

Chapter 33 STREETS AND SIDEWALKS

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Articles:

33.ED Editor's note to Chapter 33

33.02 Adoption of Standards

33.04 In General

33.08 House Numbering

33.12 Excavations

33.16 Creation of Municipal Street Light Utility

Article 33.ED Editor's note to Chapter 33

Sections:

33.ED.010 Editor's note to Chapter 33

Section 33.ED.010 Editor's note to Chapter 33

For state law as to authority of city to establish, regulate, etc., streets and sidewalks, see NDCC, 40-05-01 (8).

As to cleanliness, see NDCC, 40-05-01 (14). As to curbs and gutters, see NDCC, § 40-05-01 (15). As to sidewalks, see NDCC § 40-29-01 et seq. As to boulevards, see NDCC, § 40-32-01 et seq.

As to sale, consumption, etc., of alcoholic beverages, on streets, etc., see § 4.04.070 of this Code. As to riding of bicycles on sidewalks, see § 6.08.100. As to use of streets by community antenna television system, see §§ 10.04.060, 10.04.070. As to spitting, throwing litter, etc., in public place, see § 25.16.12.150. As to specifications for streets in subdivisions, see § 34.24.04.010.

Article 33.02 In General

Sections:

33.02.010 Adoption of Standards

Section 33.02.010 Adoption of Standards

There is hereby adopted by the Board of City Commissioners certain standard specifications (known as the “City of Dickinson Standard Specifications”) and standard drawings (known as the “Dickinson Standard Drawings”) for all public improvements within the jurisdiction of the City of Dickinson.

“Public improvement” shall include any improvement undertaken by the City of Dickinson for the good of the public and which is paid for with public funds and constructed on public land (including public easements or rights-of-way). “Public improvement” shall also include any improvement on public or nonpublic land if any portion of the construction is paid for with public funds, or if the City of Dickinson is expected or anticipated to accept ownership of the improvement upon its completion.

A copy of such Standard Specifications and Standard Drawings is on file in the office of the City Administrator, and is available for use and examination by the public.

Upon notice to the Board of City Commissioners, the Standard Specifications and Standard Drawings may be modified, amended or supplemented from time to time by the City Administrator or his duly designated representative.

The City Administrator, or his duly designated representative, is hereby authorized and directed to enforce such Standard Specifications and Standard Drawings as hereby adopted or as may be amended from time to time.

The Standard Specifications and Standard Drawings adopted pursuant to this Section are minimum standards. This Section shall not create any liability on the part of the City, or its officers, agents, servants, representatives or employees for any damages that result from any person’s reliance upon this Section or any administrative decisions lawfully made hereunder. (Ord. 1534, § 1)

Article 33.04 In General

Sections:

- 33.04.010** Definitions
- 33.04.020** Composition of street department
- 33.04.030** Powers and duties of superintendent of streets generally
- 33.04.040** Duties of city engineer generally
- 33.04.050** Designation of streets and avenues
- 33.04.060** Street grades--Filing
- 33.04.070** Same--Initial bench mark designated
- 33.04.080** Same--Changes generally; excavations or additions changing grade
- 33.04.090** Grading, ditching, etc., of streets generally
- 33.04.100** Crosswalk construction--Generally
- 33.04.110** Same--Private crossings
- 33.04.120** Sidewalk construction--Width and location
- 33.04.130** Same--Thickness
- 33.04.140** Same--Permits
- 33.04.150** Preparation of area between curb and sidewalk
- 33.04.160** Construction of private driveways
- 33.04.170** Construction of curbs and gutters generally
- 33.04.180** Costs of curbing, gutter and grading
- 33.04.190** License for construction of driveways, sidewalks, curbs and retaining walls--
Required
- 33.04.200** Same--Application generally
- 33.04.210** Same--Approval of application; bond required of applicant
- 33.04.220** Same--Issuance; fee; term; renewal
- 33.04.230** Notice to city engineer of construction of sidewalks, curb or retaining wall
- 33.04.240** Repair or removal of defective driveways, sidewalks, etc.
- 33.04.250** Protection of manholes, gate boxes, etc.
- 33.04.260** Removal or destruction of construction stakes
- 33.04.270** Openings in sidewalks generally
- 33.04.280** Maintenance of sidewalks--Generally
- 33.04.290** Same--Removal of snow and ice
- 33.04.300** Depositing or scattering rubbish, refuse, etc.
- 33.04.310** Depositing snow or ice onto streets, etc.
- 33.04.320** Hauling sand, mud, etc., over streets, etc.
- 33.04.330** Washing of earth, etc., onto sidewalks
- 33.04.340** Depositing or throwing materials on streets--Glass, nails, etc.
- 33.04.350** Same--Wire or tacks
- 33.04.360** Painting signs on sidewalks
- 33.04.370** Coasting, tobogganing, etc.
- 33.04.380** Driving vehicles and animals across sidewalks and curbs
- 33.04.390** Exhibition or sale of goods on streets, sidewalks or building entrances
- 33.04.400** Assemblies impeding traffic or access to buildings
- 33.04.410** Signs, fences, etc., generally
- 33.04.420** Using boulevards, etc., for gardening purposes
- 33.04.430** Commercial tree trimmers

- 33.04.440 Regulation of pesticides application**
- 33.04.450 Fastening animals to trees; traveling on areas used for lawn or park**
- 33.04.460 Deposits accompanying application for vacation of public grounds, streets or alleys**
- 33.04.470 Appeal of interpretation or enforcement of chapter**

Section 33.04.010 Definitions

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Grade. The elevation from which the levels of street surfaces, curves and sidewalks are to be determined.

Owner. Any person owning or controlling property or a duly authorized agent, attorney, guardian, conservator or trustee.

Street. Any public highway designated as a street, highway, avenue, boulevard, place, court or road otherwise indicated as a public highway on the official records or maps.

Used. Includes the terms "arranged," "designed" or "intended to be used." (Code 1958, § 28-1.)

Section 33.04.020 Composition of street department

The street department shall consist of the commissioner of streets, the superintendent of streets and such number of other employees as from time to time may be deemed necessary by the board of city commissioners. (Code 1958, § 28-2.)

Section 33.04.030 Powers and duties of superintendent of streets generally

The grading and surfacing of streets and alleys, except under contract; the construction of crosswalks; the grading, planting and maintenance of parking strips; the cleaning, maintenance and repair of all streets and alleys and all pavements, driveways, sidewalks, curbs, crosswalks and parking strips in or along such streets, etc.; the sprinkling of the streets, alleys and avenues; the cleaning, maintenance and repair of manholes, catch basins and drains; and the preservation of such streets, etc., safe and unobstructed for public travel shall be under the supervision and regulation of the superintendent of streets, subject to such rules and regulations as may be given him by the commissioner of streets and the city engineer and subject also to such rules and regulations as may be adopted for his guidance by the board of city commissioners. (Code 1958, § 28-3.)

Section 33.04.040 Duties of city engineer generally

The determination of lines and elevations for sidewalks, crosswalks, curbs and street surfaces in conformity with the grades established in this chapter and the widths of roadways and sidewalks laid down herein; the grading and surfacing of streets and alleys where such work is done under contract; and the construction of pavements, driveways, sidewalks, curbs and retaining walls in or along the public streets and alleys, whether by or for private persons or the city shall be under the supervision and regulation of the city engineer and shall conform to the

plans and specifications established by the city engineer and adopted and approved by the city commission. (Code 1958, § 28-4.)

Section 33.04.050 Designation of streets and avenues

All streets in the city running east and west shall be known as streets, and all streets running north and south shall be known as avenues. (Code 1958, § 28-5.)

For state law as to authority of city to name streets, etc. see NDCC, § 40-05-01 (20).

Section 33.04.060 Street grades--Filing

All street grades shall be on file in the city engineer's office. (Code 1958, § 28-6.)

For state law as to authority of city to establish street grades, see NDCC, § 40-39-03.

Section 33.04.070 Same--Initial bench mark designated

The initial bench mark on the east face of the city hall, three feet north of the southeast corner and four and one-half feet above the sidewalk, stamped "J-14-1931," such disc being the standard disc stamped "J-14-1931" set vertically 2,416.731 feet, such disc having been determined by the 1929 general adjustment of the first order level net of the United States Coast Geodetic Survey based on mean sea level datum, is hereby declared to be the initial bench mark from which all grades of streets, avenues, alleys, water mains, gas mains and sewers of the city are established. (Code 1958, § 28-7.)

Section 33.04.080 Same--Changes generally; excavations or additions changing grade

No regularly established grades shall be changed by any authority other than the city commission, except grades which affect work previously constructed in accordance with established grades given by the duly authorized officer appointed at that time to do such work.

No street or alley shall be graded, by contract or otherwise, in such manner as to bring an excavation lower than the established grade, or any fill or embankment higher than the established grade. No ashes, cinders, gravel or other surfacing material shall be placed upon any street or alley, by contract or otherwise, unless such street shall first have been so graded that the finished surface shall conform to the established grade. (Code 1958, § 28-8.)

Section 33.04.090 Grading, ditching, etc., of streets generally

No grading, ditching or other alteration of the existing ground level in the roadway of any street or alley and no surfacing by means of the placing of ashes, cinders, gravel or other material in or upon such street, etc., shall be undertaken or executed by any person other than the street commissioner or persons employed under him, unless such work is done under contract with the city. (Code 1958, § 28-9.)

Section 33.04.100 Crosswalk construction--Generally

No person shall lay any plank, stone or other material in any street or alley for the purpose of providing a crosswalk or construct any crosswalk therein, except the street commissioner and those employed under his direction. All crosswalks across the roadways of any streets, which the board of city commissions may require to be constructed, shall be laid by the street commissioner. (Code 1958, § 28-10.)

Section 33.04.110 Same--Private crossings

It shall be unlawful for any person to construct over or across any boulevard or sidewalk any private or other crossing except in conformity with the plans and specifications to be prescribed by the city engineer. (Code 1958, § 28-27.)

Section 33.04.120 Sidewalk construction--Width and location

All sidewalks in the residential areas of the city shall be constructed not less than four and one-half feet in width with either the outer edge of the walk six feet from the property line or with the outer edge of the sidewalk along the curb. The width and location shall be subject to the judgment and determination of the engineer of the city with due regard to the pedestrian traffic thereon, the suitability, existing walks, street widths and traffic, the architectural landscaping and building harmony in the area and the street upon which such walk is constructed. In special instances where retaining walls are placed on the property line, the walks shall be full six feet in width for the full length of such retaining walls with the inner edge of such walk on the property line.

Within the fire limits and in areas generally devoted to commercial activities, the sidewalk shall be constructed to extend from the property line to the curb. (Code 1958, § 28-11.)

For state law as to authority of city to prescribe the width and location of sidewalks, see NDCC, § 40-29-01.

Section 33.04.130 Same--Thickness

The thickness of all concrete sidewalks placed in the city shall be three and one-half inches, except where such sidewalk is used for driveway or car parking, in which case the thickness shall be a full six inches. (Code 1958, § 28-13.)

For state law as to authority of city to prescribe the manner of sidewalk construction, see NDCC, § 40-29-01.

Section 33.04.140 Same--Permits

Any person who desires to or who has been ordered to construct or repair any sidewalk abutting his property and desires to construct such sidewalk within the time limit provided by law may do so; provided, however, that he shall first make application to the city engineer for a permit to construct such work, which application shall state the location of the work to be done, the name of the applicant, the name of the person who is to do the work, and the applicant's willingness that such sidewalk be constructed in accordance with the provisions of this chapter. Upon complying with the above requirements, a permit will be issued for such work, which permit shall expire in thirty days from the date of issuance or upon the day set as the time limit in which the sidewalk is to be built by the owner, in case such sidewalk has been ordered

constructed as provided by law. The city engineer shall keep a record of such permits in his office. A separate permit shall be issued for each separate piece of work, but one permit may be issued to cover all continuous work in the same block. No permit shall be required by the city contractor for sidewalks to be constructed by him upon orders from the city commission. (Code 1958, § 28-12.)

Section 33.04.150 Preparation of area between curb and sidewalk

Within sixty days after the construction of any curb or curb and gutter along any property, the owner shall cause the parking between the curb and the sidewalk to be properly filled in and graded and seeded to grass. (Code 1958, § 28-15.)

Section 33.04.160 Construction of private driveways

Whenever any private driveway is opened up between the roadway of any street and the property line so as to cross any existing sidewalk, such sidewalk, for the full width of the driveway, shall be removed and replaced with a walk constructed in accordance with the specifications prepared from time to time by the city engineer for the construction of crosswalks under contract with the city. Such work shall be done without expense to the city.

No private driveway or other approach to any building or property to be used for the passage of vehicles of any kind shall be so constructed that any portion of such driveway or approach is closer than six feet to any fire hydrant. (Code 1958, § 28-16.)

Section 33.04.170 Construction of curbs and gutters generally

The city commission, at the time specified by law, shall advertise for bids for the construction of curb and gutter in or along the streets and alleys of the city when application for the construction thereof has been made to the commission or the commission may proceed with the construction of curb and gutter, as is provided for in state law. (Code 1958, § 28-17.)

For state law as to construction and repair of curbs and gutters in cities, see NDCC, § 40-31-01 et seq.

Section 33.04.180 Costs of curbing, gutter and grading

All costs for curbing, gutter and grading shall be paid by the property owner either in cash or by special assessment against the property benefitted. (Code 1958, § 28-14.)

For state law as to assessment of property owners for costs of curbing and gutters, see NDCC, § 40-31-06.

Section 33.04.190 License for construction of driveways, sidewalks, curbs and retaining walls--Required

No person shall engage in the business or occupation of constructing paved driveways, sidewalks, curbs and retaining walls in or along the streets and alleys of the city nor engage in the construction of paved driveways, sidewalks, curbs and retaining walls in or along the streets and alleys of the city without first procuring a license to do so. (Code 1958, § 28-18.)

Section 33.04.200 Same--Application generally

All applications for licenses required by section 33.04.190 shall be made in writing to the city auditor and shall set forth the experience and competency of the applicant to perform such work. An applicant shall be required to submit, as part of the application, a copy of his contractor's license or renewal certificate, issued pursuant to North Dakota Century Code, Chapter 43-07. A concrete license may not be issued unless the applicant has a current North Dakota contractor's license. (Code 1958, § 28-19; Ord. No. 1105, § 1.)

Section 33.04.210 Same--Approval of application; bond required of applicant

If all of the requirements of this chapter are met, the city auditor shall approve the application for a license required by section 33.04.190, which shall be filed with the city auditor, together with a surety bond in the sum of five thousand dollars approved by the city auditor, for the execution of all work in strict conformity with the provisions of this chapter and the protection, indemnification and saving harmless the city from any or all loss, claim, suit or damages, direct or consequential which the city may sustain through violation or any of the provisions of this chapter, through negligence or in any other manner whatsoever. (Code 1958, § 28-20; Ord. No. 1083, § 3; Ord. No. 1105, § 2.)

Section 33.04.220 Same--Issuance; fee; term; renewal

Upon the filing of the required application and bond the city auditor shall issue a license, as required by section 33.04.100, to the applicant upon payment by such person to the city auditor of a fee in such amount as determined from time to time by the board of city commissioners and shall be on file in the office of the city auditor in the city fee schedule. All licenses shall be for one year or a fractional part thereof and shall expire as of the thirty-first day of December of each year. They shall be renewed by the board of city commissioners from year to year upon the approval of such board and upon the filing of a bond and the payment of the annual license fee. (Code 1958, § 28-21; Ord. No. 705, § 1; Ord. No. 1086, § 20.)

Section 33.04.230 Notice to city engineer of construction of sidewalks, curb or retaining wall

No person shall commence the construction of any sidewalk or curb in or along any street or alley until he shall have notified the city engineer of his intention to construct such sidewalk or curb, nor until the city engineer shall have set stakes marking the line and grade at which such sidewalk is to be constructed; provided, that where a sidewalk and curb already are in place, no notification to the city engineer and no line and grade stakes shall be required for the construction of walks leading from the sidewalk to the curb, or for the construction of curbs adjacent to private drives. No person shall commence the construction of any retaining wall without first notifying the city engineer and obtaining from him the correct line and grade of such wall, unless the line and grade are already sufficiently marked by an existing sidewalk which is at the correct line and grade. (Code 1958, § 28-22.)

Section 33.04.240 Repair or removal of defective driveways, sidewalks, etc.

The city engineer is hereby given authority to order the repair or removal of any paved driveway, sidewalk, curb or retaining wall which has been constructed in violation of any provision of this chapter or of the specifications prepared by the city engineer for such work. In case such driveway, sidewalk, curb or retaining wall is not properly repaired or removed, in accordance with the directions of the city engineer, he may cause such sidewalk, etc., to be repaired or removed at the expense of the city and the city shall be entitled to recover, under the bond specified in section 33.04.210, for all costs arising from such repairs or removal. (Code 1958, § 28-23.)

Section 33.04.250 Protection of manholes, gate boxes, etc.

It shall be unlawful to allow the wheels of any engine or other heavy body of injurious weight to go over or come in contact with any manhole, gate box or stop box within the city. (Code 1958, § 28-25.)

Section 33.04.260 Removal or destruction of construction stakes

No person shall in any way move or destroy any construction stakes, referencing alignment or grades, which have been placed by or under the direction of the city engineer. (Code 1958, § 28-26.)

Section 33.04.270 Openings in sidewalks generally

No permanent opening shall be made in any sidewalk in any of the public streets of the city for the purpose of stairways leading to any basement or cellar, for admitting light or for any other purpose; provided, that openings in sidewalks for the admission of coal, light, air or for other purposes, if covered with suitable iron covers, iron grating or glass set in iron or cement, set level with the surface of the sidewalk and of such construction as not be dangerous to pedestrians passing over such covers, may be constructed upon the approval of the city engineer under a permit obtained from him specifying the details of the construction to be used. No person shall keep or leave open or suffer or permit to be kept or left open any cellar door or grating of any kind in or upon any sidewalk in the city, except during such time as such door, etc., may be necessarily open during the use thereof, during which time it shall be properly guarded and protected. (Code 1958, § 28-24.)

Section 33.04.280 Maintenance of sidewalks--Generally

It shall be the duty of every owner of premises fronting on a public street or avenue to keep the sidewalk in front of such premises unobstructed, clean and in good order and repair.

It shall be the duty of the owner of any property along which a sidewalk has been constructed to maintain such sidewalk in good repair and safe condition. Should any such owner fail to so maintain such sidewalk, the street commissioner shall direct him to make such repairs as may be necessary to restore such sidewalk to a safe condition. Should he fail, within a reasonable time, to follow the directions of the street commissioner, the street commissioner

shall report the facts to the board of city commissioners, who shall then proceed, as provided in the laws of the state, to make such sidewalk safe. (Code 1958, § 28-28.)

For similar state law, see NDCC, § 40-29-02.

Section 33.04.290 Same--Removal of snow and ice

(a) It shall be the duty of the owner or occupant of each lot in the city to remove from the sidewalk in front of or along such lot any ice or snow which forms, accumulates or obstructs such sidewalk within seventy-two hours after the ice forms or the snow ceases to fall thereon; provided, that where the ice accumulated is of such character as to make removal thereof impossible, the sprinkling of ashes, salt or sand thereon within the time specified for removal in such manner as to make such sidewalk safe for the travel of pedestrians thereon shall be deemed a compliance with the provisions of this section.

(b) In case the owner of any lot in the city refuses or neglects to remove from such sidewalk in front of or along any lot the ice or snow, within seventy-two hours after the ice forms or the snow ceases to fall thereon, such ice or snow may be removed by or under the direction of the street commissioner of the city. The street commissioner may remove or direct the removal of such ice or snow upon complaint received, wherein the complainant shall furnish his or her name, address and telephone number. The necessary expense of such ice or snow removal shall be chargeable against the abutting lot or property by billing and special assessment, if not paid in the manner prescribed by law.

(c) Notwithstanding any other provision hereof, any violation of this section shall be an infraction, punishable by the general penalty provided in section 11.12.010. (Code 1958, § 28-29; Ord. No. 753, § 1; Ord. No. 921, § 1.)

For state law as to snow and ice removal by city and assessment of costs against owner of abutting property, see NDCC, §§ 40-05-01 (13), 40-29-18, 40-29-19.

Section 33.04.300 Depositing or scattering rubbish, refuse, etc.

It shall be unlawful for any person in the city to throw or permit to be deposited or scattered upon any sidewalk, alley, street, bridge, public passageway or any vacant lot, public or private property in the city any waste or other material of any kind, including but not limited to wood, ashes, grass, rubber, cans, cartons, bottles, offal, paper, earth or any other thing or substance whatever which may injure, disfigure or tend to render such street, etc., unclean or a nuisance.

Nothing herein shall prevent or make unlawful the storage and deposit of garbage and refuse pursuant to and in the manner provided in chapter 18, relating to the storage and collection of garbage and refuse within the city.

Notwithstanding any other provision hereof, any violation of this section shall be an infraction, punishable by a fine of no less than \$200.00. (Ord. No. 314, §§ 1, 2; Ord. No. 1460, §§ 1)

Section 33.04.310 Depositing snow or ice onto streets, etc.

(a) Generally. It shall be unlawful for any person in the city to throw, move, dump, deposit or permit to be deposited or scattered any snow or ice accumulated on private property, sidewalks or public passageway onto driving lanes of any street or alley, except as otherwise permitted by this section.

- (b) Residential Exceptions. Snow or ice may be deposited on the boulevard or area between the edge of the curb or paved surface of a street or alley and the sidewalk. Snow or ice may also be deposited, in the event there is no boulevard or the boulevard area is filled, along the curb and gutter in the parking lane of the street or alley.
- (c) Commercial Buildings. In order to facilitate safe and adequate parking for customers and other business related activities, any person operating or conducting a business in any commercial building within the city shall be prohibited from depositing snow or ice from the premises along the curb and gutter in the parking lane of the street or alley.
- (d) Commercial Exceptions. Subsection (c) of this section shall not apply to the sidewalk portions of the commercial building premises.
- (e) Penalty. Notwithstanding any other provisions hereof, violation of this section shall be punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding thirty days, or both such fine and imprisonment, for each such offense. (Ord. No. 970, § 1.)

Section 33.04.320 Hauling sand, mud, etc., over streets, etc.

No person shall haul or transport over the paved streets, avenues or alleys of the city any manure, sand, mud, dirt, clay, stone, ashes, coal, gravel or rubbish of any kind, unless such material is hauled or transported in a tight box so constructed as to prevent the spilling, sifting or scattering of any of the substances therein contained upon such streets, avenues or alleys. (Code 1958, § 28-31.)

Section 33.04.330 Washing of earth, etc., onto sidewalks

The owner of any lot or piece of land abutting any sidewalk in the city shall not allow or permit earth or other substances from such lot or piece of land to wash or accumulate upon any such walk, and in the event that any earth or other substance shall wash or accumulate upon any such walk, it shall be the duty of the owner of the abutting lot or piece of land to remove it, and failure so to do shall be a violation of this section. (Code 1958, § 28-32.)

Section 33.04.340 Depositing or throwing materials on streets-- Glass, nails, etc.

No person shall throw or place in any street or alley any glass, nails or other material likely to puncture or injure the rubber tires of any vehicle. Any person who, through accident, may cause to be thrown or placed in any street or alley any glass, nails or other material likely to puncture or injure the rubber tires of any vehicle shall remove such material immediately. (Code 1958, § 28-33.)

Section 33.04.350 Same--Wire or tacks

It shall be unlawful for any person to throw or deposit in any street, avenue or alley of the city any wire or tacks. (Code 1958, § 28-34.)

Section 33.04.360 Painting signs on sidewalks

It shall be unlawful for any person to paint any signs upon the sidewalks within the city either with paint, chalk or other substance. (Code 1958, § 28-35.)

Section 33.04.370 Coasting, tobogganing, etc.

No person shall use any portion of any street or sidewalk for coasting, tobogganing or similar sports. (Code 1958, § 28-36.)

Section 33.04.380 Driving vehicles and animals across sidewalks and curbs

It shall be unlawful for any person to place, push, draw or propel any wagon, cart, buggy, automobile, bicycle or tricycle upon, over, against or across any sidewalk or curb or to use, ride or drive any horse or other animal, wagon, sleigh or other vehicle over, against, upon or across any sidewalk or curb in the city. (Code 1958, § 28-37.)

Section 33.04.390 Exhibition or sale of goods on streets, sidewalks or building entrances

It shall be unlawful for any person to place, construct or maintain any showcase or other device or display for the exhibition or sale of goods, wares or merchandise upon any of the streets or sidewalks of the city or the entrance to any building except for provided in Article 33.06. (Code 1958, § 28-38; Code 1605, § 1)

For state law as to authority of city to regulate sales on sidewalks, see NDCC, § 40-05-01 (17).

Section 33.04.400 Assemblies impeding traffic or access to buildings

It shall be unlawful for any person to assemble upon any street, sidewalk or upon any public grounds in the city so as to hinder the street travel or traffic thereon or to hinder or impede free ingress and egress to and from any public place of business, private dwelling, public hall, church or other public building. Any person so assembled who shall refuse or neglect to move away, depart and give free passage after being requested by any police officer or by the owner, occupant or manager of such public place of business, hall, church or other public building obstructed as aforesaid shall be guilty of violating this section. (Code 1958, § 28-39.)

For state law as to authority of city to regulate traffic on streets and sidewalks, see NDCC § 40-05-01 (17).

Section 33.04.410 Signs, fences, etc., generally

It shall be unlawful for any person to erect, construct or place any sign, signpost, fence or hedge or to keep or maintain any sign, signpost, fence or hedge on the sidewalks, parking lots, boulevards or streets of the city or outside of the property line of the abutting property to any sidewalk, parking lot, boulevard or street of the city except as provided in Article 33.06. This section shall not affect the right of the city to erect, construct, keep and maintain fire hydrants, manholes, catch basins or other construction

used for the maintenance or operation of the sewer or water systems of the city; nor shall it affect the right of the city or the state to erect, construct, keep and maintain highway signs and signposts upon sidewalks, parking lots, boulevards and streets of the city. (Code 1958, § 28-40; Code 1605§ 2)

For state law as to authority of city to regulate signs on streets and sidewalks, see NDCC, § 40-05-01 (16).

Section 33.04.420 Using boulevards, etc., for gardening purposes

It shall be unlawful for any person to use any of the boulevards or any part or portion thereof lying adjacent to any of the paved streets or lying or being within the paved area of the city for gardening purposes. (Code 1958, § 28-41.)

Section 33.04.430 Commercial tree trimmers

- (a) Generally. It shall be unlawful to do commercial tree trimming in any public boulevard in the city without a permit therefor obtained from the city auditor, and the fee therefor shall be ten dollars. The applicant shall furnish a one thousand dollar bond and evidence of liability insurance in the amount of twenty-five thousand dollars property damage, fifty thousand dollars bodily injury in one accident or occurrence and one hundred fifty thousand dollars aggregate.
- (b) Commercial Certification. Any person providing commercial tree services within the city shall be required to obtain commercial certification under the state pesticide certification program in the category of ornamental and turf certification. This certification is provided by the state extension service. Failure to comply with this section shall subject such person to the penalty provided in section 35.130. (Ord. No. 610; Ord. No. 984, § 1.)

Section 33.04.440 Regulation of pesticides application

- (a) Purpose. It is hereby declared to be the policy of the city to regulate and control the application of pesticides within the city in order to protect persons and property within the city and to guard against injury to persons, property, pets, wildlife and desirable plants and other vegetation.
- (b) Definitions. Whenever the following words or terms are used in this section, they shall be construed to have the following meanings:
 - Pesticide. Any chemical or agent applied to lawns, shrubs, trees or other vegetation used to kill vegetation, insects or diseases.
 - Public Trees, Lawns and Shrubs. All trees, lawns or shrubs located on any park, playground or other property controlled or owned by the city or on any public street, boulevard or alley right-of-way.
- (c) Permit Required:
 - (1) Permit Required. It shall be unlawful for any person, for compensation, to apply pesticides in the city without first obtaining a commercial applicator license therefor from the city.
 - (2) Application and Qualifications. Any person desiring a commercial applicator permit to apply pesticides within the city shall file an application therefor with the office of the city auditor, on forms to be furnished by the city auditor, and as a part of such application shall certify and agree to the following:

- A. That applicant shall obey all ordinances and regulations of the city and state with respect to the commercial application of pesticides.
 - B. That applicant agrees to indemnify and hold harmless the city from any and all claims for loss or damage caused by or resulting from the application of pesticides by applicant, its agents or employees within the city pursuant to the commercial applicator permit issued by the city.
- (3) Additional Documents. Prior to the issuance of any commercial applicator permit, applicant will furnish to the city the following documents:
- A. Evidence of liability insurance with coverage of not less than three hundred thousand dollars per occurrence protecting applicant, its agents and employees from any and all claims for any loss or damages caused by or resulting from the application of pesticides;
 - B. Applicant's North Dakota Commercial Applicator's Certification/Classification;
 - C. A check for the annual license fee in such amount as determined from time to time by the board of city commissioners in the city fee schedule which shall be on file in the office of the city administrator.
- (4) Granting of Permit. The city administrator shall review the application and attachments of the proposed applicant for a commercial applicator permit and, if the application is in order and the applicant otherwise is qualified for a commercial applicator's permit, the city administrator shall issue a commercial applicator's permit. All permits issued hereunder shall run for annual periods commencing January 1 of each year and terminating on December 31 of the same year.
- (5) Revocation of Permit. The board of city commissioners shall have the authority to revoke or to refuse to reissue a commercial applicator's permit for any violation by the permit holder of ordinances and regulations or for any other cause resulting in violation of this section. Written notice detailing such violations shall be given to the permit holder and the permit holder shall be entitled to a public hearing upon such violations before the board of city commissioners.
- (6) Exemptions from Permit Requirements. No individual owners or tenants of real property shall be required to have a permit to apply pesticides to their property or to the public property or right-of-way adjoining such property.
- (d) General Pesticide Application Regulations.
- (1) Pesticides must be applied in accordance with label directions.
 - (2) Any persons applying pesticides commercially must, after making the application, leave written information with the property owner or occupant specifically stating (but not limited to) the following:
 - A. Product names of all pesticides applied.
 - B. Names of intended target organisms.
 - C. Date and exact time of application.
 - D. Applicator's signature, business phone number and name of firm.
- (e) Penalties.
- (1) In the event that any person violates any provision of this section, he shall be subject to a fine not to exceed five hundred dollars or imprisonment not

exceeding thirty days, or both such fine and imprisonment. Each day any violation of any provision of this section shall continue shall constitute a separate offense.

- (2) In addition to the penalties set forth herein, the city may avail itself of such injunctive remedies to enforce the terms and conditions of this section or to prohibit conduct contrary to the terms and conditions of this section as it may deem necessary and is allowable by law by commencing an appropriate action in the appropriate courts having jurisdiction over such an action. Any such legal action by the city shall in no way affect the right of the city to enforce penalties within the criminal court in addition to obtaining injunctive relief. (Ord. No. 1042, § 1; Ord. No. 1059, § 1; Ord. No. 1083, § 2; Ord. No. 1086, § 21; Ord. No. 1320 §1)

Section 33.04.450 Fastening animals to trees; traveling on areas used for lawn or park

No person shall at any time fasten any horse or other animal to any ornamental or shade tree in any of the streets or public grounds of the city or to any box or protection around such tree without the consent of the owner of such tree.

No person shall go upon, cross or otherwise travel upon the grass or turf of any land or lot abutting on a public street or boulevard within the city where such land is used for lawn or park purposes or a boulevard without permission from the owner or person in charge thereof. (Code 1958, § 28-42.)

Section 33.04.460 Deposits accompanying application for vacation of public grounds, streets or alleys

Any petition that may be filed pursuant to chapter 40-39 of the North Dakota Century Code for the vacation of any public grounds, street or alley shall be accompanied by a deposit of one hundred and fifty dollars cash, which shall be deposited with the city treasurer before any proceedings pursuant to such petition will be held.

The city auditor shall keep an accurate account of all expenses incurred in connection with any such proceeding, including statements to be received from the city attorney, city engineer and any city department involved, reciting the value of any such services rendered in such proceeding. The total amount of all such actual expenses as well as the value of other services rendered in such proceeding shall be deducted from the amount deposited and shall be retained in the city treasury. Any part of such deposit not used for such expenses shall be returned to the petitioner at the conclusion of the proceeding. (Ord. No. 346, §§ 1, 2.)

For state law as to the opening and vacating of streets, alleys and public places, see NDCC, § 40-39-01 et seq.

Section 33.04.470 Appeal of interpretation or enforcement of chapter

In case any difference should arise between the city engineer or street commissioner and the owner of any property adjacent to any street, alley or any pavement, driveway, sidewalk, curb, retaining wall or parking strip in or along such street or alley, subject to the regulations of this chapter or any persons desirous of constructing any driveway, sidewalk, curb or retaining

wall or of laying out or planting any parking strip regarding the interpretation or enforcement of any of the provisions of this chapter, appeal may be made to the board of city commissioners, whose decision regarding all matters affecting such dispute shall be final.

An appeal from any such determination by the city engineer or the street commissioner, as the case may be, shall be taken by filing notice thereof in writing in the office of the city auditor within five days after such determination is made. The board of city commissioners shall act upon such appeal at its next regular meeting following the filing of such notice of appeal.

In the event that an appeal is not taken, the decision of the city engineer or street commissioner shall be final and conclusive. (Code 1958, § 28-43.)

Article 33.06 Commercial Use of Sidewalks, Streets, and Public Grounds

Sections:

- 33.06.010 Commercial use of sidewalks, streets and public grounds restricted**
- 33.06.020 Permitted uses of sidewalks, streets, or other public grounds**
- 33.06.030 Penalty**

Section 33.06.010 Commercial use of sidewalks, streets and public grounds restricted

Except as authorized by this Chapter for locations within the Downtown Commercial District, no person, firm, or entity shall sell, offer, or expose for sale any food, goods, wares, or merchandise, upon any public street, alley, sidewalk, public right-of-way or other public grounds owned or controlled by the City.

1. Definitions. As used in this Chapter:
 - a. “Adjacent to” as it relates to patio areas, shall mean an area on the public sidewalk defined as the space between two lines, each drawn from the ends of a building or portion of a building housing a business, perpendicular to the right-of way.
 - b. “Cooking” shall mean the preparation of food through the use of heat by boiling, baking, roasting, microwaving, frying, grilling, smoking or any other method using heat.
 - c. “Designated area” shall mean an area of public right-of-way or public property specifically set aside or designated by the City for use by mobile vendors. The boundaries and rules for use of each designated area shall be as shown by maps or diagrams produced by the City and available from City Engineering or City Administration.
 - d. “Downtown Commercial District” shall mean the area of the zoning district entitled downtown commercial district pursuant to Article 39.04.
 - e. “Food” shall include any food item meant for human consumption and any beverage meant for human consumption.
 - f. “Grilling” shall mean the cooking of raw animal products such as meat, poultry or fish or vegetables 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, rotisserie-style cooking or any other type of cooking.

- g. "Merchandise" shall include, but is not limited to, plants, flowers, wearing apparel, jewelry, ornaments, art work, household or office supplies or other goods or wares and excepting food or beverages of any kind.
 - h. "Mobile vendor" shall mean any person or entity engaged in the business of preparing or serving food or merchandise from a pushcart or a mobile vendor vehicle.
 - i. "Mobile Vendor Vehicle" shall mean a trailer which may be moved by towing with a vehicle or a self-contained mobile food truck which is designed and used for displaying, cooking, keeping or storing any food, beverages, merchandise or other articles for sale by a vendor. To the extent a mobile vendor vehicle is used for preparing, displaying, cooking, keeping or storing food or beverages, the mobile vendor vehicle must be inspected and approved by the Public Health Department/Environmental Health Division.
 - j. "Outdoor patio area" shall mean an area in front of or adjacent to a business maintaining a liquor license, a restaurant license or limited restaurant license issued by the City and located on a public sidewalk whereon tables, chairs or benches are placed for purposes of serving food and/or alcoholic beverages.
 - k. "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 merchandise for sale.
 - l. "Pushcart" shall mean a wheeled cart which may be moved by hand by one person without the assistance of a motor and which is designed and used for displaying, cooking 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 inspected and approved by the Public Health Department/Environmental Health Division.
2. Each permit required by this Chapter shall expire on December 31 of each year, unless revoked by the City, regardless of the date of issuance. There shall be an application fee for permits issued under this Chapter as provided in the City Fees.
3. Each application and permit required by this Chapter 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 outdoor patio areas, mobile vendors, sale of merchandise or 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, including but not limited to public street, alley, sidewalk, public right-of-way or other public grounds or property owned or controlled by the City, caused by the presence of items on public property. Said insurance shall provide minimum coverage for bodily injury of

\$1,000,000 per occurrence and in the aggregate. Such insurance shall be issued by an insurance company authorized to conduct business in the State of North Dakota, and the City of Dickinson shall be listed as a Certificate Holder on each such policy of insurance. Any license issued under this Chapter shall immediately and automatically expire upon lapse or termination of said policy.

Section 33.06.020 Permitted uses of sidewalks, streets, or other public grounds

Except as allowed under the provisions of this Chapter or as part of a permitted community event or festival within the Downtown Commercial District, it shall be unlawful for any person to sell, offer for sale or order, any food, goods, wares, merchandise, mechanical devices, animals or any other article of any kind whatsoever, by whatever name called, upon any public street, alley, sidewalk, public right-of-way or other City owned or controlled public grounds without a permit issued by the City.

1. Outdoor Patio Areas. No person may own, set up or operate an outdoor patio area on any public sidewalk without first obtaining a permit from the City. An application for an outdoor patio area and minimum rules for sidewalk clearances and border heights is available from the Building and Codes Department. Food and beverages may be sold in outdoor patio areas on the public sidewalks only pursuant to a permit issued by the City. An outdoor patio area must be adjacent to the business that has received the permit to operate the outdoor patio area. This section shall not apply to an outdoor patio area that is part of a permitted community event or festival. Permit holders for outdoor patio areas and their employees shall meet the following:

- a. The permit holder shall set up the outdoor patio area, including, but not limited to, the furniture, canopies, fencing and/or other accessories used for the outdoor patio area, only in the area designated by the City in the permit. An outdoor patio area may not include a roadway or alley. The outdoor patio area shall not impede, endanger or interfere with pedestrian or vehicular traffic. The City shall set minimum sidewalk standards with regard to obstructions located in the clear space required by this section.
- b. Furniture, canopies, fencing and/or other accessories used for the outdoor patio area shall be located so that a minimum of 48 consecutive inches of unobstructed clear space for pedestrian travel within the pedestrian way, or the minimum required by the Americans with Disabilities Act, if greater, is maintained 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 patio area clean of garbage, trash, paper, cups, cans, litter, or other spillage 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 patio area by the City. The permit holder shall renew the permit annually. The permit holder shall continuously maintain the required approvals, permits and/or licenses and provide evidence to the City upon request.
- e. The permit holder shall be responsible for the maintenance, upkeep, security, and safe condition of the furniture and accessories of the outdoor patio 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 patio area.
- h. For any outdoor patio 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 diagram and/or plans showing the location of the outdoor patio area where alcoholic beverages will be served. In addition, the area where alcoholic beverages are sold, possessed and/or consumed must be effectively bordered by a partition, temporary fence or other rigid device designed and intended to separate the outdoor patio area from passersby.
- i. The permit holder shall not post any signs or other advertisements on any partitions, fence or other device designed and intended to separate the outdoor patio area from passersby.
- j. The permit holder shall comply with the prohibitions on disturbing, annoying and unnecessary noises set forth in Article 24.12.
- k. The design of the furniture, canopies, fencing and/or other accessories, including a border required for an outdoor patio area by paragraph 1(h) of this section, must be approved by the City prior to a permit being issued. The applicant must provide a scaled site plan including dimensions of the design of the furniture and accessories to be used for the outdoor patio area as part of the application for a permit.
- l. Tables, chairs, fences or dividers and any other structure or item placed on the sidewalk must be removed by November 1 each year and may not be set out until April 1 each year unless different dates are specifically allowed by the City Administrator.
- m. Cooking or food preparation shall not be allowed in outdoor dining areas. Self-service food outdoors is allowed if approved by the Public Health Department/Environmental Health Division.

- n. No outdoor patio area equipment or furniture may be placed in such a manner as to obstruct a building exit.
2. Mobile vendors. A mobile vendor may not cook prepare, display or sell food or sell merchandise on any public street, public alley or sidewalk or other public grounds except as allowed by this section. Upon application and receipt of a permit to do so issued by the City, a mobile vendor may, cook, prepare, display or sell food or merchandise in or on any designated area that has been specifically identified by the City for that use. No mobile vendor shall locate or operate in an area of the City not zoned for the sale of prepared food or merchandise. This section shall not apply to a mobile vendor that is part of a permitted community event or festival. Permit holders for mobile vendors and their employees shall meet the following:
- a. A mobile vendor may locate a mobile vendor vehicle or pushcart and operate in any designated area between the hours designated by the City for each designated area. Designated areas may be used from May 1 through October 31 each year. Designated areas are available to any permitted mobile vendor on a first come-first serve basis. A mobile vendor may not reserve, occupy or otherwise attempt to hold a designated area prior to the time requirements set forth above.
 - b. A mobile vendor may not grill, barbeque or smoke food within 50 feet from any entrance of any building without first obtaining the written permission of the building owner and tenant(s) served by those entrances.
 - c. A mobile vendor must provide and deploy portable lighting adequate to illuminate the vicinity of the mobile vendor vehicle or pushcart.
 - d. A mobile vendor may not set up chairs, tables or other temporary seating in a designated area.
 - e. A mobile vendor shall be responsible to remove any garbage, spills or stains or repair any damage to the designated area resulting from its operations, and shall be prohibited from any dumping into the storm sewers.
 - f. A mobile vendor may not leave a mobile vendor vehicle or pushcart in a designated area unattended or overnight.
 - g. A mobile vendor wishing to utilize the City's designated areas to sell food or merchandise shall make application for a mobile vendor license on an application which is available from the Building and Codes Department. At a minimum, the information in the application must contain:
 - i. For the sale of food, a letter from the Public Health Department/Environmental Health Division stating that the mobile vendor vehicle or pushcart has been inspected and approved.
 - ii. A certificate of insurance from a company licensed to do business in North Dakota evidencing that the applicant has general liability insurance policies in effect with limits of at least \$250,000 per individual and \$1,000,000 per occurrence.

- iii. A mobile vendor failing to comply with any state law, city ordinance or policy adopted by the City is subject to permit suspension or revocation upon the order of the City Commission.
3. Use of the sidewalk by an adjacent business for sale of merchandise. Merchandise may not be sold on any public street, alley, sidewalk, public right-of-way or other public grounds in the City except as part of a permitted community event or festival or except pursuant to a permit for the temporary use of the sidewalk within the Downtown Commercial District issued by the City. An application for a permit to use the sidewalk to sell merchandise shall be available from the Building and Codes Department.
- a. A permit to sell merchandise shall not be issued unless the proposed location is adjacent to the applicant's business and shall be located so that they do not impede, endanger or interfere with pedestrian or vehicular traffic.
 - b. A minimum of 48 consecutive inches of unobstructed clearance within the pedestrian way, or the minimum required by the Americans with Disabilities Act, if greater, must be maintained at all times.
 - c. 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.
 - d. 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 displays are stable and not easily tipped and do not include sharp edges, protrusions, or other features which may be hazardous to the public.
 - e. 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.
 - f. 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 inclement weather, including, but not limited to, heavy rain, wind, ice or snow.
 - g. All merchandise and the fixture, or devised 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.
 - h. Outdoor merchandise areas shall not include merchandising of any live animals.
 - i. Alcoholic beverages may not be displayed or sold from outdoor merchandise areas.
4. Pedestrian Signs. Pedestrian signs may be on a public sidewalk that are 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 pursuant to Article 39.10.

- a. A sign permit shall not be issued unless the proposed location is adjacent to the applicant's business and shall be located so that it does not impede, endanger or interfere with pedestrian or vehicular traffic.
- b. A minimum of 48 consecutive inches of unobstructed clearance within the pedestrian way, or the minimum required by the Americans with Disabilities Act, if greater, must be maintained at all times.
- c. 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.
- d. The width of the sign shall not exceed 30 inches, or a width that ensures that at least four feet (48 inches) of unobstructed clearance will exist on the sidewalk after sign placement, whichever results in the lesser sign width.
- e. No sign shall extend past one foot (12 inches) back from the curb or into any portion of the street surface or parking lane.
- f. Pedestrian signs shall be self-supporting and freestanding. Sign supports or features shall not protrude into the pedestrian area adjacent to the sign.
- g. Signs requiring electrical connections shall be prohibited.
- h. Permitted pedestrian signs may be displayed or located on the sidewalk only during hours the business is open.

Section 33.06.030 **Penalty**

A violation of this Chapter shall be an infraction. (Code 1605, § 3)

Article 33.08 House Numbering

Sections:

- 33.08.00E** Editor's note to Article 33.08
- 33.08.010** Compliance with article required
- 33.08.020** Designation and furnishing of numbers by city engineer
- 33.08.030** Size and location of figures
- 33.08.040** Failure, refusal or neglect of owner, etc., to comply with article

Section 33.08.00E Editor's note to Article 33.08

For state law as to authority of city to regulate numbering of houses and lots, see NDCC, § 40-05-01 (19).

Section 33.08.010 Compliance with article required

The owner of each building in the city shall number the same in conformity with the provisions of this article. (Code 1958, § 28-44.)

Section 33.08.020 Designation and furnishing of numbers by city engineer

The city engineer shall designate the numbers of all houses and shall furnish the owner, occupant or agent of each house now or hereafter built with its proper number. (Code 1958, § 28-45.)

Section 33.08.030 Size and location of figures

The figures forming the numbers of all buildings shall be not less than three inches in height and shall be conspicuously painted over the entrance to each building or may be painted, stamped or printed on glass, tin or other substantial background or body and attached to such buildings in a conspicuous place over the front entrance thereto. (Code 1958, § 28-46.)

Section 33.08.040 Failure, refusal or neglect of owner, etc., to comply with article

If the owner or other person in charge or custody of a building within the city fails, refuses or neglects to comply with the requirements of this article, the city engineer shall cause proper numbers to be placed upon such building and the cost of so doing shall be collected from the owner or custodian of the building in a suit therefor by the city. (Code 1958, § 28-47)

Article 33.12 Excavations

Sections:

- 33.12.010 Permits--Fees**
- 33.12.020 Same--Form and display of placard**
- 33.12.030 Same--Surety bond of applicant**
- 33.12.040 Routing of traffic**
- 33.12.050 Interference with fire-fighting equipment, fire escapes, etc.**
- 33.12.060 Encroachment of earth onto highways; traffic crossings**
- 33.12.070 Removal and protection of utilities**
- 33.12.080 Protection of adjoining property**
- 33.12.090 Erection of footbridges over sidewalk excavations**
- 33.12.100 Barriers, etc., surrounding excavation and materials excavated**
- 33.12.110 Maintenance of attractive nuisance**
- 33.12.120 Maintenance and storage of excavated materials generally**
- 33.12.130 Repairing damage done to existing improvements**
- 33.12.140 Cleaning site and surrounding area**
- 33.12.150 Protection and restoration of watercourses, sewers or drains; accommodation of surplus water, muck, silt, etc.**
- 33.12.160 Promulgation of standards**
- 33.12.170 Restoration of surface**
- 33.12.180 Length, bracing and sheathing of pipe trenches**
- 33.12.190 Period for completion of work generally**
- 33.12.200 Emergency repairs generally**
- 33.12.210 Declaration of emergency work**
- 33.12.220 Avoidance of unnecessary inconveniences or annoyances; reduction of noise, dust, etc.**
- 33.12.230 Disturbing surface monuments or hubs**
- 33.12.240 Inspections; promulgation of regulations to carry out article**
- 33.12.250 Maintenance of drawings of subsurface street installations**
- 33.12.260 Applicability of article to work done by or for city**
- 33.12.270 Applicability of article to persons operating public utilities**
- 33.12.280 Liability insurance required of permittee**
- 33.12.290 Liability of city**

Section 33.12.010 Permits--Fees

A permit fee shall be charged by the city engineer for the issuance of an excavation permit which shall be in addition to all other fees for permits or charges relative to any proposed construction work. The excavation permit fee shall be in an amount varying with the type of surface to be opened, dug or excavated under the permit issued as per the schedule of assessed fees maintained by the city engineer's office; such fees shall be uniform. The amount of said fees shall be in such amount as determined from time to time by the board of city commissioners and shall be on file in the office of the city auditor in the city fee schedule. (Ord. No. 482, § 28-48; Ord. No. 1086, § 22.)

Section 33.12.020 Same--Form and display of placard

The contractor shall provide each permittee at the time a permit is issued hereunder a suitable placard plainly written or printed in English letters at least one inch high with the following notice: "City of Dickinson, Permit No. __ Expires ____." In the first blank space on such placard there shall be inserted the number of the permit and after word "expires" shall be stated the date when the permit expires.

It shall be the duty of any permittee to keep the placard posted in a conspicuous place at the site of the excavation work. It shall be unlawful for any person to exhibit such placard at or about any excavation not covered by such permit or to misrepresent the number of the permit or the date of expiration of the permit. (Ord. No. 482, § 28-49.)

Section 33.12.030 Same--Surety bond of applicant

Before an excavation permit as herein provided is issued, the applicant shall deposit with the city auditor a surety bond in the amount of one thousand dollars payable to the city, unless the applicant has a current franchise issued by the City of Dickinson. The required surety bond must be:

- (a) With good and sufficient surety;
- (b) By a surety company authorized to transact business in the state;
- (c) Satisfactory to the city attorney in form and substance;
- (d) Conditioned upon the permittee's compliance with this article and to secure and hold the city and its officers harmless against any and all claims, judgments or other costs arising from the excavation and other work covered by the excavation permit or for which the city, the city council or any city officer may be made liable by reason of any accident or injury to persons or property through the fault of the permittee either in not properly guarding the excavation or for any other injury resulting from the negligence of the permittee and further conditioned to fill up, restore and place in good and safe condition as near as may be to its original condition and to the satisfaction of the city engineer all openings and excavations made in streets, and to maintain any street where excavation is made in as good condition for the period of twenty-four months after such work shall have been done, usual wear and tear excepted, as it was in before such work shall have been done. Any settlement of the surface within such two-year period shall be deemed conclusive evidence of defective back-filling by the permittee. Nothing herein contained shall be construed to require the permittee to maintain any repairs to pavement made by the city if such repairs should prove defective. Recovery on such bond for any injury or accident shall not exhaust the bond but it shall in its entirety cover any or all future accidents or injuries during the excavation work for which it is given. In the event of any suit or claim against the city by reason of the negligence or default of the permittee, upon the city's giving written notice to the permittee of such suit or claim any final judgment against the city requiring it to pay for such damage shall be conclusive upon the permittee and his surety.

An annual bond may be given under this provision which shall remain in force for one year conditioned as above, in the amount specified above and in other respects as specified above

but applicable as to all excavation work in streets by the principal in such bond during the term of one year from such date. (Ord. No. 482, § 28-50; Ord. No. 1269 § 1.)

Section 33.12.040 Routing of traffic

The permittee shall take appropriate measures to assure that during the performance of the excavation work traffic conditions as nearly normal as practicable shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public; provided, that the city engineer may permit the closing of streets to all traffic for a period of time prescribed by him if in his opinion it is necessary. The permittee shall route and control traffic including its own vehicles as directed by the city police department. The following steps shall be taken before any highway may be closed or restricted to traffic:

- (a) The permittee must receive the approval of the city engineer and the police department therefor;
- (b) The permittee must notify the chief of the fire department of any street so closed;
- (c) Upon completion of construction work, the permittee shall notify the city engineer and city police department before traffic is moved back to its normal flow so that any necessary adjustments may be made;
- (d) Where flagmen are deemed necessary by the city engineer they shall be furnished by the permittee at its own expense. Through traffic shall be maintained without the aid of detours, if possible; in instances in which this would not be feasible the city engineer will designate detours. The city shall maintain roadway surfaces of existing highways designated as detours without expense to the permittee but in case there are no existing highways the permittee shall construct all detours at its expense and in conformity with the specifications of the city engineer. The permittee will be responsible for any unnecessary damage caused to any highways by the operation of its equipment. (Ord. No. 482, § 28-51.)

Section 33.12.050 Interference with fire-fighting equipment, fire escapes, etc.

The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within fifteen feet of fire plugs. Passageways leading to fire escapes or fire-fighting equipment shall be kept free of piles of material or other obstructions. (Ord. No. 482, § 28-52.)

Section 33.12.060 Encroachment of earth onto highways; traffic crossings

The permittee shall erect and maintain suitable timber barriers to confine earth from trenches or other excavations in order to encroach upon highways as little as possible.

The permittee shall construct and maintain adequate and safe crossings over excavations and across highways under improvement to accommodate vehicular and pedestrian traffic at all street intersections. Vehicular crossings shall be constructed and maintained of plank, timbers and blocking of adequate size to accommodate vehicular traffic safely. Decking shall be not less than four inches thick and shall be securely fastened together with heavy wire and staples. Pedestrian crossings shall consist of planking three inches thick, twelve inches wide and of

adequate length together with necessary blocking. The walk shall be not less than three feet in width and shall be provided with a railing as required by the city engineer. (Ord. No. 482, § 28-53.)

Section 33.12.070 Removal and protection of utilities

The permittee shall not interfere with any existing utility without the written consent of the city engineer and the utility company or person owning the utility. If it becomes necessary to remove an existing utility this shall be done by its owner. No utility 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 utilities shall be similarly borne by the permittee unless he makes other arrangements with the person owning the utility. The permittee shall support and protect by timbers or otherwise 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 such work. In case any such pipes, conduits, poles, wires or apparatus should be damaged, they shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee, and his bond shall be liable therefor. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, gas pipe, electric conduit or other utility and his bond shall be liable therefor. The permittee shall inform itself as to the existence and location of all underground utilities and protect them against damage. (Ord. No. 482, § 28-54.)

Section 33.12.080 Protection of adjoining property

The permittee shall at all times and at his own expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain a license from the owner of such private property for such purpose; and if he cannot obtain a license from such owner; the city engineer may authorize him to enter the private premises solely for the purpose of making the property safe. 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 excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out such work. Whenever it may be necessary for the permittee to trench through any lawn area, the sod shall be carefully cut and rolled and replaced after ditches have been backfilled as required in this article. All construction and maintenance work shall be done in a manner calculated to leave the lawn 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 trees or shrubs which exist in parking strip areas or easements across private property without first having notified and obtained the consent of the property owner or in the case of public property the appropriate city department or city official having control of such property. (Ord. No. 482, § 28-55.)

Section 33.12.090 Erection of footbridges over sidewalk excavations

Any excavation made in any sidewalk or under a sidewalk shall be provided with a substantial and adequate footbridge over such excavation on the line of the sidewalk, which bridge shall be at least three feet wide and securely railed on each side so that foot passengers can pass over safely at all times. (Ord. No. 482, § 28-56.)

Section 33.12.100 Barriers, etc., surrounding excavation and materials excavated

The permittee shall erect such fence, railing or barriers about the site of the excavation work as shall prevent danger to persons using the city streets or sidewalks, and such protective barriers shall be maintained until the work shall be completed or the danger removed. At twilight there shall be placed upon such place of excavation and upon any excavated materials or structures or other obstructions to streets suitable and sufficient lights which shall be kept burning throughout the night during the maintenance of such obstructions. It shall be unlawful for anyone to remove or tear down the fence or railing or other protective barriers or any lights provided there for the protection of the public. (Ord. No. 482, § 28-57.)

Section 33.12.110 Maintenance of attractive nuisance

It shall be unlawful for the permittee to suffer or permit to remain unguarded at the place of excavation or opening any machinery, equipment or other device having the characteristics of an attractive nuisance likely to attract children and hazardous to their safety or health. (Ord. No. 482, § 28-58.)

Section 33.12.120 Maintenance and storage of excavated materials generally

All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such 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 streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, such as might be the case in a narrow alley, the city engineer shall have the authority to require that the permittee haul the excavated material to a storage site and then re-haul it to the trench site at the time of back-filling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites. (Ord. No. 482, § 28-59.)

Section 33.12.130 Repairing damage done to existing improvements

All damage done to existing improvements during the progress of the excavation work shall be required by the permittee. Materials for such repair shall conform with the requirements of any applicable code or ordinance. If upon being ordered the permittee fails to furnish the necessary labor and materials for such repairs the city engineer shall have the authority to cause

such necessary labor and materials to be furnished by the city and the cost shall be charged against the permittee and the permittee shall also be liable on his bond therefor. (Ord. No. 482, § 28-60.)

Section 33.12.140 Cleaning site and surrounding area

As the excavation work progresses all streets and private properties shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All clean-up operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the city engineer. From time to time as may be ordered by the city engineer and in any event immediately after completion of such work, the permittee shall at his own expense clean up and remove all refuse and unused materials of any kind resulting from such work, and upon failure to do so within twenty-four hours after having been notified to do so by the city engineer, such work may be done by the city engineer and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided hereunder. (Ord. No. 482, § 28-61.)

Section 33.12.150 Protection and restoration of watercourses, sewers or drains; accommodation of surplus water, muck, silt, etc.

The permittee shall provide for the flow of all watercourses, sewers or drains intercepted during the excavation work and shall replace watercourses, etc., in as good condition as it found them or shall make such provisions for them as the city engineer may direct. The permittee shall not obstruct the gutter of any street but shall use all proper measures to provide for the free passage of surface water.

The permittee shall make provision to take care of all surplus water, muck, silt, slickings or other run-off pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide. (Ord. No. 482, § 28-62.)

Section 33.12.160 Promulgation of standards

Standards for breaking through pavement, tunnels, back-filling and restoration of surface shall be promulgated by the city engineer from time to time which standards shall be kept on file in the city engineer's office for inspection during business hours. (Ord. No. 482, § 28-63.)

Section 33.12.170 Restoration of surface

If the permittee shall have failed to restore the surface of the street to its original and proper condition upon the expiration of the time fixed by such permit or shall otherwise have failed to complete the excavation work covered by such permit, the city engineer, if he deems it advisable, shall have the right to do all work and things necessary to restore the street and to complete the excavation work. The permittee shall be liable for the actual cost thereof and twenty-five percent of such cost in addition for general overhead and administrative expenses. The city shall have a cause of action for all fees, expenses and amounts paid out due it for such work and shall apply in payment of the amount due it any funds of the permittee deposited as herein provided and the city shall also enforce its rights under the permittee's surety bond provided pursuant to this article.

It shall be the duty of the permittee to guarantee and maintain the site of the excavation work in the same condition it was prior to the excavation for two years after restoring it to its original condition. (Ord. No. 482, § 28-64.)

Section 33.12.180 Length, bracing and sheathing of pipe trenches

Except by special permission from the city engineer, no trench shall be excavated more than two hundred fifty feet in advance of pipe laying nor left unfilled more than five hundred feet where pipe has been laid. The length of the trench that may be opened at any one time shall not be greater than the length of pipe and the necessary accessories which are available at the site ready to be put in place. Trenches shall be braced and sheathed according to generally accepted safety standards for construction work as prescribed by the city engineer. No timber bracing, lagging, sheathing or other lumber shall be left in any trench. (Ord. No. 482, § 28-65.)

Section 33.12.190 Period for completion of work generally

The permittee shall prosecute with diligence and expedition all excavation work covered by the excavation permit and shall promptly complete such work and restore the street to its original condition, or as near as may be, as soon as practicable and in any event not later than the date specified in the excavation permit therefor. (Ord. No. 482, § 28-66.)

Section 33.12.200 Emergency repairs generally

In the event of any emergency in which a sewer, main, conduit or utility in or under any street breaks, bursts or otherwise is in such condition as to immediately endanger the property, life, health and safety of any individual, the person owning or controlling such sewer, main, conduit or utility, without first applying for and obtaining an excavation permit hereunder, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, such person owning or controlling such facility shall apply for an excavation permit not later than the end of the next succeeding day during which the city engineer's office is open for business and shall not proceed with permanent repairs without first obtaining an excavation permit hereunder. (Ord. No. 482, § 28-68.)

Section 33.12.210 Declaration of emergency work

If in his judgment traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the city engineer shall have full power to order, at the time the permit is granted, that a crew of men and adequate facilities be employed by the permittee twenty-four hours a day to the end that such excavation work may be completed as soon as possible. (Ord. No. 482, § 28-67.)

Section 33.12.220 Avoidance of unnecessary inconveniences or annoyances; reduction of noise, dust, etc.

Each permittee shall conduct and carry out the excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest

extent practicable in the performance of the excavation work, noise, dust and unsightly debris. During the hours of 10:00 p.m. and 7:00 a.m., such permittee shall not use, except with the express written permission of the city engineer 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. (Ord. No. 482, § 28-69.)

Section 33.12.230 Disturbing surface monuments or hubs

The permittee shall not disturb any surface monuments or hubs found on the line of excavation work until ordered to do so by the city engineer. (Ord. No. 482, § 28-70.)

Section 33.12.240 Inspections; promulgation of regulations to carry out article

The city engineer shall make such inspections as are reasonably necessary in the enforcement of this article.

The city engineer shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this article. (Ord. No. 482, § 28-71.)

Section 33.12.250 Maintenance of drawings of subsurface street installations

Users of subsurface street space shall maintain accurate drawings, plans and profiles showing the location and character of all underground structures including abandoned installations. Corrected maps shall be filed with the city engineer within sixty days after new installations, changes or replacements are made. (Ord. No. 482, § 28-72.)

Section 33.12.260 Applicability of article to work done by or for city

The provisions of this article shall not be applicable to any excavation work under the direction of competent city authorities by employees of the city or by any contractor of the city performing work for and in behalf of the city necessitating openings or excavations in streets. (Ord. No. 482, § 28-73.)

Section 33.12.270 Applicability of article to persons operating public utilities

All persons operating public utilities in the city under franchise granted by the city and having the right either by general or special permission to enter upon streets and open and excavate pavements, sidewalks or disturb the surface thereof by excavation or other work shall not be required to apply for a permit but shall be required to perform the work and bring it to completion as promptly as practicable and to that end shall employ an adequate standing force. Any person operating any such public utility shall, however, comply with other requirements of this article, including the surety bond and deposit requirements. (Ord. No. 482, § 28-74.)

Section 33.12.280 Liability insurance required of permittee

A permittee, prior to the commencement of excavation work hereunder, shall furnish the city engineer satisfactory evidence in writing that the permittee has in force and will maintain in force during the performance of the excavation work and the period of the excavation permit public liability insurance of not less than one hundred thousand dollars for any one person and three hundred thousand dollars for any one accident and property damage insurance of not less than fifty thousand dollars duly issued by an insurance company authorized to do business in this state. (Ord. No. 482, § 28-75.)

Section 33.12.290 Liability of city

This article shall not be construed as imposing upon the city or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued hereunder; nor shall the city or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any excavation work. (Ord. No. 482, § 28-76.)

Article 33.16 Creation of Municipal Street Light Utility

Sections:

- 33.16.010** **Creation of Municipal Street Light Utility**
- 33.16.020** **Control of Systems**
- 33.16.030** **Rates and Charges to be Established**
- 33.16.040** **Rates and Charges to be Billed and Collected**
- 33.16.050** **Due Date; Failure to Pay - Generally**
- 33.16.060** **Joint and Several Liability of Owner and Occupant**
- 33.16.070** **Charges to constitute a lien on premises; assessment and collection of lien**
- 33.16.080** **Special Assessments Not Precluded**

Section 33.16.010 **Creation of Municipal Street Light Utility**

There is hereby created a municipal street light utility on all lands, easements, rights in land, facilities, poles, wires, cables, conduits, and other electrical fixtures, and equipment necessary or proper for the maintenance and operation of the municipal street light system, whether heretofore or hereafter acquired by the City. (Ord No. 1376 §1)

Section 33.16.020 **Control of Systems**

All properties and other assets set aside or held by the City for the municipal street light utility, and all monies derived or to be derived from the operation of the municipal street light utility shall at all times be under the management and control of the Board of City Commissioners, and shall be operated under such rules, regulations, terms, and conditions as the Board of City Commissioners may from time to time ordain and establish. (Ord No. 1376 §1)

Section 33.16.030 **Rates and Charges to be Established**

In order to help defray the costs of operation, maintenance, and repair of the municipal street light system, the Board of City Commissioners shall from time to time determine and establish, by resolution, such rates, charges, or fees as the Board may deem necessary and proper for the services and benefits furnished by the municipal street light system. Such rates, charges, or fees shall be incorporated into the regular municipal fee schedule maintained by the City. (Ord No. 1376 §1)

Section 33.16.040 **Rates and Charges to be Billed and Collected**

The rates and charges for the municipal street light utility shall be billed and collected on a monthly basis in the same manner and time as bills for other municipal utility services as provided by city ordinance. (Ord No. 1376 §1)

Section 33.16.050 **Due Date; Failure to Pay - Generally**

All invoices for the municipal street light utility shall be due and payable on the date of billing. Accounts unpaid at the next billing date will be considered past due and will be assessed penalties as set by the Board of City Commissioners. (Ord No. 1376 §1)

Section 33.16.060 Joint and Several Liability of Owner and Occupant

Rates and charges for the municipal street light utility shall be charged against both the owner of property so charged and any occupant, tenant, or lessee thereof, and shall be a personal liability on the part of the owner, occupant, tenant, or lessee and may be collected from any such person so liable. The owner and any occupant, tenant, or lessee of each premises billed shall be jointly and severally liable for all charges of the municipal street light utility during the period of their respective ownership or occupancy, tenancy, or lease. Any charges properly billed but not paid may be recovered by the City of Dickinson in a civil action in any court of competent jurisdiction against either the owner or occupant, tenant, lessee, or any of them. (Ord No. 1376 §1)

Section 33.16.070 Charges to constitute a lien on premises; assessment and collection of lien

All charges for the municipal street light utility shall constitute liens upon the respective lots, tracts, and premises so billed for the municipal street light utility. All such charges that have been properly billed to the owner or occupant, tenant, or lessee of the premises, and which are more than 30 days past due or September 30th of each year shall be certified by the City to Stark County between the first and the tenth day of October each year. The City, in so certifying such charges, shall specify the amount thereof, the description of the premises, and the name of the owner thereof. The amount so certified shall be extended by the County on the tax rolls against such premises and collected by the County and paid to the City in the same manner as other county and municipal taxes are assessed, certified, collected, and returned. (Ord No. 1376 §1)

Section 33.16.080 Special Assessments Not Precluded

It is recognized that the municipal street light utility hereby created may not fully defray the costs of construction, operation, maintenance, and repair of the municipal street light system. Accordingly, nothing in this Chapter shall be deemed or construed to preclude the City from defraying any part of the expense of the construction, operation, or improvement of the municipal street lighting system by levy of special assessments, taxes, or the issue of general obligation bonds, whenever and to the extent that such action is authorized in the manner provided by law and is deemed fair and equitable by the Board of City Commissioners. (Ord No. 1376 §1)