance of a motor and which is designed and used for displaying, keeping or storing any food, beverages or other articles for sale by a vendor. To the extent a pushcart is used for displaying, keeping or storing food or beverages, the pushcart must be limited to service of potentially hazardous foods or commissary-wrapped food maintained at proper temperatures, or limited to the preparation and service of frankfurters, as is defined by North Dakota Administrative Code Chapter 33-33-04. Cooking will only be allowed on an approved grilling pushcart.

J. "Review Committee" shall consist of five members to be appointed by the mayor with the consent of the board of city commissioners. Such membership of the review committee may be comprised of one or more city employees from one or more departments within the city.

K. "Sidewalk entertainment" shall mean performances which may include, but not be limited to, music, dance, mimes, magicians, clowns, jugglers and theatrical presentations, but specifically excluding speeches, lectures, and sermons.

Source: 4379 (2004).

18-0309. Pedestrian signs.--Notwithstanding any other requirements of this article, pedestrian signs may be on public sidewalk that is within the Central Business District and that is at least six (6) feet in width, provided the dimensions and proposed location of the sign meet the following standards and provided a permit is obtained from the planning director.

- A. A pedestrian sign permit application must be submitted to the planning director in a form established by the planning director along with a nonrefundable fee established by the board of city commissioners.
1. The application must include the name, address and telephone number of the applicant, the dimensions of the proposed sign and the specific location of where the sign will be displayed, including the distance the sign will be from the adjacent curb and building. A photograph or drawing of the sign shall be submitted, along with a complete description of the materials from which the sign will be made and the manner in which the sign is self-supporting.
 2. The height of the sign shall not exceed four feet (48 inches) above the surface of the sidewalk. A height of five feet (60 inches) above the surface of the sidewalk is permitted if the sign is mounted on an easel.
 3. The width of the sign shall not exceed 30 inches, or a width that ensures that at least 44 inches of unobstructed clearance will exist on the sidewalk (after sign placement), whichever results in the lesser sign width.
 4. Spacing between sign locations shall be 25 feet, so that no

portable sign application may be approved for any sign that is proposed to be located within 25 feet, measured along the same side of the street, of any other portable sign location.

5. No sign shall extend past the curb or into any portion of the street surface or parking lane.
6. Pedestrian signs shall be self-supporting and freestanding. Sign supports or features shall not protrude into the pedestrian area adjacent to the sign.
7. The application and permit shall clearly state that the applicant agrees to indemnify and hold the city harmless from any and all claims, demands or causes of action which may result from placement of the sign on public property. The applicant shall, at the time of making application for the permit, provide proof of insurance to cover the risk of injury to person or property caused by the presence of the sign. Said insurance shall provide minimum coverage for bodily injury of \$1,000,000 per occurrence and in the aggregate.
8. Signs requiring electrical connections shall be prohibited.
9. The permit shall state the name, address and telephone number of the applicant, the date of issuance of the permit and the date of expiration of the permit. The permit must be securely fastened to the sign at all times while the sign is being displayed or evidence of a permit made visible on the store front.
10. The permit shall be valid for a period of one (1) year, but may be renewed upon application of the permittee for another period of one (1) year, without payment of an additional fee.
11. Permitted pedestrian signs may be displayed or located on the sidewalk only between the hours of 7:00 a.m. and 11:00 p.m. or at business closure, whichever is earlier.

Source: 4379 (2004).

18-0310. Performers of sidewalk entertainment.--Performers of sidewalk entertainment may perform on any pedestrian way within the Central Business District provided that such performers shall:

- A. Not violate the prohibitions on disturbing, annoying and unnecessary noise as set forth in article 11-02 of the Fargo Municipal Code.
- B. Not violate the prohibitions on panhandling as set forth in Fargo Municipal Code section 10-0311.
- C. Not obstruct or cause to be obstructed pedestrian or vehicular traffic, including but not limited to not obstructing or causing to be obstructed sidewalks, doorways or other access areas. Entertainer must provide a minimum of 6 feet of pedestrian passageway.
- D. Not sell records, tapes or other products.

- E. Perform only at times between the hours of 9:00 a.m. and 10:00 p.m.
- F. Not consume nor be under the influence of alcoholic beverages or other controlled substances while performing, in compliance with the North Dakota laws and regulations.
- G. Not perform any closer than 150 feet from another performer.
- H. Not perform at locations designated for a community event or festival, unless permitted to play at the community event or festival by the event or festival coordinator, pursuant to section 18-0313.
- I. Comply with all federal, state and local laws when performing within the city, including but not limited to, the solicitation ordinance and the noise ordinance.

Source: 4379 (2004).

18-0311. Pushcarts.--Pushcarts meeting the requirements of this article shall be allowed in the pedestrian way of the Central Business District provided a permit is first obtained and provided that all pushcarts and their operators shall meet the following:

- A. The pushcart shall not be motorized or propelled in any manner other than the walking motion of person operating the pushcart, with the exception that persons with disabilities may use a motorized system to propel the pushcart. No motorized assistance shall be used to locate the pushcart on the sidewalk or public place, with the exception that persons with disabilities may use motorized assistance.
- B. With the exception of grilling performed on approved grilling pushcarts, pushcarts may not be utilized to cook foods, but only to heat and hold previously cooked foods at a safe temperature. The city health department shall have the authority to determine whether a food product requires cooking or may be re-heated. The pushcart shall be covered with an appropriate material to prevent exposure of the food or food product to wind, dust, insects and the elements and shall meet any such other regulations as may be required by the city health department or any other applicable regulatory agency. The pushcart operator shall display, in plain view, all required permits as set forth by federal, state, and local laws and shall provide a copy of health department and other regulatory agency permits and/or licenses to the city prior to the issuance of a permit by the city for the pushcart. The pushcart operator shall continuously maintain the required approvals, permits and/or licenses and provide evidence to the city of the continuous maintenance of them.
- C. The pushcart shall have attached to it a proper container for the collection of waste and trash. The pushcart operator shall be responsible for the proper disposal of waste and trash associated with the pushcart operation. No grease, waste, trash or other debris from the pushcart operation shall be deposited on or released onto city property, which includes the streets, sidewalk or other public place nor into the gutter or storm drainage

system. The pushcart operator shall keep the immediate area in a 5-foot radius from the center of the pushcart clean of garbage, trash, paper, cups, cans or litter associated with the pushcart operation. Unless otherwise permitted by the city, a pushcart operator shall not locate a container for the collection of waste and trash on the streets, sidewalks or public places nor use city trash receptacles, city street cans or other city waste disposal containers for the disposal of waste and trash associated with the pushcart operation. A three-foot by five-foot (3' x 5') mat shall be used with pushcarts from which foodstuff is sold. Said mat must comply with standards set by the National Sanitation Foundation, or with equivalent standards.

- D. The pushcart shall not have attached to it any bell, siren, horn, loudspeaker or any similar device to attract the attention of possible customers, nor shall the permit holder use any such device to attract attention.
- E. Signs attached to the pushcart shall comply with the requirements article 25-03 of the Fargo Municipal Code, regarding outdoor advertising, including the Fargo Sign Code incorporated by reference therein.
- F. The pushcart shall be set up only in the location set forth in the operator's permit issued by the city, and shall not impede, endanger or interfere with pedestrian or vehicular traffic.
- G. The pushcart shall be set up so that a minimum of six feet of passage for pedestrians shall be provided at all times.
- H. The pushcart shall not be stored, parked or left overnight on any street or sidewalk or in any parking space of the city.
- I. The pushcart shall operate only at times between the hours of 7:00 a.m. and 2:00 a.m.
- J. No item related to the operation of the pushcart shall be placed on the street, sidewalk, public place or anywhere other than in or on the pushcart.
- K. Pushcart operators shall not consume nor be under the influence of alcohol or controlled substance while operating the pushcart.
- L. The dimensions of the pushcart shall be no greater than the following:
 - 1. 4 feet 6 inches in height as measured from the ground to the highest point of the pushcart; and
 - 2. 24 square feet as measured in length and width (the overall footprint), excluding any trailer hitch; and
 - 3. 5 feet for the height of any umbrella affixed to the pushcart, as measured from the base of the umbrella to the highest point of the umbrella. No freestanding umbrella or canopy shall be used.

The city reserves the right to require smaller dimensions based upon such factors as, but not limited to, pedestrian and vehicular safety and adequate sight distances.

- M. The pushcart permit holder or her/his designee shall be in attendance at the pushcart at all times, except in case of an emergency.
- N. The pushcart operator shall comply with all federal, state and local laws when operating the pushcart.
- O. Design of pushcarts which are to be permitted for the Central Business District must be approved by the planning director or her/his designee, using the city's downtown design review guidelines, prior to a permit being issued for their use in the Central Business District. The applicant must provide a photograph, drawing or sketch of the design of pushcart as part of the application for a permit.
- P. Pushcarts may not be located nearer than 65 feet from any other pushcart vendor. Pushcarts may not be located nearer than 65 feet from a business that holds a limited restaurant license or a restaurant license issued by the city health department; provided, however, that a pushcart may be located in front of the sponsoring restaurant for said pushcart or the base of commissary operations for the pushcart, as the case may be.
- Q. No pushcart vendor shall sell, offer for sale, or solicit offers to purchase from any motor vehicle.
- R. The owner or operator of a grilling pushcart must obtain permission from the city health department and the planning director before the grilling pushcart may be used for grilling. A grilling pushcart must meet the standards set by the National Sanitation Foundation, or equivalent nationally-recognized standards for food equipment and must be constructed of appropriate material, must be of adequate size, must be readily cleanable and must be in good repair, as approved by the city health director. In addition, a grilling pushcart must comply with all requirements of a pushcart set forth herein.

Source: 4379 (2004).

18-0312. Outdoor merchandise areas.-- No person may own, set up or operate an outdoor merchandise area without first obtaining a permit. The planning director is authorized to issue a permit for an outdoor merchandise area that extends no more than thirty-six (36) inches beyond the property boundary adjacent to a public sidewalk. An outdoor merchandise area that extends more than thirty-six (36) inches beyond the property boundary adjacent to a public sidewalk shall not be allowed without the owner or operator first obtaining a permit in the form of an encroachment agreement pursuant to the provisions of this article.

Permit holders for outdoor merchandise areas and their employees shall meet the following:

- A. Outdoor merchandise areas shall be located only in the area designated by the city and indicated in the encroachment agreement or on the permit, specifically excluding roadways. Merchandise and the fixtures or devices on which it is displayed shall be located so that they do not impede, endanger or interfere with pedestrian or vehicular traffic.

- B. Merchandise and the fixtures or devices on which it is displayed shall be located so that a minimum of 6 feet of unobstructed clearance for pedestrian traffic, or the minimum required by the Fargo Building Code or the Americans with Disabilities Act, whichever requirement is more restrictive, shall be provided at all times.
- C. No fixtures or devices on which outdoor merchandise is displayed shall be attached to the sidewalk or other public area without the permission of the city in the encroachment agreement.
- D. Outdoor merchandise areas will be permitted only adjacent to the building or structure in which the retail business is located and shall not be permitted next to the curb of the street or in the middle of the sidewalk. In no event shall outdoor merchandise areas be permitted in roadways.
- E. Merchandise and the fixtures or devices on which the merchandise is displayed must not block regulatory signs, crosswalks or intersections and shall be sufficiently lit during times of low light in order to provide for safe pedestrian passage alongside the outdoor merchandise area.
- F. All merchandise located within an outdoor merchandise area shall be placed so that the outdoor merchandise and the fixtures or devices on which the merchandise is displayed are stable and not easily tipped and do not include sharp edges, protrusions, or other features which may be hazardous to the public. No canopy may be placed over a building exit.
- G. All displays of merchandise within the outdoor merchandise area must meet a minimum height of 28 inches tall or of sufficient size or height so that safe pedestrian traffic is not impeded or must comply with the requirements of the Americans with Disabilities Act, whichever requirement is more restrictive.
- H. All merchandise and the fixtures or devices on which the merchandise is displayed shall be moved inside the building or structure wherein the retail business is located during hours the retail business is open and during inclement weather, including, but not limited to, heavy rain, wind, ice or snow.
- I. All merchandise and the fixture, or devices on which the merchandise is displayed must be secured so that it may not be dislodged during windy or stormy weather prior to being moved inside the building or structure wherein the retail business is located.
- J. In the event of a declared emergency or in a situation where exigent circumstances arise, a permit holder shall remove all articles from the sidewalk when directed to do so by any law enforcement officer, fire official or emergency medical personnel.
- K. The permit holder for the outdoor merchandise area shall be responsible for the maintenance, upkeep and security of the devices on which the merchandise is displayed and the city shall not be responsible for the

same.

- L. The permit holder for the outdoor merchandise area shall be responsible for keeping the outdoor merchandise area clean of garbage, trash, paper, cups, cans or litter associated with the operation of the outdoor merchandise area, and shall be responsible for clean up or repair of the sidewalk caused by use of the outdoor merchandise area.
- M. The permit holder for the outdoor merchandise area shall not have on the premises any bell, siren, horn, bullhorn or similar loudspeaker or any such device to attract the attention of possible customers nor shall the permit holder use any such device to attract attention.
- N. Outdoor merchandise areas shall not include merchandising of any live animals.
- O. Alcoholic beverages may not be displayed or sold from outdoor merchandise areas.

Source: 4379 (2004).

18-0313. Outdoor dining areas.-- No person may own, set up or operate an outdoor dining area without first obtaining a permit. The planning director is authorized to issue a permit for an outdoor dining area that extends no more than forty-two (42) inches beyond the property boundary adjacent to a public sidewalk. An outdoor dining area that extends more than forty-two (42) inches beyond the property boundary adjacent to a public sidewalk; includes placement of a fence, rope or similar structure, as may be necessary for the serving of alcoholic beverages, or a canopy or similar structure on the sidewalk; or which is placed at a location other than immediately adjacent to the appurtenant building shall not be allowed without the owner or operator first obtaining a permit in the form of an encroachment agreement pursuant to the provisions of this article.

Permit holders for outdoor dining areas and their employees shall meet the following:

- A. The permit holder shall set up the outdoor dining area, including, but not limited to, the furniture, canopies, fencing and/or other accessories used for the outdoor dining area, only in the area designated by the city in the encroachment agreement or on the permit, specifically excluding roadways. The outdoor dining area shall not impede, endanger or interfere with pedestrian or vehicular traffic.
- B. Furniture, canopies, fencing and/or other accessories used for the outdoor dining area shall be located so that a minimum clearance of 44 inches of unobstructed clearance within the pedestrian way, or the minimum required by the Fargo Building Code or the Americans with Disabilities Act, whichever is more restrictive, shall be provided at all times.
- C. The permit holder shall provide proper containers or some other means for the collection of waste and trash within the outdoor dining area permitted. The permit holder shall keep the immediate area around the outdoor dining area and the outdoor dining area clean of garbage, trash, paper, cups, cans or litter associated with the operation of the outdoor dining

area. All waste and trash shall be properly disposed of by the permit holder.

- D. The permit holder shall comply with all city health and other applicable regulatory agency requirements, including, but not limited to, the requirements for food service. The permit holder shall display in a conspicuous location all such required permits and/or licenses and shall provide copies of those permits and/or licenses to the city prior to issuance of a permit for an outdoor dining area by the city. The permit holder shall continuously maintain the required approvals, permits and/or licenses and provide evidence to the city of the continuous maintenance of them.
- E. The permit holder shall be responsible for the maintenance, upkeep and security of the furniture and accessories of the outdoor dining area and the city shall not be responsible for the same.
- F. The permit holder shall not have on the premises any bell, siren, horn, loudspeaker or any similar device to attract the attention of possible customers nor shall the permit holder use any such device to attract attention.
- G. Employees of the permit holder for the outdoor dining area shall not consume alcoholic beverages while working in the outdoor dining area.
- H. For any outdoor dining area where alcoholic beverages are served, the permit holder shall comply with all state and local regulations for the sale, possession and/or consumption of alcoholic beverages and shall provide the city with a copy of any and all required permits or licenses for the sale, possession and/or consumption of alcoholic beverages and the diagram and/or plans showing the location of the outdoor dining area which were submitted for the permit or license. In addition, the area where alcoholic beverages are sold, possessed and/or consumed must be effectively partitioned by rope, temporary fence, or other device designed and intended to separate the outdoor dining area from passersby.
- I. The permit holder shall comply with the prohibitions on disturbing, annoying and unnecessary noises set forth in article 11-02 of the Fargo Municipal Code.
- J. Design of the furniture and accessories for an outdoor dining area to be located in the Central Business District must be approved by the planning director prior to a permit being issued for their use in the Central Business District. The applicant must provide a photograph, drawing or sketch of the design of the furniture and accessories to be used for the outdoor dining area as part of the application for a permit.
- K. Tables, chairs, ropes, fences and any other structure or item placed on the sidewalk must be removed from the sidewalk at the end of the business day, at business closure, or in the event of inclement weather, unless arrangements for assembly and storage of such items on a part of the

sidewalk are approved in an encroachment agreement.

- L. Cooking, food preparation or self-service food shall not be allowed in such outdoor dining areas.
- M. No canopy may be placed over a building exit.

Source: 4379 (2004).

18-0314. Community events and festivals.--The planning director is hereby authorized to grant a permit, after notice, a hearing before the review committee and approval by vote of the majority of the members of the review committee in attendance, for certain types of community events or festivals to take place upon the public streets, sidewalks, squares, avenues or alleys of the city.

- A. The sponsor of the event or festival shall submit to the planning director a written application for a permit at least 45 s prior to the opening of the community event or festival for which a permit is desired. The application shall state:
 - 1. The time, date and location of the festival or event;
 - 2. The group, firm or individual by whom the festival or event will be sponsored;
 - 3. The purpose of the festival or event;
 - 4. The activities that will be held.
- B. A hearing must be held by the review committee, after notice of the application and of the hearing is given. The provisions of sections 20-0901 through 20-0904 of the Land Development Code shall apply to the requirements for such applications, notice, the burden of proof or persuasion and date of decision and time period for appeals, with the exception that appeals of final decisions must be filed within 24 hours of the date of the decision. The decision of the review committee may be appealed to the board of city commissioners.
- C. In granting permits for community events and festivals, the review committee shall consider the following:
 - 1. The nature of the event or festival and how it can serve the community of the city and its citizens;
 - 2. The time period during which the event or festival will occur;
 - 3. The location of the event or festival and whether the location inhibits the safe flow of traffic in the city;
 - 4. Whether the activities would be in compliance with other applicable laws;
 - 5. Whether the event or festival is to benefit nonprofit community service organizations. Commercial events or festivals which generate profit for the private sector, other than profit incidental to the festival or event which is made by persons other than the sponsor of the festival or event,

shall be permitted only if the applicant submits evidence to the review committee that the event or festival constitutes a community service; and

6. The general health, safety and welfare of the participants in the event or festival and the citizens of the city.
- D. The annual Downtown Street Fair, sponsored by the Downtown Community Partnership, is deemed a festival and shall be automatically allowed.
- E. The sponsor of the event or festival shall provide all cleaning services necessary to rid the festival area of all debris and litter created as a result of the event or festival.
- F. The issuance of a permit to a sponsor shall authorize only that sponsor and participants specifically authorized by the sponsor to participate in that community event or festival without the restrictions imposed by this chapter.
- G. Authorized participants in a community event or festival for which a permit has been issued shall not be required to obtain a city permit required by the provisions of sections 18-0307 through 18-0316, for the period during which the community event or festival takes place; provided, however, that in no event may any person affix any structure to the sidewalk or other public right of way during such community event or festival without an encroachment agreement.
- H. Community events and festivals will be posted in city hall, near the office of the city auditor and on the city's website.

Source: 4379 (2004).

18-0315. Planning director to issue permits.--The planning director shall be authorized to issue permits under this article for a term of up to one year. Such permits may be extended for additional periods of up to one year per extension. The denial of a permit by the planning director may be appealed to the review committee by delivery of notice of appeal within five business days of the date notice of decision is mailed to the applicant whose application has been denied. The planning director may designate one or more city employee to exercise the planning director's functions under this article.

Source: 4379 (2004).

18-0316. Application.--Businesses or property owners within the Central Business District are eligible to obtain a permit under this article for use of the sidewalk fronting said business or property and of the sidewalk in general as to pushcart operators. Each application for an encroachment agreement for an outdoor dining area or outdoor merchandise area shall be filed with the planning director and shall include, but not be limited to, the following:

- A. The name, address and telephone number of the applicant.
- B. For permits to allow outdoor dining areas, the application shall include a site plan showing the proposed location of furniture, canopies, fencing and

other accessories for the outdoor dining area; a description, drawing, sketch, or photograph showing the design of all furniture, fencing, canopies and accessories to be used in the outdoor dining area; location for the outdoor dining area; and other pertinent information related to the use of the outdoor dining area. For permits to allow outdoor merchandise areas, the application shall include a site plan showing the location of the outdoor merchandise area, the proposed location of fixtures or devices on which the merchandise is to be displayed, and other pertinent information related to the use of the outdoor merchandise area.

- C. For permits to allow pushcarts, the application shall include the name and phone number of the sponsoring restaurant or the location of the base of commissary operations that has been approved by the city health department and the application shall include information about the type of food or other product to be sold; proposed times and area of operation; description, drawing, sketch, or photograph of the type of pushcart to be used; and other pertinent information related to the method of doing business under the permit.
- D. For permits for pushcarts to allow the sale of food, food products and/or beverages and for permits or encroachment agreements for outdoor dining areas, the applicant shall provide and maintain a certificate of insurance for comprehensive general liability and products and completed operations coverage in a minimum amount of \$1,000,000.00 per occurrence and in the aggregate, provided that those certificates may be furnished as evidence of such coverage purchased for the applicant's principal place of business for serving food, food products and/or beverages, so long as such certificates meet the minimum acceptable requirements established in this section. For permits or encroachment agreements for outdoor merchandise areas, the applicant shall provide and maintain a certificate of insurance for comprehensive general liability and products and completed operations coverage in a minimum amount of \$1,000,000.00 per occurrence and in the aggregate, provided that those certificates may be furnished as evidence of such coverage purchased for the applicant's retail business, so long as such certificates meet the minimum acceptable requirements established in this section. All certificates shall be issued by an insurance company authorized to do business in North Dakota, shall name the city as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the city. The permit holder or encroachment agreement party shall continuously maintain the insurance required by this section and shall continuously provide the city with evidence of the insurance required by this section.
- E. The permit holder shall execute a statement on the permit application wherein the applicant holds harmless and indemnifies the city from any

claims or causes of action arising out of or related to the permitted activity, including, but not limited to, compliance with the Americans with Disabilities Act, the Fargo Building Code and all other health and safety laws and regulations.

- F. Written approval from the city health department and/or other applicable regulatory agency showing that the outdoor dining area has been inspected and is in compliance with current requirements for food handling establishments or sale of other product.
- G. Such additional information as may be requested by the planning director or review committee which may be necessary to determine compliance with this article.
- H. Payment of the permit fee and/or encroachment fee set by resolution of the board of city commissioners.
- I. The planning director shall have the same remedies and enforcement powers as are set forth in article 20-011 of the Land Development Code.

Source: 4379 (2004).

18-0317. Encroachment agreements.--The planning director is hereby authorized to execute encroachment agreements only in the Central Business District, as defined in article 18-03, after notice, a hearing before the review committee and approval by vote of the majority of the members of the review committee in attendance.

The procedure for obtaining an encroachment agreement authorizing a structure or merchandise on the sidewalk or other public place shall be as follows:

- A. Written application shall be made to the planning director or her/his designee. If the property is being leased, the lessee shall also sign the application.
- B. The application shall include those items described in section 18-0316.
- C. The application shall state the reason the encroachment is being requested.
- D. Before approving an encroachment agreement, a hearing must be held by the review committee, after notice of the application and of the hearing is given. The provisions of sections 20-0901 through 20-0904 of the Land Development Code shall apply to the requirements for such applications, notice, the burden of proof or persuasion and date of decision and time period for appeals, with the exception that appeals of final decisions must be filed within 24 hours of the date of the decision. The decision of the review committee may be appealed to the board of city commissioners.
- E. An encroachment agreement with property owners (and lessees, where applicable) may only be executed by the planning director after a hearing on the application and approval by vote of a majority of the members of the review committee in attendance. An application for an encroachment agreement with property owners (and lessees, where applicable) may only be approved if the review committee determines that the encroachment can be allowed without detriment to the health, safety and welfare of the

general public. In determining what constitutes detriment to the health, safety and welfare of the general public, the following factors, among others not specifically enumerated, shall be considered:

1. The location, type and size of the encroachment, including the encroaching structure(s) or merchandise.
2. The proximity of the encroaching structure(s) or merchandise to a traveled road, whether public or private.
3. Whether the encroaching merchandise, display, tables, chairs or other structure(s) will unreasonably interfere with pedestrian or vehicular passage or safety.
4. Whether the encroaching structure(s) or merchandise will interfere with an existing water or wastewater line, storm water facility or other utility.

F. The review committee shall set forth in writing the reason for granting or denying an encroachment pursuant to this section. The terms of an encroachment agreement shall include, but not be limited, to the following:

1. The agreement shall be subject to termination upon 30 days notice at such time as the review committee may deem the encroachment, including activities associated with the encroachment, to create a safety hazard to pedestrians or vehicular traffic or other safety hazard or a public nuisance or otherwise not be in keeping with the health, safety and welfare of the general public.
2. The owner (and lessee, where applicable) obtaining the encroachment agreement shall agree that, upon such termination, if the owner (or lessee, where applicable) shall fail to remove the encroachment within 30 days following the giving of the notice by the city in accordance with subsection F(1) of this section, the city shall be authorized to remove the encroaching structure and recover all costs associated therewith from the property owner.
3. The property owner (and lessee, if applicable) shall agree to indemnify and hold harmless the city from any and all liability that may arise by virtue of the encroachment, including, but not limited to, compliance with the Americans with Disabilities Act, the Fargo Building Code and all other health and safety laws and regulations. The applicant shall provide and maintain a certificate of insurance for comprehensive general liability and products and completed operations coverage in a minimum amount of \$1,000,000.00 per occurrence and in the aggregate providing coverage for all the dates of the approved festival

or community event, including the days allowed for set up and tear down of such festival or event. All certificates shall be issued by an insurance company authorized to do business in North Dakota, shall name the city as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the city.

4. If the property is sold or, where applicable, if the lease is terminated after execution of the encroachment agreement, the encroachment agreement shall be null and void and a new encroachment agreement with the new property owner and, where applicable, with the lessee, shall be required prior to the encroachment being permitted to continue.
5. The length of the term of the encroachment agreement, which term may not exceed three years. Upon filing and review of a renewal application, an encroachment agreement may be extended for additional periods of up to three years per extension.

G. No structure may be affixed to the sidewalk, or any street or other public property, without an encroachment agreement approved by the board of city commissioners. Neither the review committee nor the planning director have authority to approve or enter into encroachment agreements for any such fixture.

Source: 4379 (2004).

ARTICLE 18-04

ENCROACHMENTS, OBSTRUCTIONS, EXCAVATIONS AND PAVING

Section

18-0401	Repealed by omission.
18-0402	License necessary to exhibit shows on streets.
18-0403	Wires in street--Permission necessary to stretch.
18-0404	Wires in street--Manner of stretching.
18-0405	Wires in street--Prohibiting interference with other wires.
18-0406	Wires in street--Cutting wires prohibited.
18-0407	Wires in street--Placing of poles.
18-0408	Pipes and conduits in streets--Prevention of leaks.
18-0409	Pipes and conduits in streets--Repairing of breaks.
18-0410	Pipes and conduits in streets--Duty of officials to notify owner of leak.
18-0411	Pipes and conduits in streets--Failure of owner to repair.
18-0412	Excavations in streets--Compliance with excavation code.

- 18-0413 Construction of sewer, vault, cellar, cistern, or well-- Authority of city commissioners required.
- 18-0414 Excavations in streets--Permits required--Repealed.
- 18-0415 Excavations in streets--Bond required--Repealed.
- 18-0416 Excavations in streets--Deposit required--Repealed.
- 18-0417 Excavations not to be unguarded--Repealed by omission.
- 18-0418 Excavations to have signal lights--Repealed by omission.
- 18-0419 Excavations to be under direction of city engineer--How made--Signal lights--Repealed by omission.
- 18-0420 Excavations--Replacements of paving and sidewalks--Repealed.
- 18-0421 Excavations in street--Failure to maintain in good condition and restore--Recovery of expenses--Repealed.
- 18-0422 Openings in sidewalks--Covering required.
- 18-0423 Gas and water service shutoffs not to cause obstruction.
- 18-0424 Filthy substances not to be thrown in drains and sewers.
- 18-0425 Throwing and depositing paper or waste materials on streets and other public property prohibited.
- 18-0426 Depositing of snow on streets regulated.
- 18-0427 Depositing rubbish without owner's consent prohibited.
- 18-0428 Removal of rubbish.
- 18-0429 Paving in residential areas--Standards established--Repealed.
- 18-0430 Curb to be replaced and driveway removed where not needed.
- 18-0431 Abandonment of driveway--Restriction on building permit.
- 18-0432 Abandonment of driveway--Failure to remove and replace curb--Penalty.
- 18-0433 Low profile mountable curb at street intersections.

18-0401. Teams, vehicles not to obstruct streets.--Repealed by omission.

18-0402. License necessary to exhibit shows on streets.--No person shall, upon any of the public streets or grounds within the city, without having first obtained a license from the board of city commissioners, exhibit any show or performance of any kind which may obstruct public travel, or cause a gathering of multitudes of people upon any street or sidewalk, or tend to the injury of any public park, nor shall any person call any public meeting upon any street, alley, or public ground without such license or permission aforesaid.

Source: 1952 Rev. Ord. 18-0402.

18-0403. Wires in street--Permission necessary to stretch.--It shall be unlawful for any person, firm, or corporation to stretch any wire of any kind in any street or alley in the city without having first obtained permission from the board of city commissioners so to do.

Source: 1952 Rev. Ord. 18-0403.

18-0404. Wires in street--Manner of stretching.--Any person, firm, or corporation in stretching wire in any street or alley of the city shall so stretch the same and maintain it in such

condition that it shall not interfere with any other wire previously stretched in the same street or alley for the transmission of electricity. All such wires stretched in the streets or alleys of this city by permission of the board of city commissioners shall, within 30 days, be placed in a condition to conform with the provisions of this section, and shall thereafter be maintained in a safe and non-hazardous condition.

Source: 1952 Rev. Ord. 18-0404.

18-0405. Wires in street--Prohibiting interference with other wires.--Any person, firm, or corporation stretching or repairing wires in said streets or alleys shall so handle such wires that they shall not interfere with the electric current conducted by any other wire stretched in said streets or alleys.

Source: 1952 Rev. Ord. 18-0405.

18-0406. Wires in street--Cutting wires prohibited.--No person shall cut, remove, or break any telephone, telegraph, fire alarm, or electric wire properly strung upon poles running through or across any street in the city for the purpose of moving any building or for any other purpose, except in the case of fire or to prevent the destruction of property, without first giving at least 12 hours' written notice of his intention to cut, remove, or break such wire, such notice to be given both to the company which owns or controls such wire and to the city engineer.

Source: 1952 Rev. Ord. 18-0406.

18-0407. Wires in street--Placing of poles.--No pole or poles for the holding or conveying of any wire or wires or cables to be used in connection with telegraph, telephone, electric lighting, or electric power service shall be placed in any street, alley, avenue, park, or other public place within the city by any person, firm, company, or corporation unless permission to do so shall have first been obtained from the board of city commissioners and the place so occupied by such pole or poles shall have been approved by the city engineer.

Source: 1952 Rev. Ord. 18-0407.

18-0408. Pipes and conduits in streets--Prevention of leaks.--It shall be the duty of every person, firm, or corporation forcing, transmitting, or conveying water or gas through pipes or other conduits which have heretofore been, or shall be hereafter, laid in any street, alley, or public ground in the city to prevent the public use of such street, alley, or public ground from being or becoming in any way impaired, obstructed, injured, or rendered dangerous or offensive by the escape of water or gas out of said pipes or conduits into or upon said street, alley, or public ground.

Source: 1952 Rev. Ord. 18-0408.

18-0409. Pipes and conduits in streets--Repairing of breaks.--In case any pipe or conduit shall break out or burst so that water or gas shall escape from the same into or upon any street, alley, or public ground in the city, it shall be the duty of any person, firm, or corporation forcing, transmitting, or conveying water or gas through the same, within 24 hours after having received notice or knowledge of the escaping water or gas therefrom as aforesaid, to commence and prosecute diligently the repair of said pipe or other conduit, in case such pipe or other conduit is owned by

such person, firm, or corporation; and if such pipe or other conduit is not owned by such person, firm, or corporation, such person, firm, or corporation shall immediately shut off the water or gas therefrom until same is repaired.

Source: 1952 Rev. Ord. 18-0409.

18-0410. Pipes and conduits in streets--Duty of officials to notify owner of leak.--It shall be the duty of the superintendent of streets and all police officers of the city, upon discovery of the fact that water or gas is escaping from any pipe or other conduit used as aforesaid, into or upon any street, alley or public ground, to notify immediately the city engineer who shall, in turn, notify the person, firm, or corporation forcing, transmitting, or conveying water or gas through the same of such escape.

Source: 1952 Rev. Ord. 18-0410.

18-0411. Pipes and conduits in streets--Failure of owner to repair.--In case any person, firm, or corporation forcing, transmitting, or conveying water or gas through any pipe or other conduit laid in any street, alley, or public ground of the city shall neglect or refuse to repair the same, in case it is owned by such person, firm, or corporation or to shut the water or gas off therefrom, in case it is not owned by such person, firm, or corporation, in accordance with 18-0409, then the superintendent of streets, under the direction of the city engineer, shall forthwith proceed to repair said pipe or other conduit, and the cost shall be recovered by the city in an action for that purpose from such person, firm, or corporation. Provided, that the foregoing provision shall not apply to any water mains or service pipes which are owned or under the control of the city and under the supervision of the superintendent of waterworks.

Source: 1952 Rev. Ord. 18-0411.

18-0412. Excavations in streets--Compliance with excavation code.--All excavations in streets, alleys or sidewalks and as otherwise defined therein, shall be done only in compliance with the provisions of article 18-09 of this chapter.

Source: 1965 Rev. Ord. 18-0412, 1849 (1978).

18-0413. Construction of sewer, vault, cellar, cistern, or well--Authority of city commissioners required.--No person shall construct, or cause to be constructed or made, any sewer, vault, cellar, cistern, or well in any of the streets or public places of the city without express authority from the board of city commissioners.

Source: 1952 Rev. Ord. 17-0201 and 18-0413.

18-0414. Excavations in streets--Permits required.-- Repealed by Ord. No. 1849 (1978).

18-0415. Excavations in streets--Bond required.--Repealed by Ord. No. 1849 (1978).

18-0416. Excavations in streets--Deposit required.-- Repealed by Ord. No. 1849 (1978).

18-0417. Excavations not to be unguarded.--Repealed by omission.

18-0418. Excavations to have signal lights.--Repealed by omission.

18-0419. Excavations to be under direction of city engineer--How made--Signal lights.--Repealed by omission.

18-0420. Excavations--Replacements of paving and sidewalks.-- Repealed by Ord. No. 1849 (1978).

18-0421. Excavations in streets--Failure to maintain in good condition and restore--Recovery of expenses.--Repealed by Ord. No. 1849 (1978).

18-0422. Openings in sidewalks--Covering required.--Any person, firm, or corporation who shall make any opening in any sidewalk in the city for the purpose of placing therein any coal-hole or water meter, or shall make other like openings, shall cover such openings with a good and safe cover, firmly fastened thereon with hinges or other like appliances, and shall, at all times, keep and maintain such cover and hinges even with the surface of the walk in which the same are placed.

Source: 1952 Rev. Ord. 18-0422.

18-0423. Gas and water service shutoffs not to cause obstruction.--All gas and water service shutoffs shall be placed between the sidewalk and the curb, and the tops thereof shall not project above the surface of the street. When necessary to place such shutoffs in a sidewalk, the tops shall be placed and maintained flush with the upper surface of such sidewalk so as not to afford an obstruction to pedestrians. All shutoffs not projecting into or through any sidewalk, and which do not conform to the provisions herein contained, shall be made to conform upon notice to the owner thereof by the city engineer.

Source: 1952 Rev. Ord. 18-0423.

18-0424. Filthy substances not to be thrown in drains and sewers.--No person shall cast or throw, or cause to be cast or thrown, into any drains or sewers within the city any filthy substance, or any substance calculated to cause any obstruction, nuisance, or injury in or to the same.

Source: 1952 Rev. Ord. 17-0204 and 18-0424.

18-0425. Throwing and depositing paper or waste materials on streets and other public property prohibited.--It shall be unlawful for any person or persons, firm, association, or corporation to throw, place, leave, deposit, dispose of or bury upon any street, alley, sidewalk, park property, or other public property or grounds within the city any paper, cloth, trash, rubbish, trash burners, boxes, grass cuttings, leaves, or other waste material or to leave any such paper or waste materials in any yard or places where the same may blow or be liable to blow upon any street, alley, sidewalk, park property, or other public property or grounds within the city.

Source: 1952 Rev. Ord. 18-0425, 1054 (1950).

18-0426. Depositing of snow on streets regulated.--Snow which has been shoveled or removed from any sidewalk or driveway located upon any city street right-of-way may be deposited

upon the boulevard, provided there is a boulevard adjacent thereto; if there is no adjacent boulevard, then such snow may be deposited on the actual street area itself, provided the snow is not piled in such a manner as to create a traffic hazard or to interfere in any manner with the vision or view of a driver of a motor vehicle at or near street intersections. It shall be unlawful to deposit any snow contrary to the provisions of this paragraph.

It shall be unlawful to deposit or dump any snow removed from parking lots, filling station areas, or from any other private property upon any public or city property or city street, including boulevards or any other part of the street right-of-way.

Source: 1952 Rev. Ord. 18-0426, 1189 (1964).

18-0427. Depositing rubbish without owner's consent prohibited.--Except during construction and maintenance of utility and service lines, no person shall cast or deposit any sand, gravel, dirt, or other material or substance on the ground between any street curbing, and the street line nearest such curbing, without the consent of the owner of the adjacent property.

Source: 1952 Rev. Ord. 18-0427.

18-0428. Removal of rubbish.--In case any wood, timber, lumber, or rubbish or any material or substance whatever mentioned in 18-0425 shall be found remaining or lying upon any street, alley, sidewalk, or public grounds within the limits of the city, in violation of said section, it shall be the duty of the chief of police, the superintendent of streets, or any police officer of the city forthwith to notify and require, by either written or verbal notice, any person who may have placed, caused, or permitted to be placed such substance or thing upon such street, alley, sidewalk, or public ground, or who may be the owner or have the control of such timber, wood, lumber, or other substance, or who may suffer the same to lie or remain upon such street, alley, sidewalk, or public ground, to remove immediately such thing or substances, or cause the same to be removed therefrom, and in case such person or persons shall neglect or fail to remove such substance or thing within a reasonable time after being so notified, it shall be the duty of the chief of police, the superintendent of streets, or any police officer to remove the same, or cause it to be removed, from such street, alley, sidewalk, or public ground to some convenient or safe place within said city at the expense of such person or persons, to be recovered in an action against him or them to be prosecuted in the name of the city.

Source: 1952 Rev. Ord. 18-0428.

18-0429. Paving in residential areas--Standards established.--Repealed by Ord. No. 1412 (1971). See 18-0105, 18-0106.

18-0430. Curb to be replaced and driveway removed where not needed.--Whenever the building, remodeling, or rebuilding, or change of use of occupancy of any property in the city shall make unnecessary, unneeded, or useless any existing driveway between the roadway and property line in front of said premises, the owner of such premises, or his agent, shall remove said driveway and replace the curb and sidewalk in a manner prescribed by the city engineer.

Source: 1952 Rev. Ord. 1069 (1959).

18-0431. Abandonment of driveway--Restriction on building permit.--The city engineer

shall not issue a building permit for the building, remodeling, or rebuilding of any property in the city which building, remodeling, or rebuilding will make unnecessary, unneeded, or useless any driveway in front of said premises unless said permit shall require that any such driveway be removed and the curb replaced in a manner prescribed by the city engineer.

Source: 1952 Rev. Ord. 1069 (1959).

18-0432. Abandonment of driveway--Failure to remove and replace curb--Penalty.--Every person, firm, company, or corporation violating 18-0430 shall upon conviction be punished by a fine of not to exceed \$100, or by imprisonment not to exceed 90 days, or by both such fine and imprisonment in the discretion of the court, the court to have power to suspend said sentence and to revoke the suspension thereof. Each day any person, firm, company, or corporation shall violate any of the provisions of 18-0430 shall constitute a separate offense.

Source: 1952 Rev. Ord. 1069 (1959).

18-0433. Low profile mountable curb at street intersections.--Curb and gutter in all areas of the city shall be constructed with a low mountable profile at all intersections so as not to impede or hinder the movement of wheelchairs or any other devices used by handicapped persons. Such curb and gutter shall be constructed in a manner prescribed by the city engineer.

Source: 1965 Rev. Ord. 18-0433, 1342 (1970).

ARTICLE 18-05

PUBLIC BUILDINGS AND PROPERTY--CITY HALL--AUDITORIUM COMMISSION

Section

- 18-0501 Public library established and named.
- 18-0502 City hall/auditorium and all other city buildings.
- 18-0503 Machinery, tools, lumber, and supplies used for streets.
- 18-0504 Books, records, and files of city.
- 18-0505 City hall/auditorium commission--Composition of commission--Number of members--Qualifications.
- 18-0506 City hall/auditorium commission--Terms of office of members--Serve without compensation.
- 18-0507 City hall/auditorium commission--Removal from office--Filling vacancies in office.
- 18-0508 City hall/auditorium commission--Officers and employees of commission--Compensation.
- 18-0509 City hall/auditorium commission--Meetings of commission--Rules of procedure--Records--Quorum for transacting business.
- 18-0510 City hall/auditorium commission--Powers and duties of commission.
- 18-0511 City hall/auditorium commission--Monies received by commission--Report--Payment to city treasury.

- 18-0512 City hall/auditorium commission--Estimate of expenses for ensuing fiscal year--Reports.
- 18-0513 Possession, use or consumption of intoxicating liquor unlawful.

18-0501. Public library established and named.-- Governing law and composition of board of directors.--There is hereby established in the city of Fargo a public library and reading room. Said library shall be known as "Fargo Public Library".

The provisions of Chapter 40-38 of the North Dakota Century Code governing public libraries are hereby adopted by reference. Notwithstanding said provisions, however, the board of city commissioners may appoint a board of seven (7) directors to govern such library and reading room.

Source: 1952 Rev. Ord. 18-0501, 1225 (1966), 4459 (2005).

18-0502. City hall/auditorium and all other city buildings.--The city hall/auditorium and all other city buildings shall be under the supervision and control of the board of city commissioners and shall be subject to such regulations as the board shall, from time to time, direct.

Source: 1952 Rev. Ord. 18-0502.

18-0503. Machinery, tools, lumber, and supplies used for streets.--All the tools, machinery, lumber, supplies, and other articles used in connection with the streets, sidewalks, and bridges of the city shall be under the custody and control of the city engineer, who shall be responsible therefor.

Source: 1952 Rev. Ord. 18-0503.

18-0504. Books, records, and files of city.--All books, records, and files of the city shall be under the custody and control of the several officers using same, who shall be responsible therefor.

Source: 1952 Rev. Ord. 18-0504.

18-0505. City hall/auditorium commission--Composition of commission--Number of members--Qualifications.--There shall be a city hall/auditorium commission composed of five regular members and four ex-officio members, the five regular members to be appointed by the president of the board of city commissioners with the consent and approval of the board. The four ex-officio members shall consist of two city commissioners, one of whom shall be the commissioner in charge of public buildings, and two members of the city hall/auditorium committee selected by the board of city commissioners from the committee as presently constituted. After the terms of the two ex-officio members from the city hall/auditorium committee shall expire, then the commission shall revert to a membership of five regular members and two ex-officio members from the board of city commissioners. No person shall be eligible for such appointment who is not a citizen of the United States and a resident and taxpayer of the city.

Source: 1952 Rev. Ord. 1042 (1959).

18-0506. City hall/auditorium commission--Terms of office of members--Serve without compensation.--The terms of office of the regular members of the commission shall, subject to the provisions hereof relative to removal, be three years. The regular members of the first commission

existing hereunder shall be appointed as follows:

- One for a term of one year;
- One for a term of two years;
- One for a term of three years;
- One for a term of four years; and
- One for a term of five years;

and annually thereafter one member shall be appointed for a term of three years. The term of office of the two ex-officio members from the city hall/auditorium committee shall be three years. The term of office in each instance shall begin on the first day of January of each year. The members of the commission shall serve without compensation.

Source: 1952 Rev. Ord. 1042 (1959), 4300 (2003).

18-0507. City hall/auditorium commission--Removal from office--Filling vacancies in office.-- The members of the commission, except for the two city commissioners, shall be subject to removal from office by the board of city commissioners without cause assigned. Any vacancies in office shall be filled by the board of city commissioners for the remainder of the unexpired term.

Source: 1952 Rev. Ord. 1042 (1959).

18-0508. City hall/auditorium commission--Officers and employees of commission--Compensation.--The commission shall select a president and vice president. It shall appoint a director and, in accordance with the provisions of the city ordinances relative to civil service, such other officers, assistants, and employees as may be necessary, and prescribe the duties thereof. The compensation of the director and other assistants and employees shall be fixed by the civil service commission, subject to the approval of the board of city commissioners.

Source: 1952 Rev. Ord. 1042 (1959).

18-0509. City hall/auditorium commission--Meetings of commission--Rules of procedure--Records--Quorum for transacting business.--The commission shall hold meetings regularly at least once in every month and shall designate the time and place thereof. It shall adopt its own rules of procedure and shall keep a record of its proceedings. Proper accounts of the receipts and expenditures of money shall be kept. All meetings, records, and accounts of the commission shall be public. Three members shall constitute a quorum for the transaction of business.

Source: 1952 Rev. Ord. 1042 (1959).

18-0510. City hall/auditorium commission--Powers and duties of commission.--The powers and duties of the commission, which shall be exercised and performed as herein provided and in conformity with the general ordinances of the city, shall be as follows:

- A. The commission shall maintain, furnish, manage and operate the city hall/auditorium building, and in its discretion may rent the auditorium part of said building and any other space not used by the city, its officers, or employees, to individuals or organizations for temporary use and for public entertainment, gatherings, and meetings to be held therein on special occasions. The commission, in renting the auditorium building as aforesaid,

may allow the sale and consumption of alcoholic beverages therein if such alcoholic beverages are dispensed by an on-sale liquor dealer licensed by the city of Fargo. The sale and consumption of alcoholic beverages in the auditorium building shall be subject to all laws and ordinances otherwise applicable to licensed liquor dealers; provided, that a Class E license shall not be required for sale and consumption of alcoholic beverages in the auditorium building.

- B. The commission may allow the serving of alcoholic beverages in the auditorium on Sunday by special permit as provided in 5-02-05.1, N.D.C.C. Application for such special permit shall be made by the commission to the board of city commissioners and shall indicate the name of the on-sale liquor licensee who will be dispensing the alcoholic beverages.
- C. The commission shall have the management and direction of the said city hall/auditorium building and its grounds and shall make reasonable rules and regulations concerning the management of same.
- D. The commission may, with the approval of the board of city commissioners, in the name of the city, take and hold by purchase, gift, bequest, devise, or otherwise such real and personal property as may be proper for carrying out the intents and purposes for which it is established.
- E. The commission shall recommend to the board of city commissioners the institution of condemnation proceedings whenever in its judgment private property should be taken in the name of the city for the purposes of the commission.
- F. The commission may make, with the approval of the board of city commissioners, all contracts necessary to carry out its powers and duties.
- G. The commission shall have such other powers as are herein prescribed or may be necessary hereunder for the proper discharge of its duties.

Source: 1952 Rev. Ord. 1042 (1959), 1965 Rev. Ord. 18-0510, 1611 (1974), 2242 (1986), 2320 (1987).

18-0511. City hall/auditorium commission--Monies received by commission--Report--Payment to city treasury.--The commission shall, on the last date of each month, file with the city treasurer and board of city commissioners a report giving the date of collection or receipt of all monies collected or received by the commission and shall daily pay into the city treasury all monies so collected.

Source: 1952 Rev. Ord. 1042 (1959).

18-0512. City hall/auditorium commission--Estimate of expenses for ensuing fiscal year--Reports.--On or before the first day of May of each year, the commission shall transmit to the board of city commissioners its estimate, in duplicate, of the amount of money required for its purposes for the ensuing fiscal year, and a written report of the work of the commission during the preceding year, and a statement of the condition of the property under its control. The commission shall also make such other reports as the board of city commissioners may, from time to time, require.

Source: 1952 Rev. Ord. 1042 (1959).

18-0513. Possession, use or consumption of intoxicating liquor unlawful.--The possession, use or consumption of alcoholic beverages, beer, liquor, wine, sparkling wine, distilled spirits and alcohol as defined in 5-01-01 of the North Dakota Century Code shall be unlawful and prohibited in and on the premises of the Fargo Civic Memorial Auditorium, except as provided in 18-0510 of the Revised Ordinances of 1965 of the city of Fargo.

Source: 1965 Rev. Ord. 18-0513, 1812 (1977).

ARTICLE 18-06

BROADWAY MALL IMPROVEMENT

Section

- 18-0601 Provisions of state law adopted.
- 18-0602 Designation of Broadway Mall--Plan.
- 18-0603 Regulations.
- 18-0604 Pedestrian mall--Use restrictions.

18-0601. Provisions of state law adopted.--The provisions of §§ 40-62-01, 40-62-02, 40-62-04, 40-62-06 and 40-62-07 of the North Dakota Century Code are hereby ratified and adopted as a part of this ordinance.

Source: 1965 Rev. Ord. 18-0601, 1395 (1971).

18-0602. Designation of Broadway Mall--Plan.--The "Broadway Mall" as constructed and as depicted on the attached plan is incorporated and made a part of this ordinance by reference, and is hereby ratified and approved. The use of this improvement shall be primarily for the free movement, safety, convenience and enjoyment of pedestrians, whether or not part of the mall is made available for emergency or other permitted vehicles. The "Broadway Mall" may provide for and include space for seating, a restaurant, cafe tables, shelters, trees, flower plantings, sculptures, newsstands, telephone booths, traffic signs, kiosks, fire hydrants, street lighting, ornamental lights, trash receptacles, display cases, marquees, awnings, canopies, overhead and underground radiant heating devices, walls, barriers, and all other such fixtures, equipment, facilities and appurtenances as will in the governing body's judgment enhance the free movement, safety, convenience and enjoyment of pedestrians and benefit the adjoining properties and the central business district and the city. Any of the said uses or facilities listed above or depicted in the attached plan, may be leased to any private operator by the governing body of the city. Sidewalks may be constructed of concrete, bricks, asphalt tiles, blocks, granite sets, or such other materials or combinations of materials as the governing body may approve. The governing body may, in its discretion, narrow any roadway to be kept and maintained in the mall, may cause any street vaults to be reconstructed or removed, may construct crosswalks at any point within or at the ends of blocks, may cause the mall to be covered by a roof, may cause any enclosed spaces to be heated and air conditioned, and may cause any

roadway to curve and meander within the limits of the street, if deemed desirable to enhance the usefulness or appearance of the mall, regardless of any nonuniformity of street width or any curve or absence of curve in the center line of the street.

Source: 1965 Rev. Ord. 18-0602, 1625 (1975).

18-0603. Regulations.--Section 40-62-05 of the North Dakota Century Code is hereby superseded and the following is substituted therefor:

The jurisdiction of the city to construct the "Broadway Mall," when established in the manner provided by law, shall include jurisdiction to establish by ordinance and from time to time amend reasonable regulations for the use of the mall, conforming to the following provisions:

- A. Vehicles shall be permitted to cross the mall at all street intersections except those of two streets each forming part of the mall in the discretion of the governing body.
- B. The owners and occupants of all properties abutting upon the mall which have access to no other street or alley for delivery or receipt of merchandise and materials shall be permitted to use the mall during such days and hours, which need not be ordinary business days or hours, and in such manner and over such distance, as the governing body shall find to be reasonably adequate for this purpose and to be possible without interfering with use by pedestrians and by emergency and other vehicles for which use is permitted.
- C. The regulations may permit use for any purpose or activity which will enhance the freedom of movement, safety, convenience or enjoyment of pedestrians, including but not limited to, seating, sidewalk cafes, restaurants, displays of merchandise, exhibits, advertising, telephones, transit, transit stops and shelters, newsstands, plantings, ornaments, protection from the elements, rest and recreation areas, entertainment facilities, emergency vehicles, and police and fire equipment.
- D. The governing body may adopt a use plan prepared by city officers or consultants, providing for the location and distribution within the mall of furniture, sculpture, pedestrian traffic control devices, trees, flowers, lighting or heating facilities, and any other equipment or properties placed or installed in the mall, whether owned by the city or others, and may license and regulate the operation and maintenance thereof.
- E. Any furniture, structure, facility, or use located or permitted pursuant to such a plan shall not, by reason of such location or use, be deemed a nuisance or unlawful obstruction or condition, and neither the city nor any user acting under permit or lease from the city shall be liable for any injury to person or property therefor unless directly caused by its own negligence or that of its employees in the construction, maintenance, or operation of such furniture, structure, facility, or use.

Source: 1965 Rev. Ord. 18-0603, 1395 (1971).

18-0604. Pedestrian mall--Use restrictions.--The "Broadway Mall" as depicted on the

attached drawing, is hereby designated and established as a pedestrian oriented mall. Movement of traffic shall be subordinate to the convenience of pedestrians, and shall be subject to limitations as hereinafter set forth. Use of the "Broadway Mall" shall be subject to the following restrictions:

- A. Motorized vehicular traffic shall be limited to one lane in each direction. Overtaking and passing of any motorized vehicle by another motorized vehicle is prohibited, except in the case of emergency vehicles responding to an emergency call.
- B. Parking, stopping or standing of motorized vehicles is prohibited in the "Broadway Mall," except standing and loading shall be permitted in areas clearly posted and marked for such purpose. Hours of permitted use of said standing and loading areas shall be as determined by the Fargo Parking Authority with the assistance of the Fargo traffic engineer. Any such restrictions shall have full force and effect when posted, but may be changed by the board of city commissioners.
- C. No limitation or prohibition of use herein contained shall apply to vehicles on an avenue intersecting or crossing the said "Broadway Mall" as depicted on the attached plan.
- D. Movement and parking of motor vehicles within the "Broadway Mall" shall be subject to all of the ordinances and regulations of the city of Fargo pertaining to traffic and motor vehicles.
- E. Riding of bicycles shall be restricted to areas designated for motorized vehicles. Bicycles shall be parked in stands to be provided at convenient locations in the mall.
- F. Nothing herein contained shall be interpreted as or construed to be a vacation, in whole or in part, of any city street or part thereof, and the city of Fargo shall retain all police powers within the "Broadway Mall" and all ordinances of the city shall have full force and effect within said "Broadway Mall" except as is herein expressly otherwise provided.

Source: 1965 Rev. Ord. 18-0604, 1625 (1975).

ARTICLE 18-07

MUNICIPAL PARKING SYSTEM

Section	
18-0701	Municipal parking system.
18-0702	Municipal parking authority.
18-0703	Parking authority fund.
18-0704	Application of net parking system revenues.
18-0705	Declaration of policy.

18-0701. Municipal parking system.--For the purpose of alleviating traffic congestion, preventing the development of blight, and implementing orderly plans for urban development and urban renewal, pursuant to the provisions of North Dakota Century Code chapter 40-60 (Laws of 1967, Chapter 341), and of the laws therein referred to, it is determined that all municipal off-street parking facilities, as defined in chapter 40-60, which are now owned or shall hereafter be acquired by the city of Fargo, with the exception of those facilities situated on the premises of the Hector Municipal Airport, shall be operated and maintained as a unified municipal parking system, and the revenues therefrom shall be administered in accordance with the provisions of this ordinance. The parking facilities now comprised in the system include, without limitation, the following:

- A. Parking lots now owned and operated by the city:
 - 1. Block 6, North Dakota R. 1 Urban Renewal, known as the Civic Center Parking Lot.
 - 2. South one-half of Lot 9 and East 150 feet of Lots 10, 11 and 12, Block 3, Roberts' Addition, known as the Second Avenue North Parking Lot.
 - 3. South one-half of Block 19, Original Townsite, known as the Arena Parking Lot.
- B. Parking lots acquired and to be acquired and constructed within Parking Improvement District No. 3237, in accordance with the resolution declaring the necessity thereof, dated March 19, 1968:
 - 1. Lots 27, 28 and 29, Block 1, Roberts' Addition.
 - 2. Lots 2, 3, 4, 5, 6, 7, 8 and South 5 feet of Lot 9, Block 8, Keeney and Devitt's Addition.
 - 3. Beginning at the southwest corner of Lot 12, Block 3, Roberts' Addition; thence east 63 feet; thence north 150 feet to north line of Lot 10; thence west 28.7 feet to east line of Roberts Street; thence southwesterly along said line to beginning.

Source: 1270 (1968).

18-0702. Municipal parking authority.--The board of city commissioners of the city of Fargo is hereby designated as the municipal parking authority for the city of Fargo and shall be

vested with all of the powers and duties of such authorities as provided in chapter 40-61, N.D.C.C.
Source: 2273 (1986).

18-0703. Parking authority fund.--In accordance with North Dakota Century Code 40-61-08 [40-61-07] all monies of the municipal parking authority shall be paid to the city treasurer as agent of the authority, and shall be deposited in a separate bank account or accounts and shall not be commingled with other city funds, and shall be secured, invested, reinvested and expended as provided in 40-61-08 [40-61-07]. However, no net parking system revenues which are at any time required, under the conditions stated in this ordinance, to be paid into another city fund, shall be deemed to be monies of the authority within the meaning of this section. The following separate bookkeeping accounts shall be maintained at all times on the official books and records of the authority, subject to inspection and auditing by the city auditor, for the purpose of showing all receipts of money from the following sources and all disbursements of money for the following purposes:

- A. An operation and maintenance account, to which there shall be credited as received all revenues derived in any manner whatsoever from the operation of the municipal parking system (excluding the parking facilities at the Hector Municipal Airport), and to which there shall be charged all items which under accepted accounting practice constitute normal, reasonable and current costs of the operation and maintenance of said parking system. All rentals and payments of whatsoever nature, received under any lease agreement or operating agreement applicable to any parking facility, shall be credited to this account and no operating expenses of any such facility shall be charged thereto, except such portion of the administrative expenses of the authority as may be necessarily incurred in the collection of and the accounting for the revenues so received.
- B. A reserve account, to which there shall be credited at least once each month all monies then remaining in the operation and maintenance account, in excess of the amount then due and owing in payment of operation and maintenance expenses and the additional amount reasonably estimated by the authority to be necessary for payments of operation and maintenance expenses to become due in the then current month. The balance on hand in this account from time to time constitutes the "net revenues" referred to in the following provisions of this ordinance [18-0701 to 18-0705].

Source: 1270 (1968).

18-0704. Application of net parking system revenues.--The net revenues at any time on hand in the reserve account of the parking authority fund shall be expended or transferred therefrom only for one or more of the purposes enumerated in this section, in the order of priority stated below. If the net revenues on hand at any time are not equal to the amount then required for any purpose enumerated, no amount shall be expended or transferred for any purpose in a lower order of priority, and the requirements for each purpose shall be cumulative and shall include interest on any money necessarily borrowed by either the city or the parking authority to meet any deficiency in net

revenues from time to time available for that purpose. In accordance with the foregoing principles, said net revenues shall be applied for the following purposes in the following order of priority:

- A. To provide monies needed in the operation and maintenance account to pay valid claims due and payable with respect to current, reasonable and necessary operation and maintenance expenses of the parking system.
- B. To provide monies needed in each fund now or hereafter created by the city and appropriated for the payment of warrants or bonds financing facilities comprising the municipal parking system, not less than 30 days in advance of each date on which interest or principal becomes due and payable on said warrants or bonds, in an amount which will be sufficient with monies then on hand in such fund to pay all such interest and principal then due; provided that the city's resolutions authorizing such bonds shall have pledged and appropriated net parking system revenues for the payment thereof.
- C. To credit and pay to the city of Fargo such amount as shall be determined by the board of city commissioners to be reasonably equivalent to the amount of taxes otherwise leviable upon properties of the municipal parking system if privately owned; which amount so credited shall be subject to appropriation by said board for any proper corporate purpose consistent with the provisions of its resolutions authorizing warrants or bonds referred to in paragraph (B) of this section.
- D. To provide monies in any reserve account established for the security of warrants or bonds referred to in paragraph (B) of this section at the time or times and in the amounts required in the resolution authorizing the issuance of such warrants or bonds.
- E. To provide for replacement of facilities of the municipal parking system, and parts thereof, of a nature other than repairs needed for current maintenance of the system, as provided in paragraph (A) of 18-0703 and paragraph (A) of this section.
- F. To provide for improvements or additions to the facilities of the municipal parking system.

Source: 1270 (1968).

18-0705. Declaration of policy.--The following are declared to be the policies of the city of Fargo in relation to the municipal parking system:

- A. The system shall continue to be owned by the city and operated as a public parking system for the purposes referred to in 18-0701, at least until all obligations incurred by the city or by the municipal parking authority in providing the system, and all interest thereon, shall have been fully paid.
- B. Said system shall be expanded as soon as possible and shall thereafter be maintained at all times in such manner as to provide not less than 600 automobile parking spaces for the use of which reasonable charges shall at all times be imposed and collected.
- C. Rates and charges for individual parking spaces and rentals and other

payments under agreements for the leasing and operation of parking facilities shall be established and collected according to schedules such that the net revenues derived therefrom will be so far as possible sufficient for all requirements for the purposes specified in 18-0704.

Source: 1270 (1968).

ARTICLE 18-08

PARKING LOT CONSTRUCTION AND DRAINAGE

Section	
18-0801	Definitions.
18-0802	Minimum standards.
18-0803	Application for permit.
18-0804	Fee.
18-0805	Penalty.

18-0801. Definitions.--The following words or terms when used herein shall be deemed to have the meanings set forth below:

1. "Parking lot" shall mean an area of land to be used for parking motor vehicles, whether such parking lot is open to the public on a fee or free basis, not including residential driveways and access ways, single- or two-car parking lots, and any parking for one- and two-family dwelling units.
2. "Adequate drainage" shall mean provision for disposal of surface water from parking lots and from any buildings, walks or other surfaces which drain onto parking lots.

Source: 1965 Rev. Ord. 18-0801, 1810 (1977).

18-0802. Minimum standards.--All parking lots hereafter constructed or existing parking lots which are hereafter enlarged or improved shall conform to the following minimum standards:

- A. They shall be covered with a dust-free, all-weather surface as required by the city engineering department.
- B. Adequate drainage shall be provided as required by the city engineering department.
- C. They shall contain a type of barrier designed to prevent encroachment on adjacent public or private property or such other barrier designed to prevent such encroachment as may be approved by the proper city officials under 18-0803 of this article. Such barriers may be of permanent construction, built utilizing chains or other such restraints, or may be parking bumpers or curbs including those held in place by metal pins provided, however, that if the latter method of construction is utilized, the parking bumpers or curbs shall be installed at least two feet from the sidewalk, public or private property to prevent encroachments on such property and provided further that such parking bumpers or curbs shall be held in place by at least a 16-inch metal

pin. Any other method of construction shall insure that there shall be no encroachment on adjoining public or private property including sidewalks. Barriers shall prevent motor vehicles from being removed from the parking lot except at regularly established entrances and exits. Barriers shall be required to be erected in all parking lots not presently maintaining any type of barrier and in those hereafter constructed, enlarged or improved. Any parking lot currently having parking bumpers or curbs including those held in place by metal pins, shall be required to properly locate such barriers and secure the same with 16-inch metal pins whenever replacement is required, but in no event to exceed five years from the date of passage of this ordinance.

- D. In all other respects not inconsistent herewith, they shall conform to the requirements of 20-0321(1) of the Revised Ordinances of 1965 of the city of Fargo.

Source: 1965 Rev. Ord. 18-0802, 1810 (1977).

18-0803. Application for permit. Prior to construction, enlargement, or improvement of a parking lot or conversion of private land for use as a parking lot, or for the purpose of installing the required barriers, the owner, tenant or other party in interest who authorizes such construction, conversion, or improvement in compliance with this article, shall apply in writing to the building inspector for a permit. The application shall contain:

- A. A drawing or survey showing the location of the parking lot on the premises;
- B. The method of access to all public streets or alleys;
- C. Specifications indicating type of materials to be used and dimensions of construction;
- D. Drainage detail including approximate contours and, if sewers are available, method of connection and materials used in connection with sewers for stormwater drainage purposes;
- E. Details concerning reconstruction of any curbs, streets, and sidewalks which will be affected by the parking lot.

The building inspector upon receipt of an application, in consultation with the city engineer and the traffic engineer, shall first determine whether or not the proposed parking lot meets the minimum standards of 18-0802 of this article and that the method of drainage is adequate. The city traffic engineer shall approve the method and place of access to public streets and alleys. If such access is not acceptable as submitted, the traffic engineer shall indicate an alternative method or place of access. The city engineer and the building inspector shall specify what materials, inspection permit and fee, if any, are required with respect to the construction of drainage lines to city sewers and tapping into such city sewers, and shall specify what materials, inspection, permit and fee, if any, are required with respect to the excavation of streets or alleys, or with respect to curbs and sidewalks.

After approval of the parking lot construction, the building inspector shall issue a written permit containing a specific statement as to what changes in plans, specifications and materials are required in addition to or in substitution of those disclosed in the application; what inspections will

be required during the course of or upon completion of construction; and what additional permits are required in addition to the permit required by this ordinance. The permit shall also state what fees are required for all of the various permits, which fees shall be paid as a lump sum as a condition precedent to issuance of the permit. In the event the building inspector refuses to issue a permit he shall state in writing the reason for the refusal and the regulation, ordinance or law upon which such refusal is based. The applicant shall have a right of appeal to the board of city commissioners from the determination of the building inspector.

Source: 1965 Rev. Ord. 18-0803, 1810 (1977).

18-0804. Fee.--The fee for the permit shall, in addition to any other fee provided by law, be as established by resolution of the board of city commissioners.

Source: 1965 Rev. Ord. 18-0804, 1810 (1977).

18-0805. Penalty.--Every person, firm, or corporation violating any of the provisions of this article shall, upon conviction, be punished by a fine of not to exceed \$500 or by imprisonment not to exceed 30 days or both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof. Each separate occurrence and each day any person, firm, or corporation shall violate any of the provisions of this article shall constitute a separate offense.

Source: 1965 Rev. Ord. 18-0805, 1810 (1977).

ARTICLE 18-09

EXCAVATION CODE

Note: This article was enacted by Ord. No. 1850, 1978 as “Article 18-06 of Chapter 18”; however, since the article designation “18-06” was used for Ord. No. 1395, 1971, the compiler has assigned number “18-09” to the 1978 ordinance.

Section	
18-0901	Definitions.
18-0902	Excavator’s license.
18-0903	Permit to excavate.
18-0904	Exemptions.
18-0905	Performance deposits.
18-0906	Pre-excavation requirements.
18-0907	Excavation--Protection.
18-0908	Excavation.
18-0909	Backfilling.
18-0910	Restoration.
18-0911	Emergency excavation.
18-0912	Notice by an exempt utility.

- 18-0913 Inspections.
- 18-0914 Maintenance of substructure records.
- 18-0915 Forms.
- 18-0916 Regulations.
- 18-0917 Severability.

18-0901. Definitions.--

1. "Street" shall mean the length as dedicated for use by the public and the width as defined by the property lines on each side thereof.
2. "Alley" shall mean the length as dedicated for use by the public and the width as defined by the property lines on each side thereof.
3. "Controlled density fill" (CDF) shall mean a sand, cement and/or fly ash slurry resulting in a 50 to 100 PSI material used for backfill.
4. "Excavation" means any removal or disturbance of material to a depth of more than three inches within the traveled way of any street or alley or the removal or disturbance of material to a depth of more than 10 inches in sod or soil areas of any publicly owned property. Excavation is further defined to include all tunneling, pushing or jacking under any publicly owned property within the corporate limits of the city of Fargo.
5. "Excavator" shall mean any person, firm or corporation who performs the act of excavation through the use of mechanically powered equipment or otherwise.
6. "Traveled way" means the width from curb to curb on curbed streets, from edge to edge on asphalt noncurbed streets and from shoulder to shoulder on gravel streets.
7. "Berm" shall mean that portion of the street lying outside the traveled way.
8. "Utilities" for the purpose of this ordinance, shall include all underground cables, conduit and pipe used for the transportation or distribution of fuel, electricity, communication services, water or sewage.
9. "Lateral support" of a public place shall be considered impaired whenever an excavation extends below a plane sloping downward at an angle of 45 degrees from the boundary of the public place, or whenever a proposed excavation would expose any adverse geological formation or soil condition.

Source: 1965 Rev. Ord. 18-0601, 1850 (1978), 2546 (1990).

18-0902. Excavator's license.--No person, firm or corporation shall engage in the practice of "excavation" within public right-of-way unless licensed as an excavator in the city of Fargo. An excavator's license will be issued by the city auditor upon submission of a written application on forms obtained from the auditor and upon fulfilling the fee, bonding and insurance requirements as specified herein. The licensing period shall be from January 1 to December 31 of each year.

- A. Fee--The license fee for an excavator's license for a calendar year or any part thereof shall be set by resolution of the board of city commissioners.
- B. Insurance--Assumption of Liability--Any person, firm or corporation licensed as an excavator must file proof of liability insurance with the city auditor and must agree in writing, on forms provided by said auditor, to hold the city harmless from any and all damages claimed by reason of negligence,

incompetence or omission on the part of such person, firm or corporation in the performance of their work, the same to include, but not be limited to, careless guarding of excavations made by them or failure to restore all public properties to as good a condition as they were before such work was done, or for any damages growing out of the negligence or carelessness of any such licensed person, firm or corporation.

- C. Bond--Bond of Licensee--No license shall be granted by the city auditor unless such person shall have given a bond in the sum of \$5,000 with good and sufficient surety, conditioned, among other things, that said licensee will save harmless the city of Fargo from damages caused by reason of any negligence or faulty work by any person or any employee of such person, and that the material used and the work done shall be strictly in accordance with the requirements of this article.

Source: 1965 Rev. Ord. 18-0602, 1850 (1978), 2395 (1988), 2546 (1990).

18-0903. Permit to excavate.--No excavation within public right-of-way shall be initiated without a permit being issued by the city of Fargo, except as otherwise provided in 18-0904 of this article. Application for an excavation permit shall be made at least 24 hours in advance, in writing, to the city of Fargo on forms provided by the city. In the case of a bona fide emergency, the written application may be filed after the excavation has been initiated providing that the intent to excavate has been reported to the department of the city engineer, either in person or by telephone. In the event the excavation so initiated prior to written application does not constitute such a bona fide emergency, an additional processing fee will be assessed in an amount as established by resolution of board of city commissioners.

A permit to excavate shall be issued only to a licensed excavator, to a governmental unit of the city, to a contractor performing work under a written contract with any governmental unit or to the owner of a utility franchised to operate within the corporate limits of the city of Fargo; however, the issuance of a permit under the provisions of this ordinance shall not relieve any permittee from compliance with all requirements of this ordinance nor relieve the permittee of any liability for damage to any existing utility. The city of Fargo assumes no liability whatsoever by virtue of the issuance of said permit. The permit shall be maintained on the site while the excavation is in progress. The permit holder will provide the city engineer with an emergency phone number of a responsible employee who can be contacted during nonworking hours. The fee for each permit issued under the provisions of this ordinance and the additional processing fee shall be set by resolution of the board of city commissioners. Every permit issued under the provisions of this ordinance shall expire by limitation and become null and void if the work authorized by such permit is not commenced within 20 days from the date of such permit.

Source: 1965 Rev. Ord. 18-0603, 1850 (1978), 2727 (1995).

18-0904. Exemptions.--

- A. The following shall be exempt from the licensing and permit requirements:
 - 1. Employees of the department of street, forestry and traffic of

the city of Fargo, while engaged in work directed by the city, shall be exempt from the requirements of §§ 18-0902 and 18-0903 of this ordinance, but shall comply with all other sections and provisions of this ordinance;

2. Fargo park district employees when performing work within the property lines of the areas designated as the park system.
- B. The following shall be exempt from the licensing requirements:
1. All governmental units of the city;
 2. All utility companies authorized to operate within the corporate limits of the city;
 3. All contractors performing work under a written contract with any governmental unit or public utility company authorized to operate within the corporate limits of the city.

Source: 1965 Rev. Ord. 18-0604, 1850 (1978).

18-0905. Performance deposits.--Deposits as required under this section shall be cash or a certificate of deposit.

- A. Certificates of deposit--If a certificate of deposit is used as a performance deposit, such certificate shall be held by the city, together with an assignment to the city, duly executed by the owner of the certificate. Such certificate and the assignment shall be held by the city and utilized or returned as hereinafter provided in subsections (C) and (D).
- B. Annual deposits--Any person intending to make openings, cuts or excavations in public places may make and maintain, with the city treasurer, an annual deposit in an amount set by resolution of the board of city commissioners, and the person so depositing shall not be required to make the special deposits provided in this section but shall, however, be required to comply with all other applicable provisions of this ordinance.
- C. Purpose of deposits--Any special or annual deposit made hereunder shall serve as security for the repair and performance of work necessary to put the public place in as good a condition as it was prior to the excavation if the permittee fails to make the necessary repairs or to complete the work under the excavation permit.
- D. Refund or reduction of special deposits--Upon the permittee's completion of the work covered by such permit in conformity with this ordinance as determined by the city engineer, two-thirds of such special deposit shall be promptly refunded by the city to the permittee, and the balance shall be released by the city to the permittee upon the expiration of a 24-month period.
- E. Refund or reduction of annual deposits--Two-thirds of any annual deposit shall be refunded by the city at the end of the one-year period for which the deposit is made or the satisfactory completion of all excavation work undertaken during such period, whichever is later, and the balance of the

annual deposit shall be released at the expiration of a 24-month period following the completion of such excavation work.

- F. Use of deposits--Part, or all, of any such deposit may be used to pay the cost of any work the city performs to restore or maintain the public place as herein provided in the event the permittee fails to perform such work, in which event the amount released to the permittee shall be reduced by the amount thus expended.
- G. Exceptions from deposits--Where excavations are made by persons or utilities operating under a franchise issued by the city or regulated by the state public utilities commission or utilities operated by governmental agencies, a permit may be granted without making such deposit. In such cases, the permittee shall be liable for the actual cost of any work required to be done by the city in restoring the areas covered by such excavations to as good condition as the same were in before such work was done. The city engineer may require such deposit from any such permittee if a bill rendered in accordance with this section becomes delinquent.

Source: 1965 Rev. Ord. 18-0605, 1850 (1978), 2546 (1990).

18-0906. Pre-excavation requirements.--It shall be the responsibility of each permittee to notify all utility companies of the intended excavation. Except in the case of a bona fide emergency, a minimum 24-hour advance notice is required. The permit form shall serve as a guide to assist the permittee in scheduling and documenting utility clearance.

Source: 1965 Rev. Ord. 18-0606, 1850 (1978).

18-0907. Excavation--Protection.--The permittee shall be responsible for barricading the excavation in conformance with the "Manual on Uniform Traffic Control Devices".

- A. Protective measures and routing of traffic--It shall be the duty of every person cutting or making an excavation in or upon any public place, to place and maintain barriers and warning devices necessary for the safety of the general public. Warning signs shall be placed far enough in advance of the construction operation to alert traffic within a public street, and cones or other approved devices shall be placed to channel traffic, in accordance with the instructions of the administrative authority. All safety precautions and traffic control measures shall conform to current requirements as specified in the latest edition of the "Manual on Uniform Traffic Control Devices". If, in the opinion of the city engineer or his designee, the protective measures are not in accordance with the "Manual on Uniform Traffic Control Devices", additional signing will be required.

The permittee shall take appropriate measures to assure that during the performance of the excavation work, traffic conditions, as near normal as possible, shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property and to the general public. Adequate pedestrian passageways shall be maintained.

The permittee shall maintain safe crossings for two lanes of vehicle traffic at all street intersections, where possible. If any excavation is made across any public street, alley, sidewalk, or established crosswalk, adequate crossings shall be maintained for vehicles and for pedestrians.

The city engineer may, by written approval, permit the closing of streets and alleys for a prescribed period of time. The city engineer may require that the permittee give notification to various public agencies and to the general public before approval becomes valid. In specific instances, even though the street may not be closed, the permittee may also be required to give such notice.

- B. Protection of adjoining property--The permittee shall at all times preserve and protect from injury any adjoining property by providing adequate support and taking other necessary measures. The permittee shall, at its own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the work and shall be responsible for all damage to public or private property resulting from its failure to properly protect and carry out said work.
- C. Maintenance of roadway drainage--The permittee shall maintain all gutters free and unobstructed for the full depth of the adjacent curb and for at least one foot in width from the face of such curb at the gutter line.

Source: 1965 Rev. Ord. 18-0607, 1850 (1978), 2546 (1990), 2855 (1998).

18-0908. Excavation.--

- A. Care of excavated material--All excavated material piled adjacent to the trench or in any street shall be maintained in such a manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using the streets and adjoining property. The city engineer may require the permittee to remove the excavation material from the worksite. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements (permits, plans, etc.) for all required storage and disposal sites.
- B. Noise, dust and debris--Each permittee shall conduct and carry out excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. In the performance of the excavation work, the permittee shall take appropriate measures to reduce, to the fullest extent practicable, noise, dust and unsightly debris. Between the hours of 10:00 p.m. and 7:00 a.m., the permittee shall not use, except with the express written permission of the administrative authority, or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.
- C. Breaking through pavement--
 - 1. Heavy-duty pavement breakers may be prohibited by the city

- engineer when their use may endanger existing substructures or other property.
2. Sections of sidewalks shall be removed to the nearest score line or joint.
 3. Unstable pavement shall be removed over cave-outs and over-breaks and the restoration shall be treated as part of the main excavation.
 4. Pavement edges shall be trimmed to a vertical face and neatly aligned with the center line of the trench.
 5. Cutouts outside the trench lines must be normal or parallel to the trench line.
 6. Boring or other methods to prevent cutting of pavement may be required.
- D. Clearance for emergency facilities--The excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes and any other emergency facilities designated by the city engineer.
- E. Relocation and protection of utilities--The permittee shall notify the owners of all facilities in the excavation area a minimum of 24 hours prior to excavating. The permittee shall not interfere with any existing facility without the written consent of the city engineer and the owner of the facility. If it becomes necessary to relocate an existing facility, this shall be done by its owner. No facility owned by the city shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned facilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the facility. The permittee shall support and protect all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across said work until final backfill consolidation is obtained. The permittee shall secure approval of the method of support and protection from the owner of the facility. In case any of said pipes, conduits, poles, wires or apparatus should be damaged, and for this purpose pipe coating or other encasement or devices are to be considered as part of a substructure, the permittee shall promptly notify the owner thereof. All damaged facilities shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee. It is the intent of this paragraph that the permittee shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the permittee. The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The city shall not be a party to any action because of this paragraph. The permittee shall inform itself as to the

existence and vertical as well as horizontal location of all underground facilities within the excavation area by exposing prior to machine digging and protect the same against damage.

- F. Abandonment of substructures--Whenever the use of a substructure is abandoned, except the abandonment of service lines three inches or less in diameter designed to serve single properties, the person owning, using, controlling or having an interest therein shall, within 30 days after such abandonment, file with the city engineer a statement in writing giving, in detail, the location of the substructure so abandoned. If such abandoned substructure is in the way or subsequently becomes in the way of an installation of the city or any other public body, which installation is pursuant to a governmental function, the owner shall remove such abandoned substructure or interfering portions thereof, or pay the cost of its removal during the course of excavation for construction of the facility by the city or any other public body.

Source: 1965 Rev. Ord. 18-0608, 1850 (1978).

18-0909. Backfilling.--The placement and compaction of the backfill shall be done as directed by the city engineer. Well-graded granular material meeting North Dakota class 21 specifications or CDF shall be used within all traveled ways.

- A. When granular material is used for backfill, it will be either mechanically tamped in six inch lifts or thoroughly flushed with water using a "jetting" nozzle, to obtain 95% of proctor density at optimum moisture.

When required soil tests are to be furnished by an approved testing agency, the permittee shall be required to bear the expense of such tests.

Source: 1965 Rev. Ord. 18-0609, 1850 (1978), 2546 (1990).

18-0910. Restoration.--Any surface disturbed by excavation shall be restored to as good a condition as it was prior to excavation. Such restoration shall be made within 72 hours of the completion of backfilling if such excavation is within a berm area or an unsurfaced street unless a time extension is granted by the city engineer. Except by special permission of the city engineer, excavations within paved streets shall be temporarily patched with cold-mix asphalt and maintained for a minimum of 30 days, at which time the cold-mix asphalt shall be removed and the permanent restoration done.

- A. Site restoration and cleanup--As the excavation work progresses, all streets shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All cleanup operations at the location of such excavation shall be accomplished at the expense of the permittee. From time to time, as may be ordered by the city engineer, and in any event immediately after completion of said work, the permittee shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from said work. Upon failure to do so, within 24 hours after having been notified, said work may be done by the city and the cost thereof charged to the

permittee. Whenever it may be necessary for the permittee to excavate through any landscaped area, said area shall be re-established in a like manner after the excavation has been backfilled as required. All construction and maintenance work shall be done in a manner designed to leave the area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove, even temporarily, any existing trees or shrubs without first obtaining the consent of the city engineer.

- B. Winter construction--Between November 1st and April 1st all trenches must be backfilled with gravel and tamped in six inch lifts or layers from main or sewer to at least one foot back of curb line. The upper 1.0 feet of the trench shall be composed of asphaltic cold materials to be kept at grade at all times between November 1st and April 1st and then restored to permanent resurfacing after April 1st.
- C. Restoration of paved surfaces--
1. Asphaltic concrete--Asphalt shall be trimmed with asphalt spade or concrete saw, the asphalt edges painted with asphaltic cement and hot-mix asphaltic cement concrete placed and compacted to a depth of nine inches.
 2. P.C. Concrete w/Asphalt Overlay--Asphalt shall be trimmed with asphalt spade or concrete saw. P.C. concrete shall be placed to a depth of six inches, the top of which shall be one inch below street surface and rake-finished. After a curing time as approved by the city engineer, the patch shall be painted with asphaltic cement and filled with asphaltic cement concrete.
 3. P.C. Concrete--Concrete shall be trimmed with a concrete saw and existing steel straightened. Steel shall be placed both ways as directed by the city engineer. P.C. concrete shall be replaced to the original depth and given a wood float finish.
 4. Dowels--Three-quarter inch by 18-inch drilled-in dowels 18 inch on center will be used where full depth sawing is utilized for concrete removal.
 5. Graveled surfaces shall be bladed, shaped and resurfaced with two inches of gravel.
 6. Berms are to be restored as nearly as possible to their original condition. Grass berms are to be re-seeded or re-sodded as necessary to fulfill this requirement. The berm restoration requirement will be waived when the abutting property owner requests such a waiver.
 7. In the event the permittee lacks the proper equipment or ability to restore an asphalt, Portland cement concrete or graveled surface, the permittee may request the city to

perform the work. If the city agrees to do the work, the permittee will be responsible for paying the city for all costs incurred in restoring the surface. Such a request must be made in writing within 24 hours after the backfilling is completed.

Source: 1965 Rev. Ord. 18-0610, 1850 (1978), 2546 (1990).

18-0911. Emergency excavation.--Nothing in this ordinance shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe, or for making repairs, provided that the person making such excavation shall apply to the city engineer for such a permit on the first working day after such work is commenced.

- A. Preservation of monuments--Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a survey reference point, or a permanent survey bench mark, shall not be removed or disturbed without first obtaining permission in writing from the city engineer. Permission to remove or disturb such monuments, reference points or bench marks shall only be granted upon condition that the person applying for such permission shall pay all expenses incident to the proper placement of this monument by the city engineer or registered land surveyor.

Source: 1965 Rev. Ord. 18-0611, 1850 (1978).

18-0912. Notice by an exempt utility.--At least 24 hours prior to the commencement of an excavation for which a nonexempt person would need an excavation permit hereunder, an exempt public utility shall give notice to the city engineer. The notice shall provide the name and address of the utility, the nature, location and purpose of the excavation, and the date of commencement and the estimated date of completion of the excavation. If requested by the city engineer, such notice shall be confirmed in writing by the public utility.

Source: 1965 Rev. Ord. 18-0612, 1850 (1978).

18-0913. Inspections.--The provisions of this ordinance do not relieve or change any inspection requirements contained in the city ordinances or in any rules and regulations as approved by the board of city commissioners.

Source: 1965 Rev. Ord. 18-0613, 1850 (1978).

18-0914. Maintenance of substructure records.--Every person owning, using, controlling or having an interest in substructures under the surface of any public place, shall have on file with the administrative authority, maps, each drawn to a scale of not less than one inch to 200 feet, showing in detail the plan location, size and kind of installation, of all substructures, except service lines designed to serve single properties. Annually, at a time specified by the city engineer, a corrected map or set of maps shall be put on file.

Source: 1965 Rev. Ord. 18-0614, 1850 (1978).

18-0915. Forms.--The city auditor is hereby authorized and directed to prepare the license forms authorized by this ordinance, and to issue the same upon compliance with the application, bonding and insurance requirements of this ordinance, and upon payment of the required fee.

Source: 1965 Rev. Ord. 18-0615, 1850 (1978).

18-0916. Regulations.--The city engineer is hereby authorized and directed to promulgate rules and regulations necessary to effect the purposes of this ordinance, to prepare the permit forms required by this ordinance, to prepare the necessary related forms, and to issue such permits in compliance with this ordinance.

Source: 1965 Rev. Ord. 18-0616, 1850 (1978).

18-0917. Severability.--If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Source: 1965 Rev. Ord. 18-0617, 1850 (1978).