TITLE II.

SIDEWALKS AND STREETS

CHAPTERS:

2-01. Sidewalks and Driveways.
2-02. Streets.
2-03. Excavation Code.

CHAPTER 2-01

SIDEWALKS AND DRIVEWAYS

SECTIONS:

2-0101. Scope of Chapter
2-0102. Duty of Property Owners to Construct and Maintain Sidewalks.
2-0103. License Necessary to Construct, Reconstruct and Repair Driveways.
2-0104. Contractor's License, Fee, Expiration Date.
2-0105. Bond.
2-0106. Name Stamp Required of Licensee.
2-0107. Sidewalk Construction, Permit Required, Fees.
2-0108. Construction Subject to Inspection, Request by Licensee.
2-0109. Tearing Up Sidewalk.
2-0110. Contract for Construction of Sidewalks, Bids, Specifications.
2-0111. Qualifications of Contractor.
2-0112. Bond to Accompany Contract.
2-0113. City Sidewalk Contract Controlled by City Engineer.
2-0114. City Sidewalk Contract, Scope of Work.
2-0115. Contractor to be Responsible Until Sidewalk Completed.
2-0116. Failure of Contractor to Fulfill Conditions.
2-0117. Measurement and Payment on City Contract.
2-0118. Width and Placement of Sidewalks.
2-0119. City Sidewalks, Driveways Construction Specifications.
2-0120 Materials in General.
2-0121. Snow and Ice on Sidewalk Removed by Owner and Occupant of Property.
2-0122. RESERVED FOR FUTURE USE.
2-0123. Grandfather Clause.

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

2-0102. **DUTY OF PROPERTY OWNERS TO CONSTRUCT AND MAINTAIN SIDEWALKS**. Notwithstanding the provisions of 40-29-02 of the North Dakota Century Code, the duty to construct, reconstruct and maintain sidewalks in the City of Mapleton shall be as follows:

1. Except as hereinafter provided in subsection 5 or 6 of this section, the original owner of any building constructed in the City of Mapleton shall construct sidewalks along the street(s) in accordance with the requirements of this Chapter. This provision will apply to all lots for which a building permit is granted after July 15, 2011. Construction of sidewalks on lots covered by this section shall be a prerequisite to the issuance of a certificate of occupancy for any building constructed on such lots. Provided, however, the Building Official may waive such

requirement if the building officials determines that it was not possible to construct a sidewalk before the issuance of the certificate of occupancy because of weather conditions. In such a case, the lot owner must present proof to the building inspector that there is a contract in place for the construction of the sidewalk, and the owner of the lot must execute a petition, requesting that the sidewalk be constructed to the City. If a sidewalk is not constructed within sixty days of the issuance of the certificate of occupancy, or within sixty days after the first day a sidewalk permit is issued for the next construction season for a certificate of occupancy issued in the Winter, the City may contract to install the sidewalk and assess the cost against the lot owner. In addition, if the contractor who had the contract to construct the sidewalk fails to construct the sidewalk in the time frame required, that contractor may face a suspension of its right to be issued further building, and/or sidewalk permits in the City of Mapleton for a period up to one year.

2. The owner of any lot or parcel of land adjoining any street in the City of Mapleton shall reconstruct and maintain in good repair such sidewalks along the street(s) as have been previously constructed, and must construct such sidewalks when so ordered by resolution of the City Council.

3. Sidewalks must be constructed in accordance with all of the requirements of this Chapter.

4. It is the policy of the City of Mapleton that sidewalks be constructed along both sides of all streets and within cul-de-sacs. Construction of sidewalks in areas of the City not covered by Section 2-0102.1 and where sidewalks do not presently exist may be required by the City once eighty percent (80%) of the land frontage on the street has been developed.

5. A developer, at the time of platting a new subdivision or replatting a subdivision, must submit a sidewalk plan for approval by the Planning Commission and City Council. Such plan must conform with the requirements of Section 2-0102.4 unless the City Council, for good cause shown, waives the requirement for sidewalks on both sides of all streets and within cul-de-sacs. If the City waives the requirement for certain lots, the requirement of subsection 1 of this section will not apply.

6. Landowners may petition for sidewalk waivers to the City Council using the following procedure:

    a. A written petition, signed by a majority of the property owners within the area for which the waiver is requested may be submitted to the Auditor's office.

    b. The City Council will consider the petition and may request Planning and Zoning Commission recommendations in making its final decision on the petition.

    c. A waiver of the requirement for sidewalks will not constitute a waiver of the requirement to provide sufficient right-of-way to accommodate

sidewalks in the future, in the event the waiver is rescinded pursuant to paragraph 7 of this section. If the City waives the request for certain lots, the requirement for subsection 1 of this section will not apply.

7. A waiver of the requirement for sidewalks which is granted pursuant to paragraphs 5 and 6 of this section may be rescinded as follows:

   a. Upon submission of a petition signed by a majority of the owners of the property located within the area which is the subject of the waiver.

   b. If the City determines that sidewalks in the area are necessary and that the rescission of the previously granted waiver is in the public interest.

   c. Provided, however, that no such waiver shall be rescinded by the City without first having a public hearing on such decision after providing ten (10) days' written notice of the hearing to all landowners abutting the portion of the right-of-way where the rescission of the waiver is being considered.

8. All new sidewalk construction must conform to the Americans with Disabilities Act (ADA) standards adopted by the City of Mapleton, which standards will be available at the office of the City Engineer.

Source: Ord. 214-11, Sec. 1 (2011)

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

2-0104. **CONTRACTOR'S LICENSE, FEE, EXPIRATION DATE**. If a license to construct, reconstruct, and repair sidewalks and driveways is granted by the City Auditor, the person applying must pay to the City Auditor a license fee as set by resolution of the City Council. Such license will expire on December 31 of each year.

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

2-0106. **NAME STAMP REQUIRED OF LICENSEE**. Sidewalk construction licensees are required to have a stamp which must be used to imprint the contractor's name and year of construction into the constructed sidewalk. The stamp shall consist of letters one and one-quarter (1¼) inches high and of sufficient depth to imprint to the depth of one-eighth (1/8) inch into the fresh concrete.

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

2-0108. **CONSTRUCTION SUBJECT TO INSPECTION, REQUEST BY LICENSEE**. Licensee must request an inspection by the City Engineer, or his designee, after having constructed the forms, placed and compacted the sub-base and before the placing of any concrete. The City Engineer, or his designee, will have 24 hours in which to make the inspection after receiving notice, except that Sunday will not count towards the 24 hours. No concrete will be allowed to be poured until the inspection has occurred and approval given. If any sidewalk is poured prior to the inspection or without approval of the City Engineer or his designee, the City may require testing to be done to ensure that the sidewalk was built in compliance with City standards and on proper grades, which cost will be the responsibility of the licensee. If the sidewalk does not conform to the grade or any other City standards, the City may require the sidewalk to be removed at the expense of the licensee.

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

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

2-0111. **QUALIFICATIONS OF CONTRACTOR**. Any contractor bidding on the City contract for the construction of sidewalks must (1) have a sidewalk builder's license and (2) hold a North Dakota General Contractor's license.

2-0112**. BOND TO ACCOMPANY CONTRACT**. When any contract for the construction of sidewalks is about to be entered into by the City in accordance with the provisions

of the laws of this state, the contractor to whom any such contract may be awarded will be required, before such contract is entered into, to give, in addition to the contract bond required by Section 48-01-01 of the North Dakota Century Code, a bond in an amount to be determined by the City Council, running to the City of Mapleton. Such bond must be conditioned upon the contractor maintaining and keeping in good repair for a period of two (2) years all sidewalks so constructed by such contractor under the terms of such contract. In case of default on the part of such contractor to so maintain and keep such sidewalks in good repair for the period of two (2) years, or in case such sidewalks within such time begin to crumble or disintegrate or become cracked and broken to such an extent that, in the opinion of the City Engineer, the same is not in satisfactory compliance with the specifications for the construction thereof, then the City Engineer may direct that such sidewalk be immediately repaired or re-laid, in whole or in part, as the Engineer deems best. The contractor immediately will cause the same to be repaired or re-laid; and in the case of the contractor's neglect, refusal, or failure so to repair or relay the same, the City, at any time within the two-year period or thereafter, may cause the same to be repaired or re-laid and the cost thereof, whether done by the City directly or through a contract, may be recovered against the contractor and the surety upon such bond.

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

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

2-0114. **CITY SIDEWALK CONTRACT, SCOPE OF WORK**. The City sidewalk contract may include the construction, reconstruction, and repair of all sidewalks, sidewalk approaches, alley returns, and crossings deemed necessary by the City Council.

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

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

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

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

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

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

The Contractor will be responsible for bringing to grade and checking for usability all stop boxes within sidewalk lines. Information on locations of stop boxes may be obtained from the City Water Department.

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

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

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

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

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

1. No sidewalk may be reconstructed of a width less than that existing prior to construction.

2. Sidewalks may be substituted by combination sidewalk/bikeway facilities in accordance to the Metropolitan Bikeway Standards and approved by the City Council.

3. In commercial areas, sidewalks must be a minimum of six (6) feet in width, unless a lesser width is approved by the City Council.

2-0119. **CITY SIDEWALKS, DRIVEWAYS CONSTRUCTION SPECIFICATIONS**. All City sidewalks must be a minimum of four (4) inches thick, except within driveways where the sidewalk must be of the same thickness as the driveway. Sidewalks over vaults or other openings must be constructed to carry a load of not less than two hundred fifty (250) pounds per

square foot. No concrete tile may be used in the construction or reconstruction of any City sidewalks.

All residential driveways must be six (6) inches thick, must be no less than nine (9) feet nor more than thirty (30) feet wide at the sidewalk line, and must be located so as to provide access to a parking space within the property to be served. All commercial or industrial driveways must be seven (7) inches thick and must be no more than thirty-six (36) feet in width at the sidewalk line. Provided, however, that such commercial or industrial driveway may, upon approval of the City Engineer, be constructed to a maximum width equal to one-half of the width of the lot.

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

Designation of Street	Minimum Distance to Property Line Nearest the Intersection
Local Street Approaching Local Street	20 feet
Local Street Approaching Collector Street	30-50 feet
Local Street Approaching Arterial Street	100-120 feet
Collector Streets	Limited Access
Arterial Streets	Limited Access

Access onto designated Collector or Arterial streets should be via a local street system. In instances where this, or the minimum distance to the intersection as set out above, cannot be achieved, approval must first be obtained by the City Council following review by the Planning and Zoning Commission. The required distance to intersections on Collector streets is a minimum of one hundred (100) feet. The required distance to intersections on Arterial streets is a minimum of one hundred fifty (150) feet. In instances where this cannot be achieved, approval must first be obtained by the City Council following review by the Planning and Zoning Commission.

Distances between driveways and intersections are measured from the edge of the driveway closest to the intersection and the right-of-way line of the intersecting street. In no case will the aggregate width of the driveway into a property exceed one-half (1/2) the width of that property.

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

2-0121. **SNOW AND ICE ON SIDEWALK REMOVED BY OWNER AND OCCUPANT OF PROPERTY**. No snow or ice may be allowed to stand or remain upon any public sidewalk within the City of Mapleton. If any person or corporation either neglects or refuses to remove the snow or ice on a public sidewalk abutting the person's or corporation's property, after forty-eight (48) hours notice by a City Agent, the person or corporation will be subject to the

penalties set out in Section 2-0122. In addition, the City Agent may cause the snow or ice to be removed. The expense incurred in the removal will be charged and assessed against the abutting property by special assessment in a manner prescribed by law.

2-0122. **RESERVED FOR FUTURE USE**. Source: Ord. 216-13, Sec. 11 (2015)

2-0123. **GRANDFATHER CLAUSE**. Nothing in this Ordinance shall require, without further Council action, the construction of sidewalks in areas developed prior to the passage of the Revised Ordinance of 2000 of the City of Mapleton.

CHAPTER 2-02

STREETS

SECTIONS:

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

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

2-0202. **PIPES AND CONDUITS IN STREETS: PREVENTION OF LEAKS**. It shall be the duty of every person, firm or corporation forcing, transmitting or conveying water or gas through pipes or other conduits which have heretofore been, or shall be hereafter, laid in any street, alley or public ground in the City of Mapleton, to prevent the public use of such street, alley or public ground from being or becoming in any way impaired, obstructed, injured or rendered dangerous or offensive by the escape of water or gas into or upon said street, alley or public ground, out of said pipes or conduits.

2-0203. **PIPES AND CONDUITS IN STREETS: REPAIR OF BREAKS**. In case any such pipe or conduit shall break out or burst so that water or gas shall escape from the same into or upon any such street, alley or public ground in said City, it shall be the duty of any person, firm or corporation forcing, transmitting or conveying water or gas through the same, within twenty-four (24) hours after having received notice or knowledge of the escaping water or gas therefrom as aforesaid, to commence and diligently prosecute the repair of said pipe or other conduit, in case such pipe or other conduit is owned by such person, firm or corporation, and if such, pipe or other conduit is not owned by such person, firm or corporation, such person, firm or corporation shall immediately shut off the water or gas therefrom until same is repaired.

2-0204. **CITY AGENT TO NOTIFY OWNER OF LEAK**. It shall be the duty of the City Agent, upon discovery of the fact that water or gas is escaping from any pipe or other conduit, used as aforesaid, into or upon any street, alley or public ground, to immediately notify the person, firm or corporation forcing, transmitting or conveying water or gas through the same, of such escape.

2-0205. **FAILURE OF OWNER TO REPAIR**. In case any person, firm or corporation forcing, transmitting or conveying water or gas through any pipe or other conduit laid in any street, alley or public ground of the City of Mapleton shall neglect or refuse to repair the same, in case it

is owned by such person, firm or corporation, or to shut the water or gas off therefrom in case it is not owned by such person, firm or corporation, then the City Agent, under the direction of the City Engineer of the said City, shall forthwith proceed to repair said pipe or other conduit, and the cost shall be recovered by the City in an action for that purpose from such person, firm or corporation.

Provided, that the foregoing provision shall not apply to any water mains or service pipes which are owned or under the control of the City of Mapleton and under the supervision of the City Agent.

2-0206. **CONSTRUCTION OF SEWER, VAULT, CELLAR, CISTERN OR WELL IN STREET - PERMIT**. No person shall construct, or cause to be constructed or made, any sewer, vault, cellar, cistern or well in any of the streets or public places of the City without the express authority from the City Engineer.

2-0207. **EXCAVATION IN STREETS: PERMIT**. It shall be unlawful for any person, persons, firm or corporation to open up or make any excavation in or upon any street or alley in the City of Mapleton, for any purpose, without first having obtained a permit so to do as provided in Chapter 2-03 of the ordinances of the City of Mapleton.

CHAPTER 2-03

EXCAVATION CODE

SECTIONS:

2-0301. Definitions.
2-0302. Excavator's Registration.
2-0303. Permit to Excavate.
2-0304. Exemptions.
2-0305. Performance Deposits.
2-0306. Pre-excavation Requirements.
2-0307. Warranty.
2-0308. Joint Application.
2-0309. Supplementary Applications.
2-0310. Denial of Permit.
2-0311. Inspection.
2-0312. Revocation of Permits.
2-0313. Mapping Data.
2-0314. Location of Facilities.
2-0315. Relocation of Facilities.
2-0316. Damage to Other Facilities.
2-0317. Right-of-Way Vacation.
2-0318. Excavation Moratorium.
2-0319. Emergency Excavation.
2-0320. Preservation of Monuments.
2-0321. Inspections.
2-0322. Regulations.
2-0323. Severability.
2-0324. Penalty.
2-0325. Appeal.

2-0301. **DEFINITIONS**.

1. "Alley" shall mean the length as dedicated for use by the public and the width as defined by the property lines on each side thereof.

2. "Berm" shall mean that portion of the street lying outside the traveled way.

3. "City" shall mean the City of Mapleton, North Dakota.

4. "City Agent" shall mean a designated official of the City of Mapleton.

5. "Controlled density fill" (CDF) shall mean a sand, cement and/or fly ash slurry resulting in a 50 to 100 PSI material used for backfill.

6. "Emergency" shall mean a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

7. "Excavation" means any removal or disturbance of material to a depth of more than three inches within the traveled way of any street or alley or the removal or disturbance of material to a depth of more than ten inches in sod or soil areas of any publicly-owned property. Excavation is further defined to include all tunneling, pushing, or jacking under any publicly-owned property within the corporate limits of the City of Mapleton.

8. "Excavator" shall mean any person, firm or corporation who performs the act of excavation through the use of mechanically powered equipment or otherwise.

9. "Facility" or "Facilities" means any tangible asset in the right-of-way required to provide utility service.

10. "Lateral Support" of a public place shall be considered impaired whenever an excavation extends below a plane sloping downward at an angle of 45 degrees from the boundary of the public place, or whenever a proposal excavation would expose any adverse geological formation of soil condition.

11. "Right-of-Way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

12. "Street" shall mean the length as dedicated for use by the public and the width as defined by the property lines on each side thereof.

13. "Traveled Way" means the width from curb to curb on curbed streets, from edge to edge on asphalt non-curbed streets, and from shoulder to shoulder on gravel streets.

14. "Utilities" for the purpose of this ordinance, shall include all underground cables, conduit and pipe used for the transportation or distribution of fuel, electricity, communication services, water or sewage.

2-0302. **EXCAVATOR'S REGISTRATION**. No person, firm or corporation shall engage in the practice of Excavation within public right-of-way unless registered as an Excavator in the City of Mapleton, or under contract with the City. An Excavators registration will be issued by the City Auditor upon submission of a written application on forms obtained from the Auditor and upon fulfilling the fee, bonding and insurance requirements as specified herein. The registration period shall be from January 1 to December 31 of each year.

1. Fee. The registration fee for an Excavator's registration for a calendar year or any part thereof shall be set by resolution of the City Council.

2. Insurance. Any person, firm or corporation licensed as an excavator must file proof of liability insurance in the amount of Two Million dollars ($2,000,000) with the City Auditor. The insurance must name the City as an additional insured as to whom the coverages required are in full force and applicable and for whom defense will be provided as to all such coverages. The insurance shall also require that the City Auditor be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term.

2-0303. **PERMIT TO EXCAVATE**.

1. No excavation within public right-of-way shall be initiated without a permit being issued by the City of Mapleton, except as otherwise provided in Section 2-0304 of this chapter. Application for an excavation permit shall be made at least 24 hours in advance, in writing, to the City Agent on forms provided by the City. In the case of a bona fide emergency, the written application may be filed after the excavation has been initiated providing that the intent to excavate has been reported to the City Agent, either in person or by telephone.

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

3. Where the permittee will not be the owner of the facilities installed, the owner (or the entity who will become the owner after completion of the project) will also be required to execute the application for permit, be listed on the permit, and be subject to the indemnification and warranty provisions of Section 2-0303(4) and 2-0307.

4. The permittee in the permit must agree to hold the City harmless from any and all damages claimed by reason of negligence, incompetence or omission on the part of such person, firm or corporation in the performance of their work, the same to include, but not be limited to, careless guarding of excavations made by them or failure to restore all public properties to as good a condition as they were before

such work was done, or for any damages growing out of the negligence or carelessness of any such licensed person, firm or corporation.

5. An application for a permit will be considered complete only upon compliance with the requirements of the following provisions:

   a. Registration pursuant to this chapter.

   b. Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project, and the location of all known and existing proposed facilities.

   c. Payment of money due the City for:

      (1) Permit fees and franchise or user fees, if applicable;

      (2) Any overdue permit or fee payment;

      (3) Any disputed loss, damage or expense suffered by the City as a result of applicant's prior excavating or any emergency actions taken by the City;

6. The City Agent may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

7. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (a) makes a supplement to the application for another right-of-way permit before the expiration of the initial permit, and (b) a new permit or permit extension is granted.

8. Notwithstanding subdivision 6 of this section, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching or restoration. The delay penalty shall be established from time to time by the City Council by resolution.

2-0304. **EXEMPTIONS**.

1. The following shall be exempt from the registration and permit requirements:

   a. Employees of the department of street of the City of Mapleton, while engaged in work directed by the City, shall by exempt from the requirements of Sections 2-0302 and 2-0303 of this chapter.

   b. Mapleton Park District employees when performing work within the property lines of the areas designated as the park system.

2. The following shall be exempt from the registration requirements:

a. All governmental units of the City.

b. All contractors performing work under a written contract with any governmental unit of the City.

c. Utilities which have a franchise agreement with the City. However, all contractors hired by such utility must be registered.

2-0305. **PERFORMANCE DEPOSITS**. Deposits as required under this section shall be cash, a certificate of deposit, or a surety bond approved by the City Attorney.

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

2. Annual Deposits. Any person intending to make openings, cuts or excavations in public places may make and maintain, with the City Auditor, an annual deposit in an amount set by resolution by the City Council, and the person so depositing shall not be required to make the special deposits provided in this section but shall, however, be required to comply with all other applicable provisions of this ordinance.

3. Purpose of Deposits. Any special or annual deposit made hereunder shall serve as security for the repair and performance of work necessary to put the public place in as good a condition as it was prior to the excavation, for a period extending through the warranty period, and to cover any penalties imposed for delay.

4. Special Deposits. Special deposits shall be required for all permits not covered by an annual deposit. The amount of each special deposit shall be determined by the City Agent on a case-by-case basis in accord with paragraph 3.

5. Refund or Reduction of Deposits. Upon the permitteeȧs completion of the work, covered by a permit in apparent conformity with this chapter as determined by the City Agent, two-thirds of such deposit shall be refunded or released by the City, with the remaining balance being released at the completion of the warranty period.

6. Refund or reduction of annual deposits. Two-thirds of any annual deposit shall be refunded by the City at the end of the one-year period for which the deposit is made or the apparent satisfactory completion of all excavation work undertaken during such period, whichever is later, and the balance of the annual deposit shall be released at the expiration of the warranty period.

7. Use of Deposits. Part, or all, of any such deposit may be used to pay the cost of any work the City performs or has contracted to another entity to restore or maintain the public place as provided in this chapter in the event the permittee fails to

perform such work, and to cover any penalty for delay which is not paid directly by the permittee.

2-0306. **PRE-EXCAVATION REQUIREMENTS**. It shall be the responsibility of each permittee to notify all utility companies of the intended excavation. Except in the case of a bona fide emergency, a minimum 24-hour advance notice is required. The permit form shall serve as a guide to assist the permittee in scheduling and documenting utility clearance.

2-0307. **WARRANTY**. The permittee warrants that restoration work will meet the requirements of this chapter for a period of twenty-four (24) months following the completion of the work. During this twenty-four (24) month period, it shall, upon notification from the City Agent, correct all restoration work to the extent necessary, using the method required by the City Agent. Such work shall be completed within five (5) calendar days of the receipt of the notice from the City Agent, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable. If permittee fails to restore the right-of-way in the manner and condition required by the City Agent, or fails to satisfactorily and timely complete all restoration required by the City Agent, the City Agent, at its option, may do such work or contract for such work to be done. In that event, the permittee shall pay to the City within thirty (30) days of the billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its right under the deposits required by this chapter, and if such sums are not sufficient, the City may otherwise seek payment from the permittee and/or owner of the facilities installed.

2-0308. **JOINT APPLICATION**.

1. Registrants may jointly apply for permits to excavate or construct a right-of-way at the same place and time.

2. Registrants who apply for permits for the same obstruction or excavation may share in the payment of the permit fees. Registrants must agree among themselves as to the portion each will pay and indicate the same on their application.

3. Registrants who apply for permits for the same obstruction or excavation may share in the required deposit. Registrants must agree among themselves as to the portion each will be responsible for and indicate the same on their application.

2-0309. **SUPPLEMENTARY APPLICATIONS**.

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

2. A right-of-way permit is valid only for the dates specified in the permit. No permittee may be its work before the permit start date or, except as provided herein, continue working after the end date. If permittee does not finish the work by the

permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date.

2-0310. **DENIAL OF PERMIT**. The City Agent may deny a permit for failure to meet the requirements and conditions of this chapter, or if the City Agent determines that denial is necessary to protect the health, safety, and welfare of the public, or when necessary to protect the right-of-way and its current use.

2-0311. **INSPECTION**.

1. When the work under any permit hereunder is completed, the permittee shall provide written notice of completion to the City Agent.

2. Permittee shall make the work-site available to the City Agent and to all others as authorized by law for inspections at all reasonable times during the execution of and completion of the work.

3. The City Agent shall have the authority to do the following:

    a. At the time of inspection, the City Agent may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

    b. The City Agent may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation will be a cause for revocation of the permit. Within ten (10) days after the issuance of the order, the permittee shall present proof to the City Agent that the violation has been corrected. If such proof has not been presented within the required time, the City Agent may revoke the permit pursuant to Section 2-0316.

2-0312. **REVOCATION OF PERMITS**.

1. The City reserves its rights, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

    a. The violation of any material provision of the right-of-way permit;

    b. An evasion or attempt to evade any material provision of the right-of-way permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;

c. Any material misrepresentation of fact in the application for a right-of-way permit;

d. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete the work is due to reasons beyond the permittee's control; or

e. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 2-0315.

2. If the City Agent determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the City Agent shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the City Agent, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

3. Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the City Agent with a plan, acceptable to the City Agent, that will cure the breach. Permittee's failure to so contact the City Agent, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of permit.

4. If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

2-0313. **MAPPING DATA**. Each owner of utilities in the right of way in Mapleton must provide mapping information required by the City Agent. Mapping data shall generally consist of drawing exhibits showing all existing aboveground and underground facilities and proposed location of new facilities. Drawings shall be submitted in AutoCAD DWG or DXF digital format and in hard copy. All drawings shall be registered to the City's coordinate system, or if the City does not have a separate coordinate system, the North Dakota State Plan, and certified by a registered land surveyor or professional engineer. In regard to existing facilities, the required mapping information must be provided within one year of the written request for such information by the City Agent. Failure to provide such information in the time required, shall subject the violator to administrative fines in the amount of $500 a day until the violator is in compliance. In addition, no permit will be granted to the violator, or to a contractor doing work for the violator until the violator is in compliance with this section.

2-0314. **LOCATION OF FACILITIES**.

1. Unless otherwise permitted by an existing franchise or North Dakota law, or unless existing aboveground facilities are repaired or replaced, new construction and the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable code.

2. The City Agent may assign specific corridors within the right-of-way or any particular segment thereof as may be necessary, for each type of facilities that is, or pursuant to current technology, the City Agent expects will someday be located within the right-of-way. All permits issued by the City Agent involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. A five foot clear zone shall be maintained on each side of the City sanitary sewer, storm sewer and water main utilities.

3. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the City Agent shall, not later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived in writing by the City Agent for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

4. To protect the health, safety and welfare or, when necessary, to protect the right-of-way and its current use, the City Agent shall have the power to prohibit or limit the placement of new or additional facilities within a right-of-way. In making such decisions, the City Agent shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

2-0315. **RELOCATION OF FACILITIES**. A registrant must promptly, and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the City Agent for good cause requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation. The City Agent may make such requests to prevent interference by the company's equipment or facilities with (a) a present or future City use of the right-of-way, (b) a public improvement undertaken by the City, (c) an economical development project in which the City has an interest or investment, (d) when the public health, safety and welfare of the public require it, or (e) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a person shall not be required to move or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until reasonable costs thereof are first paid by the non-governmental entity requesting the vacation.

2-0316. **DAMAGE TO OTHER FACILITIES**. When the City Agent does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the City Agent shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to the registrant and must be paid within thirty (30) days from the date of the billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each registrant shall be responsible for the

cost of repairing any damage to the facilities of any other registrant caused during the City's response to an emergency occasioned by that registrant's facilities.

2-0317. **RIGHT-OF-WAY VACATION**.

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

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

2-0318. **EXCAVATION MORATORIUM**. No excavation requiring a permit will be allowed within 36 months of the completion of construction of a roadway. Additionally, no excavation will be allowed on any roadway within 24 months following any of the following activities: overlay, mill and overlay, chip seal, or slurly seal without written authorization from the City Agent.

2-0319. **EMERGENCY EXCAVATION**. Nothing in this ordinance shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe, or for making repairs, provided that the person making such excavation shall apply to the City Agent for such a permit on the first working day after such work is commenced.

2-0320. **PRESERVATION OF MONUMENTS**. Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a survey reference point, or a permanent survey bench mark, shall not be removed or disturbed without first obtaining permission in writing from the City Agent. Permission to remove or disturb such monuments, reference points or bench marks shall only be granted upon condition that the person applying for such permission shall pay all expenses incident to the proper placement of this monument by the City Agent or registered land surveyor. Any person or entity removing or disturbing such monuments without permission shall be responsible for any costs associated with replacing the monuments, as well as a $500 administrative penalty.

2-0321. **INSPECTIONS**. The provisions of this chapter do not relieve or change any other inspection requirements contained in the City ordinances or in any rules and regulations as approved by the City Council.

2-0322. **REGULATIONS**. The City Agent is hereby authorized and directed to promulgate rules and regulations setting forth the requirements for excavation protection,

backfilling and restoration, and related matters, to prepare the necessary related forms, and to issue such permits in compliance with this chapter.

2-0323. **SEVERABILITY**. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

2-0324. **PENALTY**.

1. Every person, firm or corporation violating this ordinance shall, upon conviction thereof, be punished by a fine not to exceed $500, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.

2. The City shall further have the right and authority to deny, suspend or revoke the registration or permit of every person violating this chapter.

2-0325. **APPEAL**.

1. A right-of-way user that (a) has been denied registration; (b) has been denied a permit; (c) has had a permit revoked; or (d) believes that the fees imposed are invalid, may have that denial, revocation, or fee imposition reviewed, upon written request by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

2. Upon confirmation by the City Council of the denial, revocation, or fee imposition, the right-of-way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the City Council and the right-of-way user. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the City, one arbitrator selected by the right-of-way users, and one selected by the other two arbitrators. The costs and fees of a single arbitrator shall be borne equally by the City and right-of-way user. In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other part of the expense of the third arbitrator and the arbitration.