

## **CHAPTER 40-29 SIDEWALKS**

### **40-29-01. Width, materials, and manner of construction of sidewalks prescribed by ordinance.**

The governing body, by ordinance, shall prescribe the width of sidewalks and may establish different widths in different locations. The governing body shall determine and prescribe the kind and quality of material of which and the manner in which sidewalks shall be constructed, taking into consideration the business and the amount of travel in the vicinity of each sidewalk. The ordinance shall be specific, and all contracts for the construction of sidewalks shall be let with reference thereto.

### **40-29-02. Duty of property owners to maintain sidewalks.**

The owner of any lot or parcel of land adjoining any street, lane, or alley in any incorporated municipality shall construct, reconstruct, and maintain in good repair such sidewalks along the street, lane, or alley adjacent to the owner's lot or parcel of land as have been constructed by the municipality or as have been ordered constructed by ordinance. Such sidewalks shall be of the material and width and upon the place and grade specified in the ordinance.

### **40-29-03. Notice to construct, rebuild, or repair sidewalks.**

Except as otherwise provided in this chapter, if the governing body deems it necessary to construct, rebuild, or repair any sidewalk in the municipality, it shall notify each owner of record at the last address shown in the recorder or the county treasurer or occupant of any lot or parcel of land that would be benefited by the sidewalk to construct, rebuild, or repair the same at the owner's own expense and subject to the approval of the street commissioner or city engineer, within the time designated in the notice. The notice must be directed in the manner hereinbefore provided to the owner of record or occupant and must set forth what work is to be done, the character of the same as specified in the ordinance, and the time within which the owner is required to do the work. The work must be done to the satisfaction of the street commissioner or city engineer. The notice may be general as to the owner of record or occupant but must be specific as to the description of the lot or parcel of ground to be benefited by the sidewalk that is to be built or repaired. The street commissioner or city engineer shall serve such notice by certified mail or delivering a copy thereof to the occupant or owner of record of each lot or parcel of occupied land described in the notice, or as to the occupant by leaving a copy thereof at the dwelling house upon such lot or parcel of land with some person over the age of fourteen years residing therein. If any lot or parcel of land is not occupied and service by mail is deemed impractical, the commissioner or city engineer may serve the notice by posting a copy thereof in a conspicuous place therein or immediately in front thereof. If such sidewalk is not repaired within the time fixed in such notice, the street commissioner or city engineer, as soon as practicable, shall repair the same and certify the cost thereof, with the person's return of service of the notice, to the city auditor, and the cost of such repairs must be paid out of the sidewalk special fund.

### **40-29-04. Power of municipality upon failure of property owner to comply with notice.**

If the sidewalk is not constructed, repaired, or rebuilt in the manner and within the time prescribed in the notice, the governing body shall order the work done by such person as it may have contracted with therefor, under the supervision of the city engineer or of the street commissioner in a city having no city engineer, at the expense of the lots or parcels of land benefiting from the sidewalk. The expense of constructing, repairing, or rebuilding the sidewalk shall include the expense of giving all notices required by the provisions of this chapter, of making assessments, and of any other nature incurred in doing such work.

### **40-29-05. Assessment of expense.**

The expense of constructing, repairing, or rebuilding sidewalks must be assessed against the lots or parcels of land benefited by the sidewalk by the city engineer, or by the street

commissioner in cities having no city engineer, who shall return the assessment and file it in the office of the city auditor. The city auditor shall cause such assessment, together with a notice of the time when and place where the governing body will meet to consider the approval thereof, to be published in one issue of the official newspaper of the city at least ten days prior to the meeting of the governing body at which the approval of the assessment will be considered.

**40-29-06. Assessment of expense in villages.**

Repealed by S.L. 1967, ch. 323, § 285.

**40-29-07. Bids for sidewalks.**

Bids for the construction of sidewalks in a city must be made in accordance with chapter 48-01.2.

**40-29-08. Awarding contract for sidewalks.**

Repealed by S.L. 1995, ch. 443, § 29.

**40-29-09. City auditor to deliver assessment rolls to county auditor - Extension - Collection.**

The city auditor shall deliver to the county auditor a duplicate of all assessment rolls containing assessments made under the provisions of this chapter, and the county auditor shall extend the assessments in the proper column against the property assessed. Each assessment shall be collected and the payment thereof enforced as county and state taxes are collected and enforced. When collected, the assessment shall be paid over by the county treasurer to the city auditor in the same manner as other taxes.

**40-29-10. Review of assessments - Assessment book.**

The city auditor shall keep in the city auditor's office a book called "sidewalk assessment book" and shall enter therein the cost certified by the street commissioner or the governing body as an assessment against the lots or parcels of land benefited by a sidewalk constructed, repaired, or rebuilt under the provisions of this chapter, and the name of the owners of such lots or parcels of land, if the same are known to the city auditor. The governing body shall review all assessments and hear all complaints against the same and approve the same as finally adjusted.

**40-29-11. Payment of assessments - Interest.**

All assessments for sidewalks shall be payable in equal annual amounts extending over a period of not exceeding ten years and shall bear interest at an annual rate of not more than two percentage points above the average net annual interest rate on any warrants for the total amount of the assessments remaining unpaid. Anyone may pay the sidewalk assessment in one single payment, and anyone who has paid any one or more installments may pay the balance in one payment.

**40-29-12. Procedure for making limited repairs to sidewalks.**

Repealed by S.L. 1969, ch. 374, § 2.

**40-29-13. Sidewalks repaired or constructed in municipalities not to be paid for by general taxation - Exception.**

Except as otherwise provided in this chapter, a municipality shall not be liable generally on any contract for the construction, rebuilding, or repairing of sidewalks and shall not be required to pay funds raised by general taxation upon any such contract.

**40-29-14. Sidewalk special fund - Warrants drawn upon - Levy.**

All moneys received by a municipality from assessments for the construction, rebuilding, or repairing of sidewalks shall be kept in a separate fund designated as "sidewalk special fund". Warrants shall be drawn on such fund for the payment of the cost of constructing, rebuilding,

and repairing sidewalks. Whenever all taxes and assessments collected are insufficient to pay the warrants issued, with interest, the governing body, upon the maturity of the last warrant, shall levy a tax upon all of the taxable property in the municipality for the payment of such deficiency; provided, however, that if at any time prior to the maturity of the last warrant a deficiency is likely to occur within one year or exists in the fund for the payment of principal and interest due on such warrants, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of such deficiency. In case a balance remains unexpended in such fund after the payment of all warrants drawn thereon with interest, it shall be paid over or transferred to the general fund of the municipality.

**40-29-15. Warrants - Payable - Interest - Contents - Signed - Uses.**

All sidewalk assessment warrants shall be payable as specified and in such amounts as in the judgment of the governing body will be provided by the taxes and assessments. The warrants shall bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not to exceed twelve percent per annum if sold at private sale. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The warrants must state on their face the purpose for which they were issued and from what fund they are payable and must be signed by the executive officer and countersigned by the city auditor under the seal of the municipality. The warrants may be used in making payment on contracts for making the improvements or may be sold for cash at not less than ninety-eight percent of the par value thereof and the proceeds credited to the special fund and used to pay for such improvements.

**40-29-16. City auditor to pay warrants from special fund.**

The city auditor shall pay sidewalk assessment warrants and interest thereon at the time or times and in the manner designated by the governing body out of the sidewalk special fund.

**40-29-17. Property owners petition for drainage and construction or repair of streets and sidewalks - Requirements.**

If two-thirds of the resident owners in number or in value of the real estate bounding both sides of any street, not less than one block in area, shall petition the governing body of a municipality to have such street ditched for the purpose of draining the same or any property abutting thereon, or for the construction or repairing of a sidewalk thereon, or if two-thirds of the owners of real estate in number or in value on one side of such street shall desire a sidewalk on that side, the governing body shall levy and cause to be collected by tax upon the real estate on such street or part of street, such sum of money as is necessary for the improvement of the street or sidewalk or the building of the sidewalk in front of each of the several lots or at the side of any corner lot or lots or real estate. No real estate shall be taxed as provided in this section for sidewalks built at a greater distance from the front of the real estate than one-half of the distance to the opposite side of the street.

**40-29-18. Snow and ice removal from sidewalks - Assessment - Street commissioner to make and file assessment list.**

If snow and ice are not removed from sidewalks within the time and in the manner provided by the ordinances of the municipality, the snow and ice may be removed by or under the direction of the street commissioner and the necessary expense thereof shall be chargeable against the abutting property. Annually, on or before May first, the street commissioner shall make and file in the office of the city auditor a list showing separately the amount chargeable and assessed against each lot and tract and stating the name of the owner of each such lot or tract so far as known to the street commissioner.

**40-29-19. Notice of meeting of governing body to confirm snow and ice removal report and assessment.**

The city auditor shall give notice of the hearing and confirmation of the report of snow and ice removal and of the assessment therefor at the regular June meeting of the governing body.

Such notice shall notify all persons objecting to the report and assessment to appear and present their objections. The notice shall be published once each week for two consecutive weeks in the official municipal newspaper and the last publication shall not be less than eight days before the date set for the hearing.

**40-29-20. Hearing on snow and ice removal assessment - Confirmation - Certificate attached to assessment list.**

At the meeting of the governing body in June or at such later meeting as the hearing and confirmation of such assessment may be adjourned to, the governing body shall consider and hear any objection to the snow and ice removal assessment, or to any part thereof, and after revising or correcting the assessment, if revision or correction is necessary, it shall approve and confirm the same. The city auditor shall attach to the assessment list the city auditor's certificate that the list is correct as confirmed by the governing body and shall file the same in the city auditor's office, and shall certify the assessment in the manner provided in section 40-24-11.

**40-29-21. Priority.**

From the time any assessment list provided for in this chapter is approved by the governing body, the assessment, with interest and penalties thereon, shall be and remain a permanent lien upon the property upon which the assessment is levied until the assessment is paid in full, and it shall have precedence over all other liens except general taxes. Such lien shall not be divested by any judicial sale, and no mistake in the description of the property assessed nor in the name of the owner thereof shall defeat such lien if the property assessed can be identified by the description in the assessment list.