

TITLE 7

SIDEWALKS AND STREETS

- Chapter 7-1: Grades and Widths of Streets
- Chapter 7-2: Street Excavations
- Chapter 7-3: Sidewalks
- Chapter 7-4: Sidewalk Maintenance
- Chapter 7-5: Trees
- Chapter 7-6: Cattle Drive

Chapter 7-1: Grades and Widths of Streets

7-1-1: Street Grades and Widths.

The grades and widths of all streets and curb and gutter in the city shall be established by the City Council before any construction thereof commences.

7-1-2: Hindering Street Improvements.

No person shall hinder, interfere with or obstruct any person lawfully constructing, grading, improving or paving any curb and gutter. Nor shall any person break, injure or tear up any curb, pavement or street unless authorized to do so by the City Council.

7-1-3: Designation of Avenues and Streets.

When any thoroughfare shall hereafter be laid out within the limits of the city, then the following criteria shall be used in determining whether the same shall be designated an "Avenue" or "Street." If the primary orientation of such thoroughfare is north and south, then the same shall be designated as a "Street" and if the primary orientation of said thoroughfare is east and west, then the same shall be designated as an "Avenue".

Chapter 7-2: Street Excavations

7-2-1: Application and Bond for Excavation Permit.

Any person desiring to make any excavation in any of the public alleys, streets or other public places of this city shall first make application to the Building Inspector. The application shall state where such excavation is to be made, and the extent thereof, and which lot or lots adjoin same, and for what purpose the excavation is to be made. The applicant shall post a good and sufficient bond to be approved by the Finance Officer in the sum of \$1,000.00 before such a permit is issued unto any person. The bond shall be conditioned upon the requirement that the applicant shall fulfill all obligations provided herein. Only one bond is necessary as long as the bond is in full force and effect. If the Building Inspector finds the application in proper order and in conformity with the provisions herein after careful examination, and the said bond has been properly posted, then a permit may be issued unto the applicant by the City Council.

7-2-2: Excavation Exemptions.

No utility company which has been by contract or franchise granted a right to use the alleys, streets or other public ground shall be required to furnish a bond for making excavations in any public place or right of way. However, all other sections of this chapter relating to excavations and public right of ways shall be binding upon such companies.

7-2-3: Excavations in Public Right of Ways.

It shall be unlawful for any person to make or cause to be made any excavation across, in, on or under any alley, sidewalk, street or other public ground or to remove any concrete, earth, gravel, paving, soil or other material therefrom without first having obtained a permit from the City Council.

7-2-4: Excavations Near Streets.

It shall be unlawful for any occupant, owner, or person of any lot or parcel of land within the city limits to make or cause to be made any excavation of said lot or parcel of land unless the site is securely guarded so as to prevent the injury of any person or animals passing along alleys, sidewalks, streets or other public grounds.

7-2-5: Obstruction of Sewer Pipes or Manholes by Excavation.

No sewer pipes or manholes which are a part of the municipal sewer system shall be damaged in any manner during the process of making an excavation. Any damage caused by excavations shall be fully compensated for by the person to whom the permit was granted to make the excavation.

7-2-6: Barricades, Guards and Lights Required.

Any person receiving a permit to make an excavation adjoining or upon any alley, sidewalk, street, thoroughfare or public ground, or any person making an excavation on either private or public ground shall during the progress and continuance of the work erect, keep and maintain by day and night suitable barricades, guards, lights and signals so as to prevent injury of any animal, person or vehicles as a result of such excavation.

7-2-7: Stair Railing and Grates.

The owner of any building in the city having a stairway leading from an adjacent sidewalk to the basement or cellar of such building shall guard the stairway with a substantial railing not less than three feet high. The entrance to the stairway shall be at right angles to the street from which such entry is made, and any person who shall have any permanent opening in any sidewalk for the purpose of letting light into any basement or cellar or for any other purpose shall guard the same with a substantial cover.

7-2-8: Excavations Must Be Refilled.

The person to whom the permit was granted to make the excavation shall promptly restore the excavation by properly refilling it and maintaining it from time to time if the excavation settles in such a manner as to afford free and unencumbered passage for the public. Additionally, the person to whom the permit was granted shall completely restore the alley, sidewalk, street or other public place to the same condition as the same was before the making of such excavation as soon as possible and in no case longer than 30 days after the start of the excavation. Furthermore, the earth shall be thoroughly settled by compaction with water and machine compacting equipment in refilling any excavation that has been authorized. The refilling is to be made in such a manner that the surface when refilled shall not be any higher or lower than the original surface when the excavation was made and the settling, if any, will be at a minimum.

7-2-9: Failure to Comply with Excavation Requirements.

If at any time after the issuance of any permit for the making of an excavation as provided for herein the Building Inspector shall find that the work for which the said bond was given and posted does not stand a satisfactory test or has not been properly or timely refilled, maintained and restored to its original condition, then the Building Inspector shall have authority to replace the excavation in satisfactory condition and the person to whom the permit was granted or his bondsmen shall be required to make full restitution for the cost thereof unto the city.

Chapter 7-3: Sidewalks

7-3-1: Sidewalk Grades and Width.

The sidewalk grades are established and fixed to be 3" above the curb grade. If no curb grade has been established, then the sidewalk shall be at least 3" above the natural level of the ground and in all cases sufficiently above the level of the ground to drain well. Additionally, the width of all sidewalks shall be established by the City Council before any construction commences.

7-3-2: Limitations on Construction and Materials.

The building of wooden sidewalks in the city is hereby prohibited. All sidewalks built hereafter in the city shall be built of cement as specified hereinafter except that a sidewalk may be built of brick or stone when specifically authorized by a resolution passed by the City Council. The specifications for the use of cement are as follows:

The concrete used in the construction of alleys, gutters, sidewalks and street crossings shall conform in all respects to the South Dakota Department of Transportation (SDDOT) Standard Specifications for Roads and Bridges. The concrete shall conform to SDDOT Class M 6, except as modified herein. The concrete aggregate mixture shall contain a minimum of 50 percent coarse aggregate by weight. The mixture shall contain at least 6 bags of cement per cubic yard. The minimum 28-day compressive strength shall be 4000 psi. The concrete shall contain between 5.0 and 8.0 percent entrained air with a maximum slump of 4-inches. The concrete shall be a minimum of 4-inches thick. Concrete subjected to vehicular traffic shall be reinforced with no. 4 (½-inch) reinforcing bars, 12-inches on center, both ways. The concrete shall be placed on a prepared base course. The base course shall conform to SDDOT "Base Course Aggregate." The base course shall be a minimum of 2-inches thick under sidewalks that are not subject to vehicular traffic and 6-inches thick under alleys, gutters and sidewalks subjected to vehicular traffic.

7-3-3: City May Construct or Supervise.

The City Council shall have authority to order the construction or repair of any alley, gutter, sidewalk or street crossing when the need for such construction or repair exists in its discretion or opinion, and when not constructed or repaired within the time fixed by law, then the city may construct or repair same and the cost thereof shall be charged to the owner of the property as provided by law. Furthermore, the City Council shall have authority to supervise the construction of all alleys, sidewalks and street crossings by the appointment of an engineer or superintendent for that purpose, and when such appointment is made, then such engineer or superintendent shall have the authority to test all materials used in the construction thereof, and must approve such construction both as to materials and workmanship.

7-3-4: Payment.

The city shall pay for the construction of a new sidewalk in all cases where the city orders the construction of new sidewalks for the reason that the curb grade or street grade of the city was changed after the sidewalk was constructed provided the curb or street was constructed according to the original required grade or before there was any established grade, but the owner of the adjoining property shall pay for the construction or repair of any sidewalk if required for any other reason.

7-3-5: Defective Sidewalk.

Any curb, driveway, parkway or sidewalk which has been deemed defective, hazardous or unsafe by the City Council is hereby declared a nuisance. It shall be the duty of the owner of the property abutting on any curb, driveway or sidewalk to make all improvements stated in the notice by the City within thirty days from the receipt of said notice.

7-3-6: Construct Sidewalk.

Whenever the City Council shall deem it necessary to construct, rebuild or repair any sidewalk or driveway, then it shall notify all owners of lots abutting and adjoining such sidewalk or driveway to construct, rebuild or repair the same at their own expense within the time designated. Such notice shall be in writing and either be served personally on each said owner or by publication once each week for two consecutive weeks in the official newspaper for the City. The notice shall set forth the character of the work and the time within which it shall be completed. The notice may be general as to the owners, but must be specific as to the description of such lots, parts of lots or parcels of land.

The failure of any owner to construct, reconstruct or repair any such sidewalk or driveway shall be deemed a misdemeanor and permit the City to proceed with a resolution of necessity for sidewalk improvements in accordance with state statutes.

Chapter 7-4: Sidewalk Maintenance

7-4-1: Ice and Snow Removal - Recovery by City.

It shall be the duty of every occupant or owner of the premises within the city to remove all ice and snow from the sidewalk abutting said premises as soon after same has accumulated as can reasonably be removed, and in case of failure of the occupant or owner, or either of them, to remove such ice and snow as soon as it can reasonably be removed, the mayor of the city may hire the same to be removed at the expense of the city and the costs so incurred by the city for removing such ice and snow shall be charged to the owner of the abutting property and shall be certified by the City Finance Officer as a special assessment levied and taxed against the lot or parcel on which the sidewalk abuts, and the special assessment shall be collected by the County Treasurer as other assessments and taxes made by the city for the benefit of the city provided that the mayor shall not

hire anyone to remove such ice or snow from the sidewalk without first giving notice at least three hours beforehand to the occupant or owner of the premises (if it is occupied or if the owner resides in the city) of his intention to hire said ice and snow removed from said sidewalk. In the alternative, the City may recover any expense incurred in a civil action against either the occupant or owner of such property, or both parties.

7-4-2: Riding Bicycle on Sidewalks.

It shall be unlawful for any person or persons to ride any bicycle upon any of the sidewalks within the limits of the City.

7-4-3: Signs Projecting Over Sidewalks.

It shall be unlawful for any person or persons to place or suspend any show board or sign of any description whatsoever from any structure so that the same shall project from the front or wall of said structure more than four (4) feet over any sidewalk or onto the adjoining street except municipal lights.

7-4-4: Sidewalk Awnings.

It shall be unlawful for any person to erect any awning over any sidewalk or public street within the limits of the City unless such awnings be elevated at least seven feet at the lowest part thereof above the top of the sidewalk or street, and said awnings shall not project over the sidewalk to exceed three-fourths of the width thereof, and said awnings shall be supported without posts by iron brackets or by iron framework or by an iron and wood framework attached firmly to the building so as to leave the sidewalk wholly unobstructed thereby.

Chapter 7-5: Trees

7-5-1: Definitions.

Street trees: trees, shrubs, bushes, and all other woody vegetation on land lying between the property lines on either side of all streets and avenues within the City.

Park trees: trees, shrubs, bushes, and all other woody vegetation in public parks including municipal cemetery and golf course.

Public community forest: all street and park trees, and other trees owned by the city as a total resource.

Private community forest: all trees within municipal boundaries but not owned by the city.

Person: any person, firm, partnership, association, corporation, company, organization, or political subdivision of any kind.

Community Forest Manager: the official (public employee) representative of the Tree Board and as such is responsible for administration of the community forestry program.

7-5-2: City Tree Board.

There is hereby created and established a City Tree Board for the City of Gary, South Dakota, which shall consist of five members, property owners or residents of the city, who shall be appointed by the Mayor with the approval of the City Council. The community forest manager shall be an ex officio member of the City Tree Board.

7-5-3: Term of Office.

The term of the five persons to be appointed by the Mayor shall be three years except that the term of two of the members appointed to the first board shall be for only one year and the term of two members of the first board shall be for two years. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed to complete the term.

7-5-4: Compensation.

Members of the Tree Board shall serve without compensation.

7-5-5: Duties and Responsibilities.

It shall be the responsibility of the Tree Board to study, investigate, counsel and develop and/or update annually, and administer written plans, both annual and long range, for the maintenance, replacement, and removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the City Council at the first meeting in March, and upon their acceptance and approval shall constitute the official comprehensive City Tree Plan for the City of Gary, South Dakota.

The Tree Board, when requested by the City Council, shall consider, investigate, make finding, report and recommend upon any special matter or question relating to trees.

7-5-6: Operation.

The Tree Board shall choose its own officers, make its own rules and regulations, and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business. The business, meetings, and records of the tree board shall be open to the public for inspection at the City offices during normal business hours.

7-5-7: Street Tree Species to be Planted.

The City of Gary shall maintain a list of not less than 12 recommended tree species for planting in public areas. The purpose of this listing will be to maintain diversity in the total tree

population. This list shall be available to residents of the city upon request to aid in the selection of trees for private and public properties. The list of recommended trees shall be updated periodically to reflect new developments or species that will affect the population of the community forest.

7-5-8: Distances and Clearances for Planting.

Street trees may be planted in the tree lawn where there is more than six feet between the edge of the sidewalk and the curb of the street. Street trees shall be planted no closer than three feet from a sidewalk, driveway, or street.

No street tree shall be planted closer than 30 feet from any street corner, measured from the point of the nearest intersection of curbs or curb lines.

No street tree shall be planted closer than 10 feet from any fire hydrant.

Special permission must be obtained from the Community Forest Manager when planting street trees within 10 feet of any point on a line on the ground immediately below any overhead utility wire.

7-5-9: Public Tree Care.

The City shall have the right to plant, prune, maintain, and remove trees, plants, and shrubs within the right-of-way or bounds of all streets, alleys, lanes, squares, and public grounds, as may be necessary to ensure the public safety.

The City may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to electric power lines or other public improvements, or is seriously affected with any fatal disease.

The abutting property owners shall have the right to perform normal tree care on all street trees.

7-5-10: Permits Required.

No person shall plant a street tree without first obtaining a permit from the Community Forest Manager. There will be no fee for such permit.

7-5-11: Compensatory Payments.

No person shall remove any public tree without replacing such tree with a tree or trees of equivalent dollar value in the vicinity of the removed tree. The value of trees shall be determined by the Community Forest Manager in accordance with regulations considering the species, location, size, and condition of trees adopted by the Tree Board. If no suitable location exists in the vicinity of the tree removed or if the replacement tree is of lesser value, the person causing the tree to be removed shall make a compensatory payment to the City equal to the difference in value between the tree removed and any replacement tree. Such compensatory payment shall be paid

into a fund established by the City Finance Officer and used solely for the purpose of enhancing the community forest.

7-5-12: Tree Topping.

It shall be unlawful as a normal practice for any person, firm or City department to top any street tree, park tree, or other tree on public property. Property owners are responsible for trees on their own property as well as trees on the public way that abuts their property.

7-5-13: Clearance Over Streets and Walkways.

Clearance over streets and walkways shall be the responsibility of the abutting property owner. A clearance of eight (8) feet must be maintained over walkways and a clearance of twelve (12) feet must be maintained over streets and alleys. Trees not maintained according to these standards may be brought into compliance by the Community Forest Manager.

7-5-14: Dead or Hazard Tree Removal.

The City shall have the right to cause to be removed any tree within the City limits that is dead or has been declared a hazard. Hazard trees are defined as trees with severe structural defects or splits. The city will notify in writing the owners of such trees. Removal is the responsibility of the owners of such trees shall be accomplished within time limits set by the Community Forest Manager.

7-5-15: Removal of Stumps.

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground. The City shall only be responsible for the removal of those stumps of trees the City removes.

7-5-16: Abatement of Nuisance.

The failure of persons to comply with planting, spacing, minimum distances, utilities, trimming and tree removal provisions of this ordinance shall constitute a nuisance and the City shall have the authority to abate the nuisance and assess the cost associated with the abatement to the property owner by special assessment.

7-5-17: Interference with the Tree Board.

It shall be unlawful for any person to prevent, delay, or interfere with the Tree Board or any of its representatives or agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any trees within the public community forest.

7-5-18: Access.

It shall be unlawful for any person to prevent, delay or interfere with access to private

property by the City or its representatives in the legal performance of any section of this ordinance.

7-5-19: Arborist Certification and Insurance.

Persons or firms engaged in the business or occupation of pruning, treating, or removing any street tree, park tree, or other privately owned tree must be recognized by the South Dakota Arborists Association as a Certified Arborist or Tree Technician. Tree Technicians must carry evidence of liability insurance and workmen's compensation. No certification shall be required by any public employee doing such work in the pursuit of their public service endeavors.

7-5-20: Review by City Council.

The City Council shall have the right to review the conduct, acts, and decisions of the City Tree Board. Any person may appeal from any ruling or order of the City Tree Board to the City Council who may hear the matter and make a final decision within thirty (30) days.

7-5-21: When Operative.

This Ordinance shall be in full force and take effect from and after its passage, approval and publication according to law.

Chapter 7-6: Cattle Drive

7-6-1: Application.

Any person desiring to drive or move cattle or other livestock upon the public streets through the City of Gary, South Dakota, other than by trucking, shall first make written application to the City of Gary, South Dakota, not less than three (3) days before the proposed date of such driving of cattle or other livestock through the City, which application shall specify the proposed date of such proposed movement of cattle or other livestock and the approximate hour of such proposed date of moving, together with the approximate number of cattle or such other livestock, proposed to be so driven through the City of Gary.

7-6-2: Permit.

If any such application for moving cattle or other livestock shall be approved by the City of Gary, the Finance Officer shall thereupon issue a permit to the applicant, specifying the date and approximate hour for such proposed moving of cattle or other livestock, and the route to be followed by such applicant in so driving such cattle or other livestock through the City of Gary, South Dakota. Before the issuance of such permit, any applicant shall first establish that they have proper liability insurance, to protect against any injury which might result from such moving of livestock.

7-6-3: Notification.

On the issuance of any such permit for so moving of cattle or other livestock, the City of Gary shall immediately advise the Deuel County Sheriff's Office of such proposed driving of cattle or other livestock, and by agreement with the County Sheriff's Office the movement of such cattle or other livestock through the City of Gary will then be supervised by the Sheriff's Staff to avoid possible damage or injuries to property.

7-6-4: Cleaning.

Immediately following the completed movement of such cattle or other livestock through the City of Gary, South Dakota, the person so driving such cattle or other livestock through the City of Gary shall promptly proceed to properly clean the sidewalks and streets of refuse resulting from such movement of cattle or other livestock.

7-6-5: Penalty.

Any person attempting to move or moving cattle or other livestock through the City of Gary, South Dakota, without full compliance with the foregoing requirements shall be fined in any sum not more than \$500.00.