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# **TITLE 8. STREETS, SIDEWALKS, CURB, GUTTER, DRIVEWAYS AND PUBLIC PLACES.**

## **Chapter 8.1. General.**

### **Section 8.1.1. Applicability.**

All construction of sidewalks, curb and gutter and driveways that cross boulevards and affect curbing, shall be done only with the approval of the City. Grades and curb lines of reinstalled curbs and gutters shall be in accordance with adjacent installations. Installations in new subdivisions shall be in accordance with engineering specifications approved by the City.

### **Section 8.1.2. Supervision of Construction.**

The building and construction of all sidewalks, driveways and curbing within the limits of the streets and alleys of the City of Flandreau shall be done under direct supervision of the City of Flandreau and its duly appointed officers and agents.

### **Section 8.1.3. Construction.**

Permit Required. Before any sidewalk, driveway or curb and gutter is constructed, altered or removed within the limits of the City of Flandreau by any owner, contractor or person for the owner, said contractor or person must first secure a permit therefore from the City Finance Officer.

## **Chapter 8.2. Curb & Gutter.**

Existing grades and curb lines as currently in place are hereby adopted as the official grades and curb lines of the city of Flandreau.

## **Chapter 8.3. Sidewalks.**

### **Section 8.3.1. Authority. (Ordinance 562)**

**Article 8.3.1.1. Responsibility for Maintenance.** Owners of lots fronting or abutting sidewalks within the City of Flandreau shall be liable for maintenance of the sidewalk in the form of sweeping, snow removal, ice removal, and removal of any and all obstructions and implements that may result in injury to the public. At no time shall the City be liable for those injuries arising out of the duties owed to the public by the owners of lots adjoining such sidewalk, particularly including all trips and falls occurring upon the sidewalk.

**Article 8.3.1.2. Notice of Construction or Repair.** As authorized by **SDCL 9-46-3**, if the City Council deems it necessary to construct, rebuild, or repair any sidewalk, it shall notify all owners of lots fronting or abutting such sidewalk to construct, rebuild, or repair the sidewalk at their own expense within a time designated by Council.

**Article 8.3.1.3. City may Construct, Rebuild, or Repair Sidewalk.** If the owner of the lots fronting or abutting the sidewalk to be constructed, rebuilt, or repaired fails to comply within the time specified by the City Council, the Council may, by resolution, cause the work to be done, with the costs assessed against the lots fronting or abutting upon the sidewalk that was constructed, rebuilt, or repaired.

**Article 8.3.1.4. Appeal.** Prior to applying the assessment upon the lots fronting or abutting the constructed, rebuilt, or repaired sidewalk, the Council shall establish a time and place for a public hearing on the same, and all lot owners impacted by the proposed assessment shall be afforded an opportunity to appeal the application of the assessment at the hearing.

**Section 8.3.2. Specifications. (Ordinance 571)**

The following specifications shall be applied to all sidewalks constructed within the city of Flandreau, South Dakota:

- a. Material to be used in construction of all sidewalks shall be Portland Cement Concrete, and shall be four inches thick (5 1/2 bag mix.)
- b. The base will be a minimum of 2 inches of compacted gravel.
- c. Sidewalks shall have a 1/4-inch per foot of width slope toward street so water will not stand.
- d. Sidewalks shall have expansion joints at a minimum of 50-foot intervals.
- e. The width of all sidewalks shall be not less than four feet or more than eight feet and shall conform to the width, grade and curb lines of the adjoining sidewalks, provided that the existing sidewalks are at least four feet wide. Any sidewalk not the same grade as adjoining property will be sloped in such a manner as not to cause a hazard to traffic.
- f. The corners of all sidewalks at intersections shall be constructed or reconstructed in such a manner so as to make the sidewalks accessible to the disabled. Application may be made to the City Council through the City Finance Officer for a grant not exceeding \$5.00 per square foot for the cost of

construction or reconstructing such corners from the sidewalk to the curb. The application must include actual costs or written cost estimates of construction for making such changes and only such costs as are directly related to making the changes necessary to make the sidewalks accessible for the disabled will be considered for reimbursement.

**Section 8.3.3. Replacement of Asphalt.**

Replacement of asphalt (blacktop) at intersections where ramps for the disabled are installed will be the responsibility of the City. Blacktop that is removed for the installation of private drives will be the responsibility of the owner.

**Section 8.3.4. Nonconformance.**

Any proposed sidewalk not conforming to these specifications must be approved by the City Council prior to construction.

**Section 8.3.5. Acceptable Sidewalks.**

The City Council shall appoint an official to inspect sidewalks. The intent of this ordinance is to provide safe passable sidewalks for the citizens of Flandreau.

**Article 8.3.5.1 Purpose.** It shall be the responsibility of the appointed official to inspect all sidewalks in the city limits and determine which sidewalks are unsafe and need to be repaired or replaced. The appointed official will report its findings to the City Finance Officer so that proper notification can be made to property owners. Whenever possible, the appointed official will make sidewalk inspections during the spring of the year.

**Article 8.3.5.2 Interference with Appointed Official.** It shall be unlawful for any person to prevent, delay, or interfere with the appointed official while engaging in sidewalk inspections.

**Section 8.3.6. Unsafe Sidewalks Defined.**

Unsafe sidewalks are defined as any sidewalk on which a person may trip or fall due to excessive cracks or excessive unevenness, or a sidewalk that has cracked or settled more than three quarters of an inch.

**Section 8.3.7. Removal of Existing Sidewalks. (Ordinance 565)**

Anyone desiring to remove a sidewalk, and not replace it, shall first make application for permission to do so through the City Finance Officer. Said application will be considered by the City Council at its next meeting following filing of the application. Upon reviewing an application, the City Council shall address, and be bound to, the following considerations:

- a. That the City of Flandreau shall strongly encourage all businesses and home owners to install and/or properly maintain sidewalks in accordance with this Chapter.
- b. In the event that fifty percent (50%) or more of the applicant's block has sidewalks in place, the application for removal of the sidewalk shall be denied.
- c. In the event that fifty percent (50%) or less of the applicant's block has sidewalks in place, the City Council may take into account the amount of foot traffic upon the applicant's sidewalk, the amount of vehicle traffic in front of the applicant's property, and whether or not adjacent landowners oppose the removal of the sidewalk, in deciding whether to approve the application. If satisfied that the application is not opposed by adjacent landowners, and that the safety of pedestrians will not be endangered by vehicular traffic, the City Council may approve the application.

### **Section 8.3.8. Sidewalk Café Permits (Ordinance 554)**

**Article 8.3.8.1. Sidewalk Café Authorized.** Notwithstanding any other provision of this chapter, the City Council may authorize businesses to operate sidewalk cafés upon public sidewalks as hereinafter described, subject to the conditions set forth herein. A sidewalk café is defined as an outdoor area located in the public right-of-way which is operated and maintained by a coffeehouse, tea shop, restaurant or bar. The areas in which sidewalk cafés may be permitted within the corporate limits of the City of Flandreau are those areas zoned as Central Commercial (C1) and Highway Commercial (HC).

**Article 8.3.8.2. Application.** An application for a sidewalk café permit shall be filed with the Finance Officer for consideration by the City Council. There shall be a one-time application fee of twenty-five dollars (\$25.00). The application shall include a site plan which identifies the location of tables, chairs, awnings, umbrellas, trash receptacles, heaters, barricades, and landscapes features as applicable.

**Article 8.3.8.3. Design Criteria.** Sidewalk café permits shall comply with the following requirements.

- a) Sidewalk cafés are permitted only on sidewalks with a minimum width of ten feet (10') from the property line to the curb face. The location of the sidewalk café must be directly in front of the business operating the café, and may not extend beyond the property lines. Sidewalk cafés must maintain a clear pedestrian

path of at least five feet (5') at all times which must remain free of any obstruction that might hinder pedestrian passage and may not interfere with utilities or other facilities including telephone poles, fire hydrants, fire protection appurtenances, or signs located within the public right-of-way.

- b) Sidewalk cafés may not attach any element permanently to the sidewalk or public right-of-way. Physical barriers may not exceed four feet (4') in height. The property owner is responsible for the restoration of the sidewalk of public right-of-way if any damage is caused by the sidewalk café. Bolting a barrier to the sidewalk is not considered permanent as long as the method of bolting allows the barrier and the bolts to be readily removed.
- c) Umbrellas must be at least seven feet (7') above the sidewalk when open, and must be designed to be secure during windy conditions.
- d) Proposed lighting for sidewalk cafés will be reviewed by the City Council and shall not cause a glare to passing motorists or pedestrians. Tabletop lighting may include candles and battery-operated fixtures.
- e) Physical barricades are required if alcoholic beverages are sold at the sidewalk café. Such barricades shall be designed to control access to areas where alcoholic beverages are consumed or sold to minimize the potential of loitering by minors in such areas.
- f) Sidewalk cafés must maintain at least one (1) opening for ingress and egress at all times and shall comply with the accessibility requirements of the City's Building Code and the Americans with Disabilities Act.

**Article 8.3.8.4. General Requirements.** Sidewalk café permit holders shall comply with the following requirements.

- a) All elements associated with sidewalk cafés, including but not limited to tables, chairs, umbrellas, temporary barricades, heaters and awnings must be of quality design, workmanship, and materials to ensure safety and convenience to patrons. All such elements will be reviewed as part of the permit process.
- b) Sidewalk cafés are prohibited from playing amplified music, whether live or recorded.
- c) Vending machines, carts, or other objects for sale are prohibited from inclusion in a sidewalk café. Nothing in this section shall

preclude the City of Flandreau from authorizing vending carts of similar uses outside of sidewalk cafes.

- d) All services provided to sidewalk café patrons as well as all patron activity must occur within the designated sidewalk café area. No alcoholic beverages may be stored or mixed in the sidewalk café.
- e) Patrons and employees must wear proper attire including shoes and shirts at all times.
- f) All areas within and surrounding a sidewalk café must be maintained in a clean, neat, and sanitary condition.
- g) The permit holder is responsible for proper supervision of the sidewalk café in order to ensure the requirements of this section are met.
- h) Sidewalk café permit holders shall abide by all federal, state, and local laws.

**Article 8.3.8.5. Insurance.** Every sidewalk café permit holder shall furnish a certificate of insurance proving commercial insurance coverage of at least two hundred fifty thousand dollars (\$250,000.00) per occurrence and five hundred thousand dollars (\$500,000.00) aggregate for bodily injury, death, disability, and property damage liability. The City of Flandreau shall be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the operation of a sidewalk café. In the event that the insurance is cancelled, the permit holder has twenty-four (24) hours to reinstate coverage or the permit shall be revoked.

**Article 8.3.8.6. Appeal.** Any decision by the City Council on a sidewalk café permit is final with no right of appeal therefrom.

**Article 8.3.8.7. Hours of Operation.** The City Council will establish the hours of operation at the time of permit issuance, and the hours of operation may be revised from time to time as determined by the City Council.

**Article 8.3.8.8. Revocation or Suspension.** The City Council, in its discretion, may revoke or suspend any permit for reasons including, but not limited to the following: failure to maintain the standards required for the sidewalk café; revocation or suspension of any business licenses required by the City, State of South Dakota, or federal government; violation of any applicable federal, state, or local statute, ordinance, rule or regulation; or violation of any provision of this City of Flandreau Municipal

Code Section. The penalty for permit revocation shall continue for a period of one (1) year from the date the revocation became effective. The penalty for a permit suspension shall continue for a period not to exceed thirty (30) days from the date the suspension became effective. Once the period of revocation or suspension has ended, the City Council may, in its discretion, require a re-application of the revoked or suspended permit. A notice of intent to revoke or suspend the permit shall be given in writing by the Finance Officer ten (10) days prior to the revocation or suspension and shall specify the grounds therefor. A permit holder may prevent revocation or suspension if compliance occurs during the ten (10) day notice period. Any revoked or suspended permit shall be reported to the City Council at its next regular meeting.

## **Chapter 8.4. Driveways.**

### **Section 8.4.1. Crossing Boulevards & Affecting Curbs.**

When property owners desire to install a driveway that will cross the public right-of-way, inspection and approval by the Superintendent of Utilities and Public Works is required. With the approval of the Superintendent, a permit may be issued.

### **Section 8.4.2. Reserved.**

## **Chapter 8.5. Enforcement.**

### **Section 8.5.1. Enforcement.**

In enforcing this Chapter, priority will be given on the following basis:

- a. A formal complaint filed with the City Finance Officer; or
- b. When directed to take specific action by the City Council.

### **Section 8.5.2. Notice to Property Owners.**

Upon determination that an unsafe sidewalk, noncompliant curb & gutter or driveway exists, the City Finance Officer shall deliver a written notice to property owners to be served personally or by return receipt mail.

### **Section 8.5.3. Compliance.**

Property owners after receiving written notice of an unsafe sidewalk, noncompliant curb & gutter or driveway will have ninety (90) days in which to reach compliance unless extended by the City. If not accomplished within the time described, the City Council by resolution may cause the same to be done. The costs thereof shall be assessed as provided for by ***SDCL Chapters 9-45 & 9-46***, as appropriate.

#### **Section 8.5.4. Letting of Bids.**

Once the city has let bids and entered into a contract for repair as provided for above, thereafter the property owners do not have the option to making repairs at their own expense, but shall permit the City to proceed to do so.

### **Chapter 8.6. Use of Streets.**

#### **Section 8.6.1. Obstructions on Streets.**

No person shall place, leave or keep on any public street, road, alley, sidewalk, or other public ground in this city, any article, substance or material which may obstruct the free use of the street, road, alley, sidewalk or public ground, except as hereinafter provided.

#### **Section 8.6.2. Materials in Streets, Permits.**

The City Council is authorized to grant temporary permission in writing to any person to deposit and keep lumber, stone, brick or other materials for building, on any public sidewalk, street, road or alley adjacent to the building to be erected or repaired. Such permission shall not excuse the obstruction or occupancy with such materials of more than one-third of the width of any main traveled portion of any street or road.

#### **Section 8.6.3. Cleaning Streets or the Sidewalk of Rubbish.**

Every person granted permission, as provided in the last section, to place and keep building material in the street, road or alley, shall cause all such material and the rubbish resulting there from, to be removed from such sidewalk, street, road or alley at the expiration of the permit. The City Council may extend the time at their discretion. Any person keeping any building material on such sidewalk or in such street, road or alley under a permit from the City Council, shall keep one or more lighted lanterns or flares so placed that such material may be easily seen by persons passing along such sidewalk, street, road or alley at night.

#### **Section 8.6.4. Excavation near Street.**

It shall be unlawful for any person, owner or occupant of any lot or parcel of land within the City of Flandreau, to make or cause to be made any excavation on said lot or parcel of land, except the same be securely guarded so as to prevent the injury or any person or persons or animals passing upon or along said sidewalks, street, alleys or public grounds or traveled path or roadway.

#### **Section 8.6.5. Garbage in Streets.**

It shall be unlawful for any person, firm or corporation to throw, or deposit any ashes, offal dirt, garbage, decaying vegetables, fish, meat, manure, filthy water, slops or any other offensive or putrid matter or thing into or upon any street, avenue, lane, alley or public ground within the corporate limits of the City of Flandreau or into any stream of water within the limits of the said City or forming the boundaries thereof.

### **Section 8.6.6. Animals and Vehicles on Sidewalks.**

No person shall ride, drive or lead any animal upon any public sidewalk in the City of Flandreau other than dogs, cats or other pets on a leash; or drive or operate, or cause to be driven or operated, any vehicle including bicycles and skateboards upon any sidewalk in the central business district (C1) in said City of Flandreau, except that the same may be driven across any sidewalk in entering or leaving the premises of any person if there shall be constructed a drive-way across said sidewalk at said premises.

## **Chapter 8.7. Moving Building on Streets.**

### **Section 8.7.1. Permission to Move Building on Streets.**

It shall be unlawful for anyone to move any building into, along or across any public street, alley or highway within the City of Flandreau without having obtained permission to do so in compliance with the provisions of this chapter.

### **Section 8.7.2. Application must state.**

Anyone desiring to move any building into, along or across any public street, alley or highway within the City of Flandreau, shall first apply in writing for permission so to do, to the office of City Finance Officer, fully stating the name of the applicant, the name of the owner of the building, the description of the lot on which such building is standing and the lot to which it is to be moved, the street along which it is proposed to move such building, the time when such removal will take place and the size of the building; which application shall be accompanied with the sum of at least One Hundred Dollars (\$100.00) to be deposited with the City Finance Officer as a pledge or guarantee fund to protect the City against loss or damage to crossings, sidewalks, or other public or private property, or expense for protecting such property against the injuries that may be caused by the removal of such building; said deposit or balance thereof, after deducting the amount of damages or expenses, if any, caused by such removal, shall be returned to the person depositing same upon an official of the condition of the streets, sidewalks, crossings, or other public or private property after such removal, made by the Supervisor of Streets.

### **Section 8.7.3. Guarantee Fund.**

Whenever the Supervisor of Streets shall decide from any examination of the application and from such other information as he may obtain, that the sum of One hundred Dollars (\$100.00) is not sufficient as a guarantee fund for ample protection of the city against the probable damages and expenses that may caused by the removal of such building, he is hereby authorized and it shall be his duty to require the deposit of a larger sum than One Hundred Dollars (\$100.00), but not to exceed Five Hundred Dollars (\$500.00.)

#### **Section 8.7.4. Permit Contents.**

On the receipt of the application and the guarantee fund as hereinbefore provided, the Supervisor of Streets may personally or through the Local Law Enforcement Officer investigate the representations of the applicant and if such investigation is satisfactory, he shall deposit said guarantee fund with the City Finance Officer to be by him held subject to the order of the Supervisor of Streets, who shall thereupon issue to the said applicant a permit in writing for the removal of such building along or across the streets, highways or alleys to be designated by the Supervisor of Streets, said removal to be finished prior to the time stated in such permit.

#### **Section 8.7.5. Refunding Guarantee Fund.**

Before refunding said guarantee fund or any part thereof, it shall be the duty of the Supervisor of Streets to examine the report of the Local Law Enforcement Officer and pay out of said fund or set aside for such purposes the amount claimed as ascertained as the damages for injuries to the public or private property, including the expenses of protection to electric, telegraph and telephone wire as aforesaid, caused or occasioned by the removal of such building as aforesaid.

#### **Section 8.7.6. Applicant must serve Notice to Owners of Wires, etc.**

If the permit includes streets, alleys or highways on which are located, or across or along which are strung electric light or telegraph or telephone wires, it shall be the duty of such applicant to notify in writing the resident manager or managing agent or officer of such public service corporation or owner of said line or wires at least twenty-four hours before the commencement of such work, of his intent to so move such building under or across such line or wire and of the approximate time of such crossing of line or wire by such building.

### **Chapter 8.8 Excavation in Public Places.**

#### **Section 8.8.1 Permit Required.**

No person shall make or cause to be made any excavation in or under any street, parking, sidewalk, alley, or public ground, or remove any earth, soil, paving, gravel, or material therefrom without having first obtained a permit therefore as hereinafter provided.

#### **Section 8.8.2 Application and Bonds.**

Application for such permit shall be made to the City Finance Officer, who shall secure the approval of the Supervisor of Streets before issuing any such permit. Such application shall be accompanied by a fee of Five

(\$5.00), which amount shall be considered compensation to the City for the granting of such permit and the necessary investigation prior thereto. In addition to the hereinbefore described fee, the applicant shall deposit with the City Finance Officer not less than Twenty-five Dollars (\$25.00) or such larger sum as deemed necessary by the Supervisor of Streets to insure the replacement and refilling of any such excavation. In lieu of such deposit, a bond for the same purpose in the amount of Five Hundred Dollars (\$500.00) to be approved by the City Council may be given covering all excavations for the year for which such bond is given. Before any such permit is issued, the person requiring the same shall state in his application therefore where such excavation is to be made, the extent therefor, in front of what lot or lots, for what purpose said excavation is to be made, and whether or not such person has a bond on file with the City Finance Officer for making such excavation. If such applicant has not filed such bond, then before a permit shall be issued, such applicant shall furnish a bond or make the deposit as above provided with the City Finance Officer as a guarantee for the proper refilling of and guarding of such trenches and excavations while in the course of excavating or refilling and the maintenance of the same in good condition for one year thereafter.

### **Section 8.8.3 Deposit Forfeited.**

If at an time within one year after this issuance of the permit referred to in this chapter the Supervisor of Streets shall find that the work for which the bond deposit was made does not stand a satisfactory test or has not been properly refilled, he shall notify the depositor in writing that the work must be put in satisfactory condition within three days, and if the depositor fails to comply with the terms of said notice, then the Supervisor of Streets shall have authority to cause expense thereof to the sum deposited. The City Finance Officer shall upon order of the City Council return the balance unexpended at the expiration of one year from date of such permit to the depositor.

In cases where a deposit is put up for all work done by any person as provided in this chapter, the Supervisor of Streets shall have power to cause the repairing or refilling of any excavations made by such person if he fails to do so upon three days written notice, and the expense thereof shall be charged to his deposit to the original amount.

### **Section 8.8.4 Supervision of Excavations.**

The Supervisor of Streets shall supervise all excavations made for any purpose in the streets, alleys, or public grounds, and he shall require that all excavations be backfilled in the manner specified.

### **Section 8.8.5 Guarding Excavations.**

Any person receiving a permit to make excavations in or upon any street, alley, sidewalk or public ground shall, during the progress and continuance of the work, erect and maintain around the same both day and night suitable guards, fences, flares, and signals so as to prevent

injury to persons, animals, or vehicles on account of such excavations. Such flares shall be kept lighted from sundown to sunrise.

**Section 8.8.6. Refilling Excavations.**

Any person making such excavation shall, when the same shall be completed, promptly and without delay, refill the same as herein provided.

**Article 8.8.6.1.** In refilling any excavation the earth shall be thoroughly settled as the refilling progresses by using water to compact earth; or the earth shall be thoroughly tamped in successive layers of approximately six inches, in such a manner that all the earth shall be replaced in the excavation leaving the surface in its original condition.

**Article 8.8.6.2.** In making connection to fire hydrants for flushing excavations, all rules and regulations of the Water Department relating thereto shall be observed.

**Article 8.8.6.3.** In all cases where excavations are made in the paved district, the earth shall be replaced in the manner above specified, and the Department of Streets shall replace the pavement.

**Section 8.8.7. Cutting Pavements.**

Where it is necessary to cut the street pavement in making any street excavation, there shall be deposited with the City Finance Officer before a permit is issued an amount equal to the estimated cost to the city for the replacement of the pavement removed. The actual cost shall be determined after the pavement is replaced and any surplus shall be refunded and any costs not covered by the deposit shall be paid immediately. The cost to the City for pavement removal and replacement shall be determined from time to time and a schedule thereof maintained at the City Office.

**Section 8.8.8. Excavations near Street.**

It shall be unlawful for any person, owner or occupant of any lot to make or cause to be made any excavation on said lot adjacent to any street, alley, public ground, or traveled road, or roadway, except the same be securely guarded so as to prevent the injury of any person or animal passing upon or along the same.

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