

TITLE II.

SIDEWALKS AND STREETS

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CHAPTER 2-01
SIDEWALKS AND DRIVEWAYS

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2-0101. SCOPE OF CHAPTER. This article shall govern all construction of all sidewalk approaches, alley returns, and driveways within the City of West Fargo.

2-0102. 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 West Fargo shall be as follows:

1. Except as hereinafter provided in subsection 5 or 6 of this section, the original owner of any building constructed in the City of West Fargo shall construct sidewalks along the street(s) in accordance with the requirements of this Chapter. This provision will apply to all lots for which a building permit is granted after November 14, 2004, and for all building permits issued for buildings in the plat of Westport Beach First

Addition, regardless of the date of issue. Construction of sidewalks on lots covered by this section shall be a prerequisite to the issuance of a certificate of occupancy for any building constructed on such lots. Provided, however, the Building Official may waive such requirement if the building officials determines that it was not possible to construct a sidewalk before the issuance of the certificate of occupancy because of weather conditions. In such a case, the lot owner must present proof to the building inspector that there is a contract in place for the construction of the sidewalk, and the owner of the lot must execute a petition, requesting that the sidewalk be constructed to the City. If a sidewalk is not constructed within sixty days of the issuance of the certificate of occupancy, or within sixty days after the first day a sidewalk permit is issued for the next construction season for a certificate of occupancy issued in the Winter, the City may contract to install the sidewalk and assess the cost against the lot owner. In addition, if the contractor who had the contract to construct the sidewalk fails to construct the sidewalk in the time frame required, that contractor may face a suspension of its right to be issued further building, and/or sidewalk permits in the City of West Fargo for a period up to one year.

2. The owner of any lot or parcel of land adjoining any street in the City of West Fargo shall reconstruct and maintain in good repair such sidewalks along the street(s) as have been previously constructed, and must construct such sidewalks when so ordered by resolution of the Board of City Commissioners.
3. Sidewalks must be constructed in accordance with all of the requirements of this Chapter.
4. It is the policy of the City of West Fargo that sidewalks be constructed along both sides of all streets and within cul-de-sacs. Construction of sidewalks in areas of the City not covered by Section 2-0102.1 and where sidewalks do not presently exist may be required by the City once eighty percent (80%) of the land frontage on the street has been developed.
5. A developer, at the time of platting a new subdivision or replatting a subdivision, must submit a sidewalk plan for approval by the Planning Commission and City Commission. Such plan must conform with the requirements of Section 2-0102.4 unless the City Commission, for good cause shown, waives the requirement for sidewalks on both sides of all streets and within cul-de-sacs. If the City waives the requirement for certain lots, the requirement of subsection 1 of this section will not apply.

6. Landowners may petition for sidewalk waivers to the City Commission using the following procedure:
 - a. A written petition, signed by a majority of the property owners within the area for which the waiver is requested may be submitted to the Auditor's office.
 - b. The Board of City Commissioners will consider the petition and may request Planning and Zoning Commission recommendations in making its final decision on the petition.
 - c. A waiver of the requirement for sidewalks will 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 7 of this section. If the City waives the request for certain lots, the requirement of subsection 1 of this section will not apply.
7. A waiver of the requirement for sidewalks which is granted pursuant to paragraphs 5 and 6 of this section may be rescinded as follows:
 - a. Upon submission of a petition signed by a majority of the owners of the property located within the area which is the subject of the waiver.
 - b. If the City determines that sidewalks in the area are necessary and that the rescission of the previously granted waiver is in the public interest.
 - c. Provided, however, that no such waiver shall be rescinded by the City without first having a public hearing on such decision after providing ten (10) days' written notice of the hearing to all landowners abutting the portion of the right-of-way where the rescission of the waiver is being considered.
8. All new sidewalk construction must conform to the Americans with Disabilities Act (ADA) standards adopted by the City of West Fargo, which standards will be available at the office of the City Engineer.

Source: Ord. 729, Sec. 1 (2004)

2-0103. LICENSE NECESSARY TO CONSTRUCT, RECONSTRUCT AND REPAIR DRIVEWAYS. No person may construct, reconstruct, or repair sidewalks or driveways within the City without first procuring a license from the City Auditor to engage in such work.

2-0104. CONTRACTOR'S LICENSE, FEE, EXPIRATION DATE. If a license to construct, reconstruct, and repair sidewalks and driveways is granted by the City Auditor, the person applying must pay to the City Auditor a license fee as set by resolution of the City Commission. All licenses in effect at the time of this ordinance amendment shall expire on March 31, 2014. Thereafter, the license period shall be from April 1 through March 31 of the following year.

Source: Ord. 959, Sec. 1 (2013)

2-0105. BOND. No license will be granted by the City Auditor unless such person has posted a bond in a sum set by resolution of the West Fargo City Commission with good and sufficient sureties therefor approved by the City Auditor conditioned, among other things, that the party will indemnify and save harmless the City of West Fargo from damages caused by reason of any negligence upon the part of the person, or any agent or employee of the person, that the materials used in the construction of the sidewalks and the methods of construction will be strictly in accordance with the requirements of this Chapter.

2-0106. NAME STAMP REQUIRED OF LICENSEE. Sidewalk construction licensees are required to have a stamp which must be used to imprint the contractor's name and year of construction into the constructed sidewalk. The stamp shall consist of letters one and one-quarter ($1\frac{1}{4}$) inches high and of sufficient depth to imprint to the depth of one-eighth ($1/8$) inch into the fresh concrete.

2-0107. 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 or his designee; and every person, firm or corporation must, before undertaking any sidewalk construction, reconstruction, or repair, request line and grade and obtain from the City Engineer, or his designee, a written permit for each separately-owned piece of property. The fee for a permit to construct, reconstruct or repair a public sidewalk will be an amount set by resolution of the City Commission. Before the permit will be issued, the applicant must also pay to the City a survey and staking fee. The staking and permit fee will be set by resolution of the City Commission. Upon the payment of the permit fee and the survey and staking fee, it will then be the duty of the City Engineer or his designee to survey and stake the lot or lots to correspond with the grade and line established by the City of West Fargo. The City Engineer, or his designee, will have 48 hours in which to stake the sidewalk after receiving a request for such work. For purposes of computing the 48 hours, Sunday will be excluded. No permit will be required for sidewalks constructed or reconstructed under a City contract.

2-0108. CONSTRUCTION SUBJECT TO INSPECTION, REQUEST BY LICENSEE. Licensee must request an inspection by the City Engineer, or his designee, after having constructed the forms, placed and compacted the sub-base and before the placing of any concrete. The City Engineer, or his designee, will have 24 hours in which to make the inspection after receiving notice, except that Sunday will not count towards the 24 hours. No concrete will be allowed to be poured until the inspection has occurred and approval given. If any sidewalk is poured prior to the inspection or

without approval of the City Engineer or his designee, the City may require testing to be done to ensure that the sidewalk was built in compliance with City standards and on proper grades, which cost will be the responsibility of the licensee. If the sidewalk does not conform to the grade or any other City standards, the City may require the sidewalk to be removed at the expense of the licensee.

2-0109. TEARING UP SIDEWALK. No person will injure or tear up any public sidewalk, or pedestrian/bikeway or drive any vehicle upon or across any public sidewalk or pedestrian/bikeway, without first obtaining the permission of the City Engineer or his designee. Anyone tearing up a public sidewalk or pedestrian/bikeway or excavating under, near or through a public sidewalk or pedestrian/bikeway without the permission of the City Engineer or his designee, must upon completion of such work place the sidewalk or pedestrian/bikeway in its original condition to the satisfaction of the City Engineer or his designee.

2-0110. CONTRACT FOR CONSTRUCTION OF SIDEWALKS, BIDS, SPECIFICATIONS. Each year, before the beginning of the construction season, the City Auditor will receive bids for the construction or reconstruction of such City sidewalks as the City may find necessary to construct. Such bids must be made upon proposals furnished by the City Engineer and conform to the specifications filed with the City Auditor by the City Engineer and approved by the Board of City Commissioners.

2-0111. 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.

2-0112. 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 may be awarded will be required, before such contract is entered into, to give, in addition to the contract bond required by Section 48-01-01 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 West Fargo. Such bond must be conditioned upon the contractor maintaining and keeping in good repair for a period of two (2) years all sidewalks so constructed by such contractor under the terms of such contract. In case of default on the part of such contractor to so maintain and keep such sidewalks in good repair for the period of two (2) years, or in case such sidewalks 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 in 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 the Engineer deems best. The contractor immediately will 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 relay the same, the City, at any time within the 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 the contractor and the surety upon such bond.

2-0113. CITY SIDEWALK CONTRACT CONTROLLED BY CITY ENGINEER. The contractor must report to the City Engineer for the purpose of receiving orders with reference to any work under the City sidewalk contract and for accurate information on the location of sidewalks; and the contractor must not begin work until so informed and until the contractor has in its possession a written order of work.

The contractor must begin work within ten (10) days of such written order of work, unless the contractor receives written permission from the City Engineer to start at a later date. The contractor should complete the work in a continuous operation insofar as possible. The contractor must notify the City Engineer before beginning work upon each sidewalk ordered.

2-0114. CITY SIDEWALK CONTRACT, SCOPE OF WORK. The City sidewalk contract may 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., The Contractor 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 must be executed and the quality of the work and material will 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.

2-0115. CONTRACTOR TO BE RESPONSIBLE UNTIL SIDEWALK COMPLETED. The contractor will have charge of and be responsible for the entire work until its completion and acceptance.

Properly skilled workmen will only be employed on the work; and the contractor will dismiss any employee who may, in the opinion of the City Engineer, be negligent or who performs the work in an improper manner.

The contractor will, at all times, either be on the work site or have a competent foreman on the work site who must have all the authority of the contractor and to whom orders, instructions and directions may be given by the City Engineer.

The contractor must not subcontract or assign any of the work under any contract made pursuant to this chapter without the written permission of the City Engineer.

The Contractor will be responsible for bringing to grade and checking for usability all stop boxes within sidewalk lines.

Information on locations of stop boxes may be obtained from the City Water Department.

2-0116. FAILURE OF CONTRACTOR TO FULFILL CONDITIONS. The finished sidewalk may not be used until, in the opinion of the City Engineer, it has set sufficiently to receive travel.

The City Engineer has the power to reject any material or work not in accordance with this chapter and the Engineer's instructions and orders, and any material work rejected, must be removed immediately by the contractor and properly replaced at contractor's own expense.

In case the contractor neglects or refuses to remove any rejected material or work or to replace the same with proper material or work, such material or work may 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.

2-0117. MEASUREMENT AND PAYMENT ON CITY CONTRACT. At the completion of each sidewalk constructed under a City contract, the contractor must measure the material and work involved, must complete the estimate form provided, and must forward a duplicate of the form to the City Engineer for verification and payment.

2-0118. WIDTH AND PLACEMENT OF SIDEWALKS. All sidewalks constructed or reconstructed in the City must be no less than four (4) feet in width and so laid that the inner edge shall be two (2) feet outside the property line, except as otherwise designated by the Board of City Commissioners, provided that:

1. No sidewalk may be reconstructed of a width less than that existing prior to construction.
2. Sidewalks may be substituted by combination sidewalk/bikeway facilities in accordance to the Metropolitan Bikeway Standards and approved by the Board of City Commissioners.
3. In commercial areas, sidewalks must be a minimum of six (6) feet in width, unless a lesser width is approved by the City Commission.

2-0119. CITY SIDEWALKS, DRIVEWAYS CONSTRUCTION SPECIFICATIONS. All City sidewalks must be a minimum of four (4) inches thick, except within driveways where the sidewalk must be of the same thickness as the driveway. Sidewalks over vaults or other openings must be constructed to carry a load of not less than two hundred fifty (250) pounds per square foot. No concrete tile may be used in the construction or reconstruction of any City sidewalks.

All residential driveways must be six (6) inches thick and must be no less than nine (9) feet wide at the sidewalk line, and must be located so as to provide access to a parking space within the property to be served. All commercial or industrial driveways

must be seven (7) inches thick and must be no more than thirty-six (36) feet in width. Provided, however, that such commercial or industrial driveway may, upon approval of the City Engineer, be constructed to a maximum width equal to one-half of the width of the lot. The maximum width of residential driveways is as follows:

On lots less than 50 feet	20 feet wide
On lots greater than 50 feet up to 60 feet	25 feet wide
On lots greater than 60 feet up to 80 feet	30 feet wide
On lots greater than 80 feet	40 feet wide

The maximum driveway width will apply from the intersection with the street to the property line. The width between the sidewalk line and the property line may not be greater than the width at the sidewalk line.

If there are two driveway accesses on the same street for the same property, the combined total width of both driveways may not exceed the width restrictions set out above.

Driveways should be designed in accordance to the following schedule and approved by the Building Inspector or City Engineer prior to construction:

<u>Designation of Street</u>	<u>Minimum Distance to Property Line Nearest the Intersection</u>
Local Street Approaching Local Street	20 feet
Local Street Approaching Collector Street	30-50 feet
Local Street Approaching Arterial Street	150-200 feet
Collector Streets	Limited Access
Arterial Streets	Limited Access

Access onto designated Collector or Arterial streets should be via a local street system. In instances where this, or the minimum distance to the intersection as set out above, cannot be achieved, approval must first be obtained by the City Commission following review by the Planning and Zoning Commission. The City's Subdivision Regulations provide general guidelines for access points and access spacing on Collector and Arterial Streets. Prior to consideration by the Planning and Zoning Commission or City Commission, a traffic analysis may be required to ensure adequate and safe traffic operations.

Distances between driveways and intersections are measured from the edge of the driveway closest to the intersection and the right-of-way line of the intersecting street. In no case will the

aggregate width of the driveway into a property exceed one-half ($\frac{1}{2}$) the width of that property.

SOURCE: Ord. 491, Sec. 1 (1995); Ord. 660, Sec. 1 (2003); Ord. 917, Sec. 1 (2012)

2-0120. MATERIALS IN GENERAL. Design specifications and material requirements for sidewalks and driveways in the City will be available at the office of the City Engineer. All sidewalks and driveways constructed in the City must conform to those requirements.

2-0121. SNOW AND ICE ON SIDEWALK REMOVED BY OWNER AND OCCUPANT OF PROPERTY. No snow or ice may be allowed to stand or remain upon any public sidewalk within the City of West Fargo. If any person or corporation either neglects or refuses to remove the snow or ice on a public sidewalk abutting the person's or corporation's property, after forty-eight (48) hours notice by the Superintendent of Streets, or his designee, the person or corporation will be subject to the penalties set out in Section 1-0211. In addition, the Superintendent of Street, or his designee, may cause the snow or ice to be removed. The expense incurred in the removal will be charged and assessed against the abutting property by special assessment in a manner prescribed by law.

2-0122. RESERVED FOR FUTURE USE.
(Repealed by Ord. 961, Sec. 10 (2013))

2-0123. SUMP PUMP HOSES. Sump pump hoses may not be placed on or over a public sidewalk. Property owners may request permission from the Public Works Director to bury their sump pump hose under the public sidewalk.

Source: Ord. 706, Sec. 1 (2004)

CHAPTER 2-02

STREETS

SECTIONS:

- 2-0201. Supervision of Construction.
- 2-0202. Pipes and Conduits in Streets: Prevention of Leaks.
- 2-0203. Pipes and Conduits in Streets: Repair of Breaks.
- 2-0204. Superintendent of Streets to Notify Owner of Leak.
- 2-0205. Failure of Owner to Repair.
- 2-0206. Construction of Sewer, Vault, Cellar, Cistern or Well in Street - Permit.
- 2-0207. Excavation in Streets: Permit.

2-0201. SUPERVISION OF CONSTRUCTION. Whenever any public streets are constructed in the City of West Fargo, such construction shall be under the supervision of the City Engineer.

Source: Ord. 254, Sec. 5 (1978).

2-0202. 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 of West Fargo, 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 into or upon said street, alley or public ground, out of said pipes or conduits.

Source: Ord. 96, Sec. 1 (1960).

2-0203. PIPES AND CONDUITS IN STREETS: REPAIR OF BREAKS. In case any such pipe or conduit shall break out or burst so that water or gas shall escape from the same into or upon any such street, alley or public ground in said City, it shall be the duty of any person, firm or corporation forcing, transmitting or conveying water or gas through the same, within twenty-four (24) hours after having received notice or knowledge of the escaping water or gas therefrom as aforesaid, to commence and diligently prosecute 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: Ord. 96, Sec. 2 (1960).

2-0204. SUPERINTENDENT OF STREETS TO NOTIFY OWNER OF LEAK. It shall be the duty of the Superintendent of Streets, 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 immediately notify the person, firm or corporation forcing, transmitting or conveying water or gas through the same, of such escape.

Source: Ord. 96, Sec. 3 (1960).

2-0205. 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 of West Fargo 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 Section 2-0402, then the Superintendent of Streets under the direction of the City Engineer of the said City 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 of West Fargo and under the supervision of the Superintendent of Waterworks.

Source: Ord. 96, Sec. 4 (1960).

2-0206. CONSTRUCTION OF SEWER, VAULT, CELLAR, CISTERN OR WELL IN STREET - PERMIT. 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 the express authority from the City Engineer.

Source: Ord. 96, Sec. 6 (1960).

2-0207. EXCAVATION IN STREETS: PERMIT. It shall be unlawful for any person, persons, firm or corporation to open up or make any excavation in or upon any street or alley in the City of West Fargo, for any purpose, without first having obtained a permit so to do as provided in Chapter 2-05 of the ordinances of the City of West Fargo.

Source: Ord 96, Sec. 7 (1960).

CHAPTER 2-03

NUMBERING OF BUILDINGS

Source: Ord. 917, Sec. 2 (2012)

SECTIONS:

- 2-0301. City Planner to Designate Number.
- 2-0302. Owner's Duty.

2-0301. CITY PLANNER TO DESIGNATE NUMBER. The City Planner shall develop addresses for residential, commercial and other buildings in the City according to the West Fargo Street Naming and Address Standards adopted by resolution by the City Commission.

2-0302. OWNER'S DUTY. It shall be the duty of the owner, owners or occupants of any building or buildings in the City of West Fargo 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 number or numbers thereof, as designated by the City Planner.

CHAPTER 2-04

SNOW EMERGENCY ROUTES

SECTIONS:

- 2-0401. Declaration of Emergency.
- 2-0402. Declaration of Emergency to the Public.
- 2-0403. Parking on Snow Emergency Routes.
- 2-0404. Stalled Vehicle on Snow Emergency Route.
- 2-0405. Signs to Mark Snow Emergency Routes & Signs to Mark Parking Prohibition.
- 2-0406. Impounding Vehicles.
- 2-0407. Designation of Snow Emergency Routes.
- 2-0408. Severability.

2-0401. DECLARATION OF EMERGENCY.

1. Whenever in the opinion of the Superintendent of Streets or in his absence, the Assistant Street Superintendent or in the absence of both the Superintendent of Streets and the Assistant Street Superintendent, the Commissioner in charge of Streets, an emergency exists in the City because of falling snow, sleet, freezing rain or on the basis of a forecast by the U.S. Weather Bureau that weather conditions would create or will likely create hazardous road conditions impeding or likely to impede the free movement of fire, health, police, emergency or other vehicular traffic or otherwise endanger the safety and welfare of the community, such official shall put into effect a parking prohibition on Snow Emergency Routes as established by this chapter by declaring in the manner prescribed by Section 2 that a snow emergency exists.

Source: Ord. 310, Sec. 1 (1982).

2-0402. DECLARATION OF EMERGENCY TO PUBLIC.

- A. Superintendent of Streets or other official authorized by this chapter shall cause each declaration made by him pursuant to this chapter to be publicly announced by means of broadcasts or telecasts from stations with a normal operating range covering the city, and he may cause such declaration to be further announced in newspapers of general circulation when feasible. Each announcement shall describe the action taken by the Public Works Director or other official authorized by this chapter, including the time it became or will become effective, and shall specify whether it is applicable to primary snow emergency routes only, or both primary and secondary snow emergency routes; and shall not go into

effect until at least three hours after it has been announced at least three times between 6:00 a.m. and 11:00 p.m. on any day.

- B. The Superintendent of streets or other official authorized by this chapter shall make or cause to be made a record of each time and date when any declaration as announced to the public in accordance with this section.
- C. Termination of Parking Prohibition by the Superintendent of Streets or Other Official Authorized by This Chapter -- Whenever the Superintendent of Streets or other official authorized by this chapter shall find that some or all of the conditions which give rise to a parking prohibition in effect pursuant to this chapter no longer exist, he may declare the prohibition terminated, in whole or in part, in the manner prescribed by this chapter, effective immediately upon announcement.
- D. Provisions Temporarily Effective to Take Precedence -- Any provision of this chapter which becomes effective by declaration of the Superintendent of Streets or other official authorized by this chapter, or upon the occurrence of certain weather conditions shall, while temporarily in effect, take precedence over other conflicting provisions of law normally in effect, except that it shall not take precedence over provisions of law relating to traffic accidents, emergency travel of authorized emergency vehicles or emergency traffic directions by a police officer.

Source: Ord. 310, Sec. 2 (1982).

2-0403. PARKING ON SNOW EMERGENCY ROUTES.

- A. A parking prohibition shall automatically go into effect on any part of any primary snow emergency route on which there has been part of an accumulation of snow and ice of three inches or more for one hour or more between 6:00 a.m. and 11:00 p.m. of any day.
- B. A prohibition of parking on secondary snow emergency routes will only come into effect upon announcement as set out in Section 2-0402. The announcement may include all or part of the secondary snow emergency routes and may provide different times for prohibited parking on different streets and avenues.
- C. Once in effect, a prohibition under this section shall remain in effect until terminated by announcement of the Superintendent of Streets in accordance with this chapter, except that any street area which has become substantially clear of snow and ice from curb to curb for the length of the entire block shall be automatically

excluded therefrom. While the prohibition is in effect, no person shall park or allow to remain parked any vehicle on any portion of a primary snow emergency route to which it applies. However, nothing in this section shall be construed to permit parking at any time or place where it is forbidden by any other provision of law.

SOURCE: Ord. 310, Sec. 3 (1982); Ord. 327, Sec. 1 (1983);
Ord. 355, Sec 1 (1986); Ord. 767, Sec. 1 (2005).

2-0404. STALLED-VEHICLE ON SNOW EMERGENCY ROUTE. Whenever a vehicle becomes stalled for any reason, whether or not in violation of this chapter, on any part of a snow emergency route on which there is a covering of snow, sleet or ice or on which there is a parking prohibition in effect, the person operating such vehicle shall take immediate action to have the vehicle towed or pushed off the roadway of such snow emergency route, either into the first cross street which is not a snow emergency route, or onto the public space portion of a nearby driveway. No person shall abandon or leave his vehicle in the roadway of a snow emergency route (regardless of whether he indicates, by raising the hood or otherwise, that the vehicle is stalled), except for the purpose of securing assistance during the actual time necessary to go to a nearby telephone or to a nearby garage, gasoline station or other place of assistance and return without delay.

SOURCE: Ord. 310, Sec. 4 (1982); Ord. 355, Sec. 2 (1986).

2-0405. SIGNS TO MARK SNOW EMERGENCY ROUTES & SIGNS TO MARK PARKING PROHIBITION.

- A. On each street designated as a primary snow emergency route, as set forth in Section 2-0407 of this chapter, shall be posted special signs "Snow Emergency Route."
- B. On each street where parking is prohibited, as set forth in Section 2-0403, "No parking" signs shall be posted.
- C. No signs shall be required on secondary snow emergency routes.

SOURCE: Ord. 310, Sec. 5 (1982); Ord. 355, Sec. 3 (1986).

2-0406. IMPOUNDING VEHICLES.

- A. Any vehicle stopped on any primary or secondary snow route in violation of any of the provisions of this article may be impounded, and no person shall recover any vehicle removed pursuant to this section without first paying the cost of storage either directly to the towing service and storage place, or by reimbursing the City if the City shall have previously paid such charges, plus an additional Twenty-five and no/100 Dollars (\$25.00)

payable to the City to cover the costs of the City in assisting the impounding of said vehicle.

- B. In addition to the fees set forth in subsection A, any person violating any of the provisions of Chapter 2-04 of the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211.

SOURCE: Ord. 310, Sec. 6 (1982); Ord. 355, Sec. 4 (1986);
Ord. 385, Sec. 7 (1989).

2-0407. DESIGNATION OF SNOW EMERGENCY ROUTES.

- A. Streets in the City of West Fargo designated as primary snow emergency routes shall be as set out in a Resolution passed by the City Commission of the City of West Fargo.
- B. All other City streets in the City of West Fargo, North Dakota, not set forth in the Resolution are designated as secondary snow emergency routes.

SOURCE: Ord. 310, Sec. 7 (1982); Ord. 355, Sec. 5 (1986);
Ord. 514, Sec. 1 (1997); Ord. 606; Sec. 1 (2000);
Ord. 662, Sec. 1 (2003); Ord. 767, Sec. 1 (2005).

2-0408. SEVERABILITY. Should any part or provision of this chapter be declared by a Court of competent jurisdiction to be invalid, the same shall not affect the validity of the chapter as a whole, or any part thereof, other than the part declared to be invalid.

Source: Ord. 310, Sec. 8 (1982).

CHAPTER 2-05

EXCAVATION CODE

Source: Ord 564, Sec. 1 (1999)

SECTIONS:

- 2-0501. Definitions.
- 2-0502. Excavator's Registration.
- 2-0503. Permit to Excavate.
- 2-0504. Exemptions.
- 2-0505. Performance Deposits.
- 2-0506. Pre-excavation Requirements.
- 2-0507. Warranty.
- 2-0508. Joint Application.
- 2-0509. Supplementary Applications.
- 2-0510. Denial of Permit.
- 2-0511. Inspection.
- 2-0512. Revocation of Permits.
- 2-0513. Mapping Data.
- 2-0514. Location of Facilities.
- 2-0515. Relocation of Facilities.
- 2-0516. Damage to Other Facilities.
- 2-0517. Right-of-Way Vacation.
- 2-0518. Excavation Moratorium.
- 2-0519. Emergency Excavation.
- 2-0520. Preservation of Monuments.
- 2-0521. Inspections.
- 2-0522. Regulations.
- 2-0523. Severability.
- 2-0524. Penalty.
- 2-0525. Appeal.

2-0501. **DEFINITIONS.**

1. "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.
2. "Berm" shall mean that portion of the street lying outside the traveled way.
3. "City" shall mean the City of West Fargo, North Dakota.
4. "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.
5. "Director" means the Public Works Director of the City, or his or her designee.

6. "Emergency" shall mean a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.
7. "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 ten 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 West Fargo.
8. "Excavator" shall mean any person, firm or corporation who performs the act of excavation through the use of mechanically powered equipment or otherwise.
9. "Facility" or "Facilities" means any tangible asset in the right-of-way required to provide utility service.
10. "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 proposal excavation would expose any adverse geological formation of soil condition.
11. "Right-of-Way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.
12. "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.
13. "Traveled Way" means the width from curb to curb on curbed streets, from edge to edge on asphalt non-curbed streets, and from shoulder to shoulder on gravel streets.
14. "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.

2-0502. **EXCAVATOR'S REGISTRATION.** No person, firm or corporation shall engage in the practice of Excavation within

public right-of-way unless registered as an Excavator in the City of West Fargo, or under contract with the City. An Excavator's registration will be issued by the City Auditor upon submission of a written application on forms obtained from the Auditors and upon fulfilling the fee, bonding and insurance requirements as specified herein. The registration period shall be from January 1 to December 31 of each year.

1. Fee. The registration fee for an Excavator's registration for a calendar year or any part thereof shall be set by resolution of the Board of City Commissioners.
2. Insurance. Any person, firm or corporation licensed as an excavator must file proof of liability insurance in the amount of Two Million dollars (\$2,000,000) with the City Auditor. The insurance must name the City as an additional insured as to whom the coverages required are in full force and applicable and for whom defense will be provided as to all such coverages. The insurance shall also require that the City Auditor be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term.

2-0503. **PERMIT TO EXCAVATE.**

1. No excavation within public right-of-way shall be initiated without a permit being issued by the City of West Fargo, except as otherwise provided in Section 2-0504 of this chapter. Application for an excavation permit shall be made at least 24 hours in advance, in writing, to the Director of the City 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 Public Works Director, either in person or by telephone.
2. A permit to excavate shall be issued only to a registered 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 West 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 West Fargo assumes no liability whatsoever by virtue to 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 Public Works Director with an emergency phone number of a responsible employee who can be contacted during non-working hours. The fee for each permit issued under the provisions of this ordinance

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 twenty days from the date of such permit.

3. Where the permittee will not be the owner of the facilities installed, the owner (or the entity who will become the owner after completion of the project) will also be required to execute the application for permit, be listed on the permit, and be subject to the indemnification and warranty provisions of Section 2-0503(4) and 2-0507.
4. The permittee in the permit must agree 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.
5. An application for a permit will be considered complete only upon compliance with the requirements of the following provisions:
 - a. Registration pursuant to this chapter.
 - b. Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project, and the location of all known and existing proposed facilities.
 - c. Payment of money due the City for:
 - (1) Permit fees and franchise or user fees, if applicable;
 - (2) Any overdue permit or fee payment;
 - (3) Any disputed loss, damage or expense suffered by the City as a result of applicant's prior excavating or any emergency actions taken by the City;
6. The Director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and

welfare or when necessary to protect the right-of-way and its current use.

7. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (a) makes a supplement to the application for another right-of-way permit before the expiration of the initial permit, and (b) a new permit or permit extension is granted.
8. Notwithstanding subdivision 6 of this section, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching or restoration. The delay penalty shall be established from time to time by the City Commission by resolution.

2-0504. **EXEMPTIONS.**

1. The following shall be exempt from the registration and permit requirements:
 - a. Employees of the department of street of the City of West Fargo, while engaged in work directed by the City, shall be exempt from the requirements of Sections 2-0502 and 2-0503 of this chapter.
 - b. West Fargo Park District employees when performing work within the property lines of the areas designated as the park system.
2. The following shall be exempt from the registration requirements:
 - a. All governmental units of the City.
 - b. All contractors performing work under a written contract with any governmental unit of the City.
 - c. Utilities which have a franchise agreement with the City. However, all contractors hired by such utility must be registered.

2-0505. **PERFORMANCE DEPOSITS.** Deposits as required under this section shall be cash, a certificate of deposit, or a surety bond approved by the City Attorney.

1. Certificates of deposit. If a certificate of deposit is used, the certificate must be held by a financial institution located within the city limits of the City of West Fargo or Fargo, North Dakota, and there must be an escrow agreement in a form satisfactory to the City Attorney executed by the City, financial institution, and permittee.

2. Annual Deposits. Any person intending to make openings, cuts or excavations in public places may make and maintain, with the City Auditor, an annual deposit in an amount set by resolution by 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.
3. 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, for a period extending through the warranty period, and to cover any penalties imposed for delay.
4. Special Deposits. Special deposits shall be required for all permits not covered by an annual deposit. The amount of each special deposit shall be determined by the Public Works Director of the City on a case-by-case basis in accord with paragraph 3.
5. Refund or Reduction of Deposits. Upon the permittee's completion of the work, covered by a permit in apparent conformity with this chapter as determined by the Public Works Director, two-thirds of such deposit shall be refunded or released by the City, with the remaining balance being released at the completion of the warranty period.
6. 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 apparent 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 the warranty period.
7. Use of Deposits. Part, or all, of any such deposit may be used to pay the cost of any work the City performs or has contracted to another entity to restore or maintain the public place as provided in this chapter in the event the permittee fails to perform such work, and to cover any penalty for delay which is not paid directly by the permittee.

2-0506. **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.

2-0507. **WARRANTY.** The permittee warrants that restoration work will meet the requirements of this chapter for a period of twenty-four (24) months following the completion of the work. During this twenty-four (24) month period, it shall, upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the Director. Such work shall be completed within five (5) calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable. If permittee fails to restore the right-of-way in the manner and condition required by the Director, or fails to satisfactorily and timely complete all restoration required by the Director, the Director, at its option, may do such work or contract for such work to be done. In that event, the permittee shall pay to the City within thirty (30) days of the billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its right under the deposits required by this chapter, and if such sums are not sufficient, the City may otherwise seek payment from the permittee and/or owner of the facilities installed.

2-0508. **JOINT APPLICATION.**

1. Registrants may jointly apply for permits to excavate or construct a right-of-way at the same place and time.
2. Registrants who apply for permits for the same obstruction or excavation may share in the payment of the permit fees. Registrants must agree among themselves as to the portion each will pay and indicate the same on their application.
3. Registrants who apply for permits for the same obstruction or excavation may share in the required deposit. Registrants must agree among themselves as to the portion each will be responsible for and indicate the same on their application.

2-0509. **SUPPLEMENTARY APPLICATIONS.**

1. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do work outside the area specified in the permit, except as provided herein. Any permittee who determines that an area is greater than that specified in the permit granted must, before working in the greater area (a) make application for a permit extension and pay any additional fees required thereby, and (b) be granted a new permit or permit extension.
2. A right-of-way permit is valid only for the dates specified in the permit. No permittee may be its work before the permit start date or, except as provided

herein, continue working after the end date. If permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date.

2-0510. **DENIAL OF PERMIT.** The Director may deny a permit for failure to meet the requirements and conditions of this chapter, or if the Director determines that denial is necessary to protect the health, safety, and welfare of the public, or when necessary to protect the right-of-way and its current use.

2-0511. **INSPECTION.**

1. When the work under any permit hereunder is completed, the permittee shall provide written notice of completion to the Director.
2. Permittee shall make the work-site available to the Director and to all others as authorized by law for inspections at all reasonable times during the execution of and completion of the work.
3. The Director shall have the authority to do the following:
 - a. At the time of inspection, the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
 - b. The Director may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation will be a cause for revocation of the permit. Within ten (10) days after the issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Section 2-0516.

2-0512. **REVOCAION OF PERMITS.**

1. The City reserves its rights, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach

by permittee shall include, but shall not be limited to, the following:

- a. The violation of any material provision of the right-of-way permit;
 - b. An evasion or attempt to evade any material provision of the right-of-way permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
 - c. Any material misrepresentation of fact in the application for a right-of-way permit;
 - d. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete the work is due to reasons beyond the permittee's control; or
 - e. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 5-0515.
2. If the Director determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the Director shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the Director, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
 3. Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the Director with a plan, acceptable to the Director, that will cure the breach. Permittee's failure to so contact the Director, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of permit.
 4. If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

2-0513. **MAPPING DATA.** Each owner of utilities in the right of way in West Fargo must provide mapping information required by the Director. Mapping data shall generally consist of drawing exhibits showing all existing aboveground and underground facilities and proposed location of new facilities. Drawings shall

be submitted in AutoCAD DWG or DXF digital format and in hard copy. All drawings shall be registered to the City's coordinate system, or if the City does not have a separate coordinate system, the North Dakota State Plan, and certified by a registered land surveyor or professional engineer. In regard to existing facilities, the required mapping information must be provided within one year of the written request for such information by the Director. Failure to provide such information in the time required, shall subject the violator to administrative fines in the amount of \$500 a day until the violator is in compliance. In addition, no permit will be granted to the violator, or to a contractor doing work for the violator until the violator is in compliance with this section.

2-0514. **LOCATION OF FACILITIES.**

1. Unless otherwise permitted by an existing franchise or North Dakota law, or unless existing aboveground facilities are repaired or replaced, new construction and the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable code.
2. The Director may assign specific corridors within the right-of-way or any particular segment thereof as may be necessary, for each type of facilities that is, or pursuant to current technology, the Director expects will someday be located within the right-of-way. All permits issued by the Director involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. A five foot clear zone shall be maintained on each side of the City sanitary sewer, storm sewer and water main utilities.
3. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the Director shall, not later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived in writing by the Director for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.
4. To protect the health, safety and welfare or, when necessary, to protect the right-of-way and its current use, the Director shall have the power to prohibit or limit the placement of new or additional facilities within a right-of-way. In making such decisions, the Director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by

considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

2-0515. **RELOCATION OF FACILITIES.** A registrant must promptly, and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the Director for good cause requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation. The Director may make such requests to prevent interference by the company's equipment or facilities with (a) a present or future City use of the right-of-way, (b) a public improvement undertaken by the City, (c) an economical development project in which the City has an interest or investment, (d) when the public health, safety and welfare of the public require it, or (e) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a person shall not be required to move or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until reasonable costs thereof are first paid by the non-governmental entity requesting the vacation.

2-0516. **DAMAGE TO OTHER FACILITIES.** When the Directors does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the Director shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to the registrant and must be paid within thirty (30) days from the date of the billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each registrant shall be responsible for the cost of repairing any damage to the facilities of any other registrant caused during the City's response to an emergency occasioned by that registrant's facilities.

2-0517. **RIGHT-OF-WAY VACATION.**

1. If the City vacates a right-of-way which contains the facilities of a registrant, and if the vacation does not require the relocation of registrant's or permittee's facilities, the City shall reserve, to and for itself and all registrants having facilities in the vacated right-of-way, the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

2. If the vacation requires the relocation of registrant's or permittee's facilities and (a) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the registrant or permittee must pay the relocation costs unless otherwise agreed to by the City and the registrant or permittee; or (c) if the vacation proceedings are initiated by a person or persons other than the registrant or permittee, such other person or persons must pay the relocation costs.

2-0518. **EXCAVATION MORATORIUM.** No excavation requiring a permit will be allowed within 36 months of the completion of construction of a roadway. Additionally, no excavation will be allowed on any roadway within 24 months following any of the following activities: overlay, mill and overlay, chip seal, or slurry seal without written authorization from the Public Works Director.

2-0519. **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 Public Works Director for such a permit on the first working day after such work is commenced.

2-0520. **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 Public Works Director. 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 Public Works Director or registered land surveyor. Any person or entity removing or disturbing such monuments without permission shall be responsible for any costs associated with replacing the monuments, as well as a \$500 administrative penalty.

2-0521. **INSPECTIONS.** The provisions of this chapter do not relieve or change any other inspection requirements contained in the City ordinances or in any rules and regulations as approved by the Board of City Commissioners.

2-0522. **REGULATIONS.** The Public Works Director is hereby authorized and directed to promulgate rules and regulations setting forth the requirements for excavation protection, backfilling and restoration, and related matters, to prepare the necessary related forms, and to issue such permits in compliance with this chapter.

2-0523. **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.

2-0524. **PENALTY.**

1. Every person, firm or corporation violating this ordinance shall, upon conviction thereof, be punished by a fine not to exceed \$500, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.
2. The City shall further have the right and authority to deny, suspend or revoke the registration or permit of every person violating this chapter.

2-0525. **APPEAL.**

1. A right-of-way user that (a) has been denied registration; (b) has been denied a permit; (c) has had a permit revoked; or (d) believes that the fees imposed are invalid, may have that denial, revocation, or fee imposition reviewed, upon written request by the City Commission. The City Commission shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Commission affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.
2. Upon confirmation by the City Commission of the denial, revocation, or fee imposition, the right-of-way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the City Commission and the right-of-way user. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the City, one arbitrator selected by the right-of-way users, and one selected by the other two arbitrators. The costs and fees of a single arbitrator shall be borne equally by the City and right-of-way user. In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other part of the expense of the third arbitrator and the arbitration.

CHAPTER 2-06

STREET RESEALING PROGRAM

SECTIONS:

- 2-0601. Street Resealing Special Fund.
 - 2-0602. Street Resealing Plan.
 - 2-0603. Expenditure of Funds.
 - 2-0604. Definition of Resealing Costs.
 - 2-0605. Obligation of City.
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2-0601. STREET RESEALING SPECIAL FUND. The City does hereby create a special fund to be designated as the Street Resealing Special Fund. Into this fund the City Auditor shall place all funds which are in the 1977 Series B Refunding Bond Fund at the time the dedication of those funds is released by the payment of the last of the 1977 Series B Refunding Bonds, as well as any funds that come into the 1977 Series B Refunding Bond Fund after that date. The funds shall be invested as other City funds, and all interest earned on those funds shall be retained in the Street Resealing Special Fund. The City Commission may, but is not obligated to, place any other funds into the Street Resealing Special Fund. No funds placed into the Street Resealing Special Fund may be expended except for purposes set out in this chapter.

2-0602. STREET RESEALING PLAN. The City Engineer shall prepare a plan for systematically resealing the streets within the City limits of West Fargo. Such plan shall be approved by the City Commission by resolution, and such plan may be amended or extended from time to time as long as the amendment or extension is approved by resolution of the City Commission. Provided, however, that the resealing done as part of Street Improvement District No. 2067 shall automatically be considered a part of the plan for which funds may be disbursed pursuant to this chapter.

2-0603. EXPENDITURE OF FUNDS. Monies in the Street Resealing Special Fund may only be expended on "resealing costs" of projects which are part of the plan prepared by the Engineer pursuant to Section 2-0602. Provided, however, that the maximum sum of money that may be expended from the Street Resealing Special Fund for any project shall not exceed \$300,000. There shall be no more than one project undertaken pursuant to this chapter in any one calendar year. For each project, the City Engineer shall determine if other street work or repair is needed in the area where the resealing is to occur. If the "resealing costs" exceed \$300,000 and/or there are other non-resealing costs involved in the project, the City shall create an improvement district, and those costs in excess of \$300,000 and/or other costs shall be assessed against the benefited property. If the project is protested out, then the resealing of

the streets in that district shall not proceed until a later street improvement project is approved.

2-0604. DEFINITION OF RESEALING COSTS. For purposes of this chapter, "resealing costs" means the construction costs directly related to resealing streets within the City of West Fargo and related engineering, legal and administrative costs. "Resealing costs" do not include construction costs related to leveling, milling, overlaying the streets, curb and gutter repair, and related items. However, for purposes of this chapter, "resealing costs" will include construction costs of the items set out in the previous sentence, provided that those costs do not exceed 10% of the total cost of the project or \$30,000, whichever is less. Furthermore, on concrete streets, where no resealing is necessary, "resealing costs" will include minor street repair work on those streets as long as the costs of those repairs do not exceed the average cost per square yard of resealing non-concrete streets. If a particular project includes construction costs that are not "resealing costs," then the engineering costs shall be prorated between improvement district costs and costs to the Street Resealing Special Fund based on the same ratio that the construction costs are allocated.

2-0605. OBLIGATION OF CITY. The approval of the plan in Section 2-0602 in no way obligates the City to reseal the streets as set out in that plan. Each year the City Commission, by resolution, shall determine whether or not any construction outlined in the plan will actually be undertaken that year. Furthermore, even if such a resolution is passed, there is still no obligation upon the City if a street improvement district created for the purpose of doing the work is protested out.

2-0606. EXCEPTION FOR OTHER EXPENDITURES. Notwithstanding the provisions of other sections of this chapter, the City, in addition to expenditures permitted elsewhere in this chapter, shall be permitted to expend the following monies from the Street Resealing Special Fund:

1. \$105,000 in the year 1992 for purposes of constructing an addition to the City Shop.
2. To expend a sum of money not to exceed \$100,000 to fund the difference in cost between using concrete, as opposed to asphalt, in Street Improvement District No. 2073 between Main Avenue and 13th Avenue South.
3. The City Commission may, by resolution, use funds from the Street Resealing Fund to meet deficiencies in any assessment bond fund in lieu of levying a deficiency levy.

SOURCE: Ord. 431, Sec. 1 (1992)

4. The City Auditor is authorized to use such funds to pay all or part of the costs of paving 40th Avenue South, west of County Road 17 to the intersection of 9th Street extended.

SOURCE: Ord. 714, Sec. 1 (2004)

5. The City Auditor is authorized to use such funds to pay all or part of the costs of curb repairs and installations in the City of West Fargo.

SOURCE: Ord. 760, Sec. 1 (2005)