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July 21, 2022

Board of City Commissioners
City Hall
225 4th Street North
Fargo, ND 58102

RE: Sidewalk Entertainers, Pushcart Vendors and Noise Ordinances

Dear Mayor and Commissioners,

Presented to you today is a staff coordinated response to the issues recently raised by continued operation of the sidewalk entertainers and pushcart vendors, initiated by a joint department memorandum to this Commission and recent social media exchanges and outreach. This letter is intended to advise as to issues and possible recommendations to resolve, short term and long term. Following the consideration of the Board of City Commissioners, public input will be sought for a brief period and recommendations will be brought back for final approval.

One of the early issues identified is an inconsistency in an interpretation of the amplified sound permit applications. As you know, the Planning Department has been responsible for granting Sidewalk Entertainer Permits. There is no mention of the use of amplified sound, but the permittees have interpreted the issuance to allow them to use amplified sound. However, the use of amplified sound permit is within the province of the police department. Thus, a police officer issued a ticket to a sidewalk performer for failing to secure an amplified sound permit. The sidewalk performer had a sidewalk entertainer permit issued by Planning. Long story made short, the ticket was voided and the performer was permitted for amplified sound by the Police Department until November, 2022. Unfortunately, that further resulted in conflict between the public, sidewalk entertainers and pushcart vendors.

First, in the short term, staff is recommending revocation of the amplified sound permits that have been issued to sidewalk entertainers. Specifically, staff is recommending that there be no amplified sound permits to pushcart vendors and sidewalk entertainers operating on the public right of way (not applicable to physical brick and mortar structures adjacent to the right of way), except as applicable to special events which otherwise require permits for safety, specific as to time, place and manner requirements. Thus, the amplified sound permits for the sidewalk entertainers would be terminated (in addition to eliminating the need for the sidewalk entertainer permit as discussed below). Note that pushcart vendors are not permitted to use amplified sound at any time, and that no such permits have been issued. Thus, this decision would not directly

impact pushcart vendors. Sidewalk entertainers who received amplified sound permits being revoked by this action could request a refund from Police.

Police have been active participants/partners in these discussions, and have indicated a willingness to take an active role in enforcement, and consideration of rules that will work to benefit all. This raises another recommendation which might appear counterintuitive, but law enforcement is recommending an increase in the permitted decibel levels for non-amplified sound. Enforcement of the present 55 decibels has proven not feasible, as normal conversation approaches that level. If the decibel level were to be increased to 80 decibels between 7:00 a.m. and 10:00 p.m., detection and enforcement of violations would be more attainable. A violation of Fargo Municipal Code § 11-0204 is a non-criminal offense resulting in a $120 fine. At a decibel level of 80 in the DMU/Central Business District, the Police have expressed that it feels it would be able to issue tickets for violations. The decibel limit could stay the same, or decrease slightly to 60 decibels (an increase from the present 50 decibels), between 10:00 p.m. and 7:00 a.m. to accommodate normal sidewalk activity (redlined ordinance provisions attached). Note that staff is recommending that the time constraints for the amplified sound permits be changed to end at 10:00 p.m. on weekend nights as well, consistent with weekdays.

Which brings us to the toughest nut to crack-- enforcement. The present ordinances have good and important rules for both sidewalk entertainers and pushcart vendors. But enforcement tools available may need some "teeth", including higher fines for violations of the existing rules, ways to hold the pushcart vendors more directly responsible, and revocation of the pushcart vendor permits for repeated violations. To this end, staff is recommending some ordinance changes to encourage voluntary compliance, with more penalty for violations.

Littering has been a primary complaint of the sidewalk entertainers and pushcart vendors activity. Fargo Municipal Code § 11-0813 does not specify a particular penalty for littering on public property. However, Fargo Municipal Code § 11-0814 addresses littering on private property, and violations are subject to a $150 fine. The littering and other cleanliness issues created by the pushcart vendor and sidewalk entertainer activities could carry this higher fine as well. And as for pushcart vendors, if the littering or sound violations are directly attributable to their operations and there is a persistent failure to rectify the issues, the vendor would receive a permit violation notice. A specified number of tickets or other permit violation notices could result in revocation of the pushcart vendor permit.

The permit requirement in the ordinance for sidewalk entertainers has been raised as unconstitutional by one permittee, who has requested a refund of the fee paid for the present season. While the matter of constitutionality can be debated, there appears to be no specific reason for the permit requirement for sidewalk entertainers. Thus, elimination of the sidewalk entertainer permit requirement would not only free up valuable staff time, but also remove any impediments to speech otherwise permitted on the right of way. An immediate cessation of the permit requirements for sidewalk entertainers only (not pushcarts or other vending on the right of way) until the ordinance can be changed to strike the provision referencing the same would be appropriate. Persons engaging in the sidewalk entertainment on the right of way would be

required to comply with all rules provided in Fargo Municipal Code §18-0310 (redlined version attached), to be amended to remove the permit references. Violations of the remaining rules, not addressed elsewhere (noise violations and littering) could be classified as non-criminal offenses with a fine associated, somewhere in the vicinity of $100. The Police could be provided a placard to present to the sidewalk entertainer to advise of the violation by way of warning, and if the sidewalk entertainer fails to comply, such entertainer would be subject to ticketing. Enforcement activity would be stepped up in order to ensure public safety and to minimize the conflicts presented by the sidewalk entertainer activity with other businesses, residents and the public enjoying the many amenities downtown Fargo has to offer.

Note that it is important to separate the pushcart vendors from the sidewalk entertainers, and address the ordinance deficiencies in terms of compliance and enforcement. Fargo Municipal Code § 18-0311 requires pushcart vendors to first obtain a permit, to be issued by the Planning Director or designee (redlined version attached). That permit requirement would remain. Unfortunately, much of the regulation incorporated in the sidewalk entertainer permit provisions is lacking from the pushcart vendor process, some of which are found in Fargo Municipal Code § 18-0313.3. In other words, staff is recommending that the pushcart vendors not only continue to be required to obtain an appropriate permit, but also provide assurances of compliance with the ordinance terms, insurance, and acknowledge the permit is non-transferable. In addition, the pushcart vendor ordinance could be further expanded to address the process to be employed in the event the permit is denied, and appropriate processes if violations of the ordinance are found to exist such that suspension or revocation of the permit is warranted. In addition to permit consequences, the pushcart vendors could be subject to a noncriminal offense for those violations not separately addressed (littering and noise ordinances) for fines in the amount of $100. Noncriminal violations could serve as a means of proof of the permit violations for purposes of determine suspension or revocation. However, not all violations would necessarily be evidenced by ticketing by Police; some violation notices may be issued by Planning, Health, Inspections or Engineering for violations such as size of cart and health and safety issues relating to the food preparation.

I will end this letter with additional considerations expressed by staff in order to address some of the complaints that have been raised. First, several complaints have been received stating that the hours of operation of the sidewalk entertainers and pushcart vendors are too late. Sidewalk performers are required to cease at 10:00 p.m. Pushcart vendors are presently permitted to operate until 2:00 a.m. Enforcement is an issue. Consideration could be given to changing the hours going forward. Second, there has been some discussion as to whether or not the pushcart vendors should contribute to the BID, or perhaps a monetary deposit of a certain amount made to the BID operations through the permitting process, given that much of the garbage created is likely deposited in trash cans emptied by the BID, and the sidewalks and cleared by BID personnel.

Suggested Motions: I move to immediately suspend the requirement that sidewalk entertainers obtain a permit in accordance with Fargo Municipal Code § 18-0310 and authorize a refund of requested permit application fees.

I further move to immediately revoke the amplified sound permits issued to sidewalk entertainers in accordance with Fargo Municipal Code §11-0209, and authorize the refund of permit fees collected if so requested by the permittees presently engaging in sidewalk entertainment.

I further move to direct staff to engage with the stakeholders and public generally to vet proposed and other possible changes to the Sidewalk Entertainment and Pushcart Vendor sections of the Fargo Municipal Code, as well as the Article 11-02, Noise Control and Radio Interference, and work with the City Attorney Office to present amended ordinance provisions for further consideration.

Sincerely,

Nancy J. Morris

NJM/lmw

Enclosures

ARTICLE 11-02 NOISE CONTROL AND RADIO INTERFERENCE

11-0201. Definitions.

For purposes of this article, certain words and phrases used herein are defined as follows:

1. "Ambient noise" is the all-encompassing noise associated with a given environment, being usually composite of sounds from many sources, near and far.
2. "'A' band level" is the total sound level of all noise as measured with a sound level meter using the "A" weighting network. The unit measurement is the dB(A). "dB" is the abbreviation for decibel. "dB(A)" is a weighted decibel which closely approximates the human ear response to sound.
3. "Bel" is the common logarithmic value of any sound intensity as related to the standard threshold of audibility (minimum detectable sound 10^{-12} watts per square meter).
4. "Decibel" is one-tenth (1/10) of a bel as measured on the "A" scale of a standard sound meter.
5. "Central Business District" as defined in § 8-0101.
6. "Cycle" is the complete sequence of value of a periodic quantity that occur during a period.
7. "Frequency" of a function periodic in time is the reciprocal of the primitive period. The unit is the cycle per unit time and must be specified.
8. "Outdoors" shall include any location not inside of a totally enclosed permanent structure.
9. "Sound amplifying equipment" is:
    A. Equipment that uses alternating current (AC) or direct current (DC) to amplify any sound.
    B. Equipment that amplifies sound to a level that equals or exceeds 85 dB(A) measured at or corrected to 25 feet.
10. "Sound-level meter" is an instrument including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of noise and sound levels in a specified manner.
11. "Person" is a person, person's firm, association, co-partnership, joint venture, corporation or any entity public or private in nature.
12. "Emergency work" is work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger.
13. "Emergency vehicles" are those vehicles such as ambulance, fire, police, and other city vehicles operating in time of emergency.

Source: 2017 (1981), 4839 (2012), 5275 (2020).

11-0202. Unlawful noise prohibited.

It shall be unlawful for any person to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city of Fargo.

Source: 2017 (1981), 4839 (2012).

11-0203. Unlawful noise—Determination.

The standards which shall be considered in determining whether a violation of § 11-0202 exists shall include, but shall not be limited, to the following:

A. The volume of the noise.

B. The intensity of the noise.

C. Whether the nature of the noise is usual or unusual.

D. Whether the origin of the noise is natural or unnatural.

E. The volume and intensity of the background noise, if any.

F. Within the Downtown Business District and all residential zoning districts, the following noises between the hours of 10:00 p.m. and ~~6~~7:00 a.m. ~~Sunday evening through Friday morning and 11:00 p.m. and 7:00 a.m. Friday evening through Sunday morning are specifically prohibited~~:

1. Radios, tape players or other sound amplifiers, whether portable or installed in vehicles, at a level which can be heard by a person more than 10 feet away from said vehicle or amplifier.

2. Any horn, bell or other noise-making device except burglar alarms or similar emergency warning devices.

3. Shouting or yelling where the voice is clearly audible at a distance of more than 10 feet.

Source: 2017 (1981), 2372 (1987), 4392 (2004), 4839 (2012).

11-0204. Projection of sound unlawful.

It shall be unlawful to project a sound or noise excluding noise emanating from a moving motor vehicle from one property into another, within the boundary of a use district which exceeds the limiting noise criteria set forth in Table 1 below, except as permitted under section 11-0208 and 11-0209.

A. Sound or noise projecting from one use district, into another use district with a different noise level limit, shall not exceed the limits of the district into which the noise is projected.

B. The permissible levels in decibels set forth in Table 1 shall be modified so that any noise occurring on property deemed to be nonconforming use property shall be determined upon the conforming zoning designation of the property.

TABLE 1. LIMITING NOISE LEVELS FOR ZONING DISTRICTS

	Zoning District		
	Residential AG, SR-0, SR-1, SR-2, SR-3, SR-4, MR-1, MR-2, MR-3, MHP, NO, NC, DMU	Commercial GO, LC, GC	Industrial LI, GI
Maximum number of decibels permitted from 6:00 a.m. to 10:00 p.m., Monday through Thursday and ~~6~~7:00 a.m. to 11:00 p.m. on Friday and 7:00 a.m. to 11:00 p.m. Saturday and 7:00 a.m. to 10:00 p.m. on Sunday	~~55~~80	~~65~~80	80

Maximum number of decibels permitted from 10:00 p.m. to ~~6~~7:00 a.m. Sunday evening through Friday morning and 11:00 p.m. to 7:00 a.m. Friday evening through Sunday morning	~~50~~60	60	75

For purposes of the decibel levels listed in Table 1, zoning districts that are comprised of a mixed use, having a residential land-use component, shall be designated as residential and the more restrictive decibel levels applicable for residential zoning shall apply.

Source: 2017 (1981), 4553 (2006), 4839 (2012).

11-0205. Motorized vehicles—compression brakes prohibited.

It shall be unlawful to operate a motorized vehicle within the city limits which creates a noise or sound which exceeds the noise level limits set out in Table 2, as follows:

TABLE 2. LIMITING NOISE LEVELS FOR MOTOR VEHICLES

A. Trucks, buses, construction equipment, or any motor vehicle with a gross weight rating of 10,000 pounds or more: Maximum allowable limit: 88 dB(A) measured at or corrected to 25 feet.

B. Passenger cars, pickups, vans, motorcycles, snowmobiles, or any motor vehicle with a gross weight rating less than 10,000 pounds: Maximum allowable limit: 80 dB(A) measured at or corrected to 25 feet.

C. Interstate Motor Carrier:
Maximum allowable limit:

1. 92 dB(A) measured at or corrected to 25 feet when traveling on roadways with speed limits of 35 mph or less.

2. 92 dB(A) measured at or corrected to 25 feet when traveling on roadways with speed limits of more than 35 mph.

D. Notwithstanding any other provision of the Fargo Municipal Code, it shall be unlawful for any person within the city limits to make, or cause to be made, loud or disturbing noises with any mechanical devices operated by compressed air and used for purposes of assisting braking on any semi-tractor.

Source: 2017 (1981), 4731 (2010).

11-0206. Aircraft.

It shall be unlawful for any person to operate or cause to be operated any type of aircraft over the city which produces noise levels exceeding 88 dB(A) within the city.

Source: 2017 (1981).

11-0207. Exemptions.

The following uses and activities shall be exempt from noise level regulations:

A. Noises of safety signals, warning devices, and emergency relief valves.

B. Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of emergency.

C. Noises resulting from emergency work as defined in § 11-0201(10).

D. Any construction or maintenance activities at the construction or maintenance site.

E. Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with § 11-0208 or § 11-0209.

F. Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and with the duly adopted federal air regulations shall be exempt from the provisions of § 11-0206 as well as other regulations of this section. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations shall also be exempt from the provisions of § 11-0206 as well as the other regulations of this section.

G. Any regulation of railroad noise will be subject to the following:
Title 40, Code of Federal Regulations, part 201:

1. 201.1 (c), (m), (p), (t), (aa), (dd), (ee)
2. 201.10
3. 201.11 (a), (b)
4. 201.12 (a), (b)
5. 201.13
6. 201.22, 201.23, 201.24

H. Non-amplified sound generated at a scheduled stadium event, which includes noise generated by parade spectators and participants on the parade route during a lawful parade.

I. Amplified announcements at scheduled stadium events or other lawful outdoor events.

Source: 2017 (1981), 4839 (2012).

11-0208. Application for special permit for construction or demolition equipment.

In the event certain construction or demolition equipment noise will exceed prohibited noise levels, the owner or operator of such equipment may apply for relief from this article on the basis of undue hardship. Applications for a permit for relief from the noise level designated in this section on the basis of undue hardship may be made to the city engineer or a duly authorized representative. Any permit granted by the city engineer hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The city engineer, or his duly authorized representative, may grant the relief as applied for if the city engineer finds:

A. That additional time is necessary for the applicant to alter or modify his activity or operation to comply with this section; or

B. The activity, operation or noise source will be of temporary duration, and cannot be done in a manner that would comply with other provisions within this article; and

C. That no other reasonable alternative is available to the applicant.

The city engineer may prescribe any conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

Source: 2017 (1981), 4839 (2012).

11-0209. Application for permit for sound amplifying equipment used outdoors- Permit Required.

No person shall use or maintain any sound amplifying equipment outdoors without first having obtained a permit.

A. Application— A complete application for a permit must be submitted to the chief of police or his authorized designee in a form established by the chief of police, along with a non-refundable fee that has been established by resolution of the board of city commissioners. The application must be made at least 30 days in advance of the requested permit date unless a waiver is granted by the chief of police. The application shall contain the following information or, in lieu thereof, a detailed statement of the reason why such information cannot be furnished:

   1. The name, address and telephone number of the applicant;
   2. The address and a site plan showing the location of the property where the sound amplifying equipment will be used, a listing of the type of sound amplifying equipment and the direction to which the ~~the~~ amplified sound will be directed.
   3. The date and time period the sound amplifying equipment will be used.
   4. A statement that the applicant understands the requirements of this chapter and agrees to comply with all applicable requirements.

B. Regulations for Use.— The following regulations apply to all permits issued pursuant to Section 11-0209.

   1. The only sound permitted shall be music or human speech or both.
   2. No permits shall be issued for any property located within a residential zoning district. For the purpose of this section the Downtown Mixed-Use Zoning District is not considered residential.
   3. Permits are valid for the day or days listed on the permit only.
   4. Permits issued for any property where the source of the sound is located within 500 feet of a residential zoning district shall be valid for no longer than one day.
   5. With respect to any permit for a property where the source of the sound is within 500 feet of a residential zoning district, no more than one permit may be issued every 30 days.

C. Waiver—The requirement of filing an application at least 30 days before the event may be waived by the chief of police upon a showing that the 30-day period may substantially burden protected rights, including rights of speech and assembly as to matters of public concern.

D. Issuance of Permit— The chief of police has the discretion to grant or deny a permit that pertains to a property for which a permit has been revoked within the prior 24-month period. In deciding whether to deny a permit on such grounds, the chief of police shall consider:

   1. Whether the ownership of the property has changed since a prior permit was denied.
   2. What steps, if any, the property owner has taken to correct the violation which led to the permit revocation.

With respect to all other applications for permits, the chief of police shall issue a permit to any applicant who has submitted a properly completed application along with the applicable fee unless such permit is prohibited because the application pertains to property in a residential zoning district.

E. Revocation— A permit may be revoked by the chief of police upon:

1. Violation of one or more regulations of the permit;
2. Material misrepresentation of fact in the permit application; or
3. Material change in any of the circumstances relied upon by the chief of police in granting the permit.
4. A permit may be revoked at any time, even after the permitted event, if the chief of police learns of any violation listed above.

F. Exemptions - The following shall be exempt from the requirement of obtaining a permit under this section:

1. Community events and festivals permitted by Section 18-0314 of the Fargo Municipal;
2. Other community-wide events or festivals;
3. An event that is open to the general public for which no admission is charged and when the purpose for the event is generally not for commercial gain; and,
4. All land and property owned by the Park District is exempt from the requirements of this section.

The chief of police is authorized to determine whether a proposed event is exempt pursuant to this subsection, and shall consider the factors provided under Section 18-0314.C. of the Fargo Municipal Code in making such determination. The Fargo Moorhead Marathon, currently operated by Fargo Marathon, Inc., is hereby deemed to be a community-wide event that is exempt.

G. Appeal—The permit applicant ~~or any person actually or potentially aggrieved by the issuance or denial of a permit or the granting or denial of an exemption~~ may appeal the denial of a permit ~~said decision~~ to the board of city commissioners.

Source: 4839 (2012), 4966 (2015).

11-0210. Radio interference between six o'clock p.m. and eleven o'clock p.m. prohibited.

It shall be unlawful for any person, firm or corporation to operate in the city any device or apparatus, either electrical or mechanical, which generates or causes high frequency oscillations or electrostatic or electromagnetic waves which interfere with radio broadcast reception between the hours of six o'clock p.m. and eleven o'clock p.m., except that a person duly licensed to practice medicine, osteopathy, chiropractic, or dentistry by the laws of the state of North Dakota, in a case of absolute emergency arising in the course of the practice of his profession, which case demands immediate treatment between the aforementioned hours, may operate or cause to be operated under his immediate direction and supervision any machinery necessary to give emergency in such case.

This prohibition shall be construed to apply to radio equipment either of the regenerative or any other type, violet ray machines, X-ray machines, diathermy machines, vibrating battery charges, sign changers or electric signs or devices using a blinking device where a make and break contact is maintained, electric refrigeration machines, electrically driven oil pumps or furnace equipment, high tension ignition systems, electric transmission lines, defective insulators and transformers, defectively sparking motors and generators, and all other electrical or mechanical devices which, because of the manner of construction, state of repair, or condition or manner of operation, interfere with radio reception.

Source: 2017 (1981), 4839 (2012).

11-0211. Unlawful interference defined.

Unlawful interference with radio reception within the meaning of this article shall exist where radio reception interference arises from the use or operation of any device or apparatus such as violet ray machines, machines using Tesla coil or principle, X-ray machines and diathermy machines described in § 11-0210, under all of the following conditions:

A. Such device or apparatus must be situated not less than 100 feet from the radio receiving set with which it interferes.

B. The radio receiving equipment interfered with shall be operated at a volume comparable to a person's normal tone of voice.

C. The broadcasting station whose program is being received when the interference occurs must have a power output of not less than one kilowatt and must be located not more than 300 miles from the receiving set.

It is expressly provided, however, that this article shall not apply to radio stations, either broadcast, commercial, or amateur, duly licensed by the government of the United States; and unlawful radio reception interference shall not be deemed to arise or exist from the operation of duly licensed broadcasting stations.

Source: 2017 (1981), 4839 (2012).

11-0212. Interference—When permitted.

Unlawful radio reception interference, within the meaning of this article, shall not be deemed to arise or exist under the following conditions:

A. It shall not be unlawful to cause radio reception interference except between the hours of six o'clock p.m. and eleven o'clock p.m.

B. It shall not be unlawful to cause radio reception interference where the devices mentioned in § 11-0210 are operated by any agency or department of the city, the county of Cass, the state of North Dakota, or the United States of America; provided, that such devices be equipped so far as is reasonably possible with filters, chokes, condensers, shields, and grounds and are operated and maintained exclusively in the exercise of public or governmental functions.

Source: 2017 (1981), 4839 (2012).

11-0213. Building inspector—Powers and duties.

The building inspector of the city, or his duly authorized deputies, shall have the right to enter upon any premises, other than private residences, at all reasonable hours for the purpose of inspecting the same. He may enter upon the premises and inspect private dwellings with the consent of the owner or occupant thereof. If it is found that equipment, apparatus, or devices described in § 11-0210 are being operated or maintained in violation of this article, the building inspector shall notify, in writing, the person, firm or corporation responsible for the unlawful operation or maintenance of such devices, equipment, or apparatus to discontinue the use thereof, or to make additions, repairs, or modifications thereof, in order that the same may be operated or used in a manner which complies with this article. The mailing of a registered or certified letter to the owner or operator of such machine, device, or apparatus, addressed to such owner or operator at the premises where such machine, device, or apparatus is operated or maintained, or the personal service of such notice upon the said owner or operator shall constitute sufficient notice for the purposes of this article. In the event that the owner or operator of such machine, device or apparatus shall not, within three days after the giving of such notice, either entirely discontinue

the use or operation of such machine, device, or apparatus during the hours when the same is prohibited to be used or operated by the terms of this article or repair the same so that it complies with the provisions of this article, such owner or operator thereof shall be deemed to be operating the same in violation of the provisions of this article.

Source: 2017 (1981), 4839 (2012).

11-0214. Wires over streets, alleys, and private property—Consent of owner.

No person, firm, or corporation shall install, operate, or maintain any aerial ground wire or other wire used in connection with any radio receiving set over, upon or across any public street or alley; nor over, upon, or across the private property of any other person, firm, or corporation without the consent of the owner thereof; nor within five feet of any telephone, electric light or telegraph pole, or any exterior telephone, telegraph, or electric light service wire. Such aerial, ground wire, or any other device used in connection with the maintenance of any radio receiving set shall be properly grounded or protected against lightning or other improper foreign electrical conductivity.

Source: 2017 (1981), 4939 (2012).

11-0215. Advertising or making announcements from buildings or on streets with sound trucks or noise-making devices prohibited—Exceptions.

The word "person" as use in this section shall include the singular and the plural and shall also mean and include any person, firm, corporation, association, club, co-partnership, society, or any other organization.

No person owning, leasing, or operating any building, structure, or vehicle shall play, use, operate, or permit to be played, used, or operated any radio receiving set, musical instrument, phonograph, loud speaker, sound amplifier, sound truck, or other machine or device for the producing or reproducing of sound for the purpose of advertising, making announcements, or attracting the attention of the public to such building, structure, or vehicle, except that the board of city commissioners may issue a permit for the use of sound trucks upon specified city streets during stated hours if the announcements or programs to be broadcast are in the public interest and not for commercial purposes.

Each person shall be deemed guilty of a separate offense for each day during any portion of which any violation of the provisions of this article be committed, continued, or permitted.

Source: 2017 (1981), 4839 (2012).

11-0216. Public nuisance—Remedy—Penalty.

Any noises found to be in violation of this ordinance and the maintenance, use, or operation of any of the apparatus, machinery, or devices defined in § 11-0210 in violation of the terms of the article, are hereby declared to be a public nuisance and may be abated, enjoined or repressed in the same manner as any other public nuisance, including restraining order or injunction issued by a court of competent jurisdiction. A violation of any of provision of this article shall constitute an infraction, punishable in accordance with § 1-0301 of the Fargo Municipal Code. Each day a violation exists shall be deemed to be a separate offense. The remedy provided by this section shall not be deemed to be exclusive, and violations may be prosecuted in municipal court in the same manner as violations of other ordinances.

Source: 2017 (1981), 4553 (2006), 4839 (2012).

ARTICLE 18-03 USE AND CARE OF STREETS AND SIDEWALKS

18-0301. Removal of snow and ice from sidewalks.

The owner or occupant of any building or grounds within the city fronting upon or adjoining any street, when a sidewalk exists, shall clear the sidewalk in front of or adjoining such building and grounds or unoccupied lot or building, as the case may be, of snow and ice to the width of such sidewalk on or before nine o'clock p.m.

If the owner or occupant shall refuse or fail to remove such snow and ice by nine o'clock p.m. of each day and cause the sidewalk to be kept clear of snow and ice, the director of public works may remove, or cause to be removed, all snow and ice from the sidewalks along or in front of any buildings, grounds or premises, and the necessary costs and expenses of such removal of snow and ice by the director of public works shall be chargeable and assessed against, and shall be a lien upon such premises. Assessment of costs and expenses shall be in accordance with article 3-17 of the Fargo Municipal Code.

Source: 1952 Rev. Ord. 18-0301, 2692 (1994).

18-0302. Riding or driving on sidewalk prohibited.

No person shall ride, drive, place, push, draw, or back any horse or other animal, wagon, car, automobile, or other vehicle or heavy object upon or over or across any sidewalk except at a regular crossing or concrete driveway or where alleys intersect the streets. The occupant of any yard, lot, or warehouse may have access across the sidewalk by placing in front of the yard, lot, or warehouse, at his expense, with the consent of the city engineer, a temporary bridge or carriageway over the sidewalk, gutter, and curbing in such manner as will preserve the same from injury.

Source: 1952 Rev. Ord. 18-0302.

18-0303. Regulating movement of tractors and heavy vehicles on pavement.

Repealed by omission.

Note: This section is repealed by omission from the 1965 Revised Ordinance. The subject matter of this section is covered in 8-0921.

18-0304. Sale of merchandise from stands on streets prohibited.

Except as authorized under sections 18-0307 through 18-0317 herein, it shall be unlawful for any person, firm, or corporation to set up any stand or wagon upon any of the streets, alleys, sidewalks, crosswalks, or public grounds within the city for the purpose of selling therefrom, or exposing for sale, any meats, provisions, refreshments, or any goods or merchandise whatsoever.

Source: 1952 Rev. Ord. 18-0304, 4378 (2004).

18-0305. Selling on streets restricted.

Except as authorized under sections 18-0307 through 18-0317 herein, no person, persons, firm, or corporation shall sell, offer, or expose or sale at any point upon any of the streets, alleys, sidewalks, crosswalks, or public

grounds, including but not limited to the berm, boulevard, return or apron abutting a private driveway, within the city any goods, wares, or merchandise whatsoever contrary to the provisions of articles 25-5 and 25-7 of chapter 25.

Source: 1952 Rev. Ord. 18-0305, 4378 (2004), 4740 (2010).

18-0306. Amusements on streets prohibited.

No person shall, upon any street or alley within the city, take part in any game of ball, nor shall any person, upon any such street or alley, take part in any game of tossing ball or flying kite, or any other game or play, so as to impede or endanger public travel thereon.

Source: 1952 Rev. Ord. 18-0306.

18-0307. Limited use of sidewalks in Central Business District allowed.

Except as allowed under the provisions of this article 18-03 for locations within the Central Business District, it shall be unlawful for any person to sell, offer for sale, exhibit or any goods, wares, merchandise, mechanical devices, animals or any article of any kind whatsoever, by whatever name called, upon any public street, sidewalk, square, avenue or alley within the corporate limits of the city.

A. None of the requirements of this article for permits or encroachment agreements shall apply to outdoor dining areas or outdoor merchandise areas which are otherwise allowed under the community events and festivals permit set forth in section 18-0314.

B. Permits issued for pushcarts and outdoor merchandise areas under the provisions of this article shall be temporarily suspended at locations designated for the community events and festivals permitted under section 18-0314 of this code. Permit holders may, however, apply to continue their operation during the community event or festival pursuant to the procedures set up by the community event or festival permit holder. Permits issued for outdoor dining areas shall not be temporarily suspended in areas designated for a community event or festival.

C. The authority granted to Sidewalk Performers under this article shall be temporarily suspended at locations designated for community events and festivals permitted under section 18-0314 of this code. Sidewalk Performers may, however, apply to continue their operation during the community event or festival pursuant to the procedures set up by the community event or festival permit holder.

Source: 4379 (2004).

18-0308. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

A. "Central Business District" as defined in § 8-0101. For purposes of defining this boundary, the sidewalk on both sides of the streets, above-named, shall be included within the Central Business District.

B. Grilling" shall mean the cooking of raw animal products such as meat, poultry or fish on a flat top or charbroil style high-heat surface designed for such purpose, but does not include smoking, deep-fat frying, wok or skillet-style cooking, barbecuing/rotisserie-style cooking or any other type of cooking.

C. "Grilling pushcart" shall mean a pushcart that includes equipment for grilling.

D. "Merchandise" shall include, but is not limited to, plants, flowers, wearing apparel, jewelry, ornaments, art work, household or office supplies, food or beverages of any kind, whether or not for immediate consumption, or other goods or wares.

E. "Outdoor dining area" shall mean an area in front of or adjacent to a business maintaining a restaurant or limited restaurant license issued by the city health department and located on a public sidewalk whereon tables, chairs or benches are placed for purposes of serving food and/or alcoholic beverages.

F. "Outdoor merchandise area" shall mean an area in front of or adjacent to a retail business where merchandise is located on a public sidewalk for the purpose of displaying, exhibiting, selling or offering for sale merchandise.

G. "Pedestrian way" shall mean the area of sidewalk adjacent to the property line and extending therefrom to the edge of the curb or for a distance of ten (10) feet, whichever is narrower.

H. "Planning Director" shall mean the department head of the Department of Planning and Development of the city of Fargo.

I. "Professional sidewalk entertainer" shall mean a sidewalk entertainer who, through direct or passive behavior, asks for or solicits any form of remuneration and "professional sidewalk entertainment" shall mean sidewalk entertainment performed while the performer is thus soliciting any form of remuneration.

J. "Pushcart" shall mean a wheeled cart which may be moved by one person without the assistance of a motor and which is designed and used for displaying, keeping or storing any food, beverages or other articles for sale by a vendor. To the extent a pushcart is used for displaying, keeping or storing food or beverages, the pushcart must be limited to service of potentially hazardous foods or commissary-wrapped food maintained at proper temperatures, or limited to the preparation and service of frankfurters, as is defined by North Dakota Administrative Code Chapter 33-33-04. Cooking will only be allowed on an approved grilling pushcart.

K. "Review Committee" shall consist of five members to be appointed by the mayor with the consent of the board of city commissioners. Such membership of the review committee may be comprised of one or more city employees from one or more departments within the city.

L. "Sidewalk entertainer" shall mean a person who engages in sidewalk entertainment.

M. "Sidewalk entertainment" shall mean performances which may include, but not be limited to, music, dance, mimes, magicians, clowns, jugglers and theatrical presentations, but specifically excluding speeches, lectures, and sermons.

Source: 4379 (2004), 4644 (2008), 5275 (2020).

18-0309. Pedestrian signs.

Notwithstanding any other requirements of this article, pedestrian signs may be on public sidewalk that is within the Central Business District and that is at least six (6) feet in width, provided the dimensions and proposed location of the sign meet the following standards and provided a permit is obtained from the planning director.

A. A pedestrian sign permit application must be submitted to the planning director in a form established by the planning director along with a nonrefundable fee established by the board of city commissioners.

1. The application must include the name, address and telephone number of the applicant, the dimensions of the proposed sign and the specific location of where the sign will be displayed, including the distance the sign will be from the adjacent curb and building. A photograph or drawing of the sign shall be submitted, along with a complete description of the materials from which the sign will be made and the manner in which the sign is self-supporting.

2. The height of the sign shall not exceed four feet (48 inches) above the surface of the sidewalk. A height of five feet (60 inches) above the surface of the sidewalk is permitted if the sign is mounted on an easel.
3. The width of the sign shall not exceed 30 inches, or a width that ensures that at least 44 inches of unobstructed clearance will exist on the sidewalk (after sign placement), whichever results in the lesser sign width.
4. Spacing between sign locations shall be 25 feet, so that no portable sign application may be approved for any sign that is proposed to be located within 25 feet, measured along the same side of the street, of any other portable sign location.
5. No sign shall extend past the curb or into any portion of the street surface or parking lane.
6. Pedestrian signs shall be self-supporting and freestanding. Sign supports or features shall not protrude into the pedestrian area adjacent to the sign.
7. The application and permit shall clearly state that the applicant agrees to indemnify and hold the city harmless from any and all claims, demands or causes of action which may result from placement of the sign on public property. The applicant shall, at the time of making application for the permit, provide proof of insurance to cover the risk of injury to person or property caused by the presence of the sign. Said insurance shall provide minimum coverage for bodily injury of $1,000,000 per occurrence and in the aggregate.
8. Signs requiring electrical connections shall be prohibited.
9. The permit shall state the name, address and telephone number of the applicant, the date of issuance of the permit and the date of expiration of the permit. The permit must be securely fastened to the sign at all times while the sign is being displayed or evidence of a permit made visible on the store front.
10. The permit shall be valid for a period of one (1) year, but may be renewed upon application of the permittee for another period of one (1) year, without payment of an additional fee.
11. Permitted pedestrian signs may be displayed or located on the sidewalk only between the hours of 7:00 a.m. and 11:00 p.m. or at business closure, whichever is earlier.

Source: 4379 (2004).

18-0310. Performers of sidewalk entertainment.

Performers of sidewalk entertainment, ~~who perform pursuant to a permit issued pursuant to this article,~~ may perform on any sidewalk or pedestrian way within the Central Business District provided that such performers shall:

A. Not violate the prohibitions on disturbing, annoying and unnecessary noise as set forth in article 11-02 of the Fargo Municipal Code.

B. Not violate the prohibitions on panhandling as set forth in Fargo Municipal Code section 10-0311.

C. Not obstruct or cause to be obstructed pedestrian or vehicular traffic, including but not limited to not obstructing or causing to be obstructed sidewalks, doorways or other access areas. Entertainer must provide a minimum of 6 feet of pedestrian passageway. If a performer attracts a crowd sufficient to obstruct the public way, a police officer may disperse the crowd if the officer determines the crowd is resulted in an obstructed pathway. The officer may ask the performer to temporarily suspend a performance or to move to a less congested area~~. Failure to cooperate with such request can lead to suspension and/or revocation of the sidewalk entertainer permit.~~

D. Not sell records, tapes or other products.

E. Perform only at times between the hours of 9:00 a.m. and 10:00 p.m.

F. Not consume nor be under the influence of alcoholic beverages or other controlled substances while performing, in compliance with the North Dakota laws and regulations.

G. Not perform any nearer than 150 feet from another professional sidewalk entertainer who is also performing.

H. Not perform at locations designated for a community event or festival, unless permitted to play at the community event or festival by the event or festival coordinator, pursuant to section 18-0313.

I. Comply with all federal, state and local laws when performing within the city, including but not limited to, the panhandling ordinance and the noise ordinance.

~~J. Display at all times the city issued permit for sidewalk entertainment so that it can be easily seen by city staff or Fargo police. If such permit is not displayed as required, it will be assumed that the performer has no valid permit and the police will have authority to order the person to cease performing and move from the location if appropriate.~~

K. Not perform within fifty (50) feet of a pushcart or permitted outdoor eating area.

L. Maintain the permitted area within a radius of ten feet free of trash and debris.

M. Not create a fire hazard or use fire, knives, or dangerous items during a performance.

N. Not engage in the application of tattoos or body piercing.

O. Not include obscenity in a performance.

P. Not engage in harassment or coercion of passersby.

Q. Not display or offer food or drink for sale.

R. Not display tables, lounge chairs, push carts or mobile display racks.

S. Not block access to an entrance to a building.

T. Not perform in a street, or not interfere with a motorist, either regarding the passage of a vehicle or the sight of its driver.

U. Make no effort to reserve a location for sidewalk entertainment; performance locations shall be on a daily, first-come, first-served basis. ~~Permit holders~~ Sidewalk entertainers shall abandon the location at the end of the day, including the removal of all personal property by 10:00 p.m..

~~V. Not engage in fraudulent practices or solicitations, including, but not limited to misrepresentation about the nature and type of organization with which the permit holder is associated or misrepresentation or concealment of any material fact in the application process.~~

W. Not connect to electric outlets or power sources owned by the city or others without the express written permission to do so..

Source: 4379 (2004), 4644 (2008).

~~18-0310.1. Performers of sidewalk entertainment for remuneration—permit required.~~

~~No person shall engage in any form of sidewalk entertainment on public property in the Central Business District while requesting, either through direct or passive solicitation, any form of remuneration without having first obtained a professional sidewalk entertainment permit pursuant to this article.~~

Source: 4644 (2008).

18-0310.2. Sidewalk entertainer or performer for remuneration—permit required seventy-two hours prior to performance.

No person shall engage in professional sidewalk entertainment unless he has obtained, at least seventy-two (72) hours prior thereto, a permit for professional sidewalk entertainment.

Source: 4644(2008).

18-0310.3. Professional sidewalk entertainer application—fee—agreement to comply with regulations.

A. Application.—An application for professional sidewalk entertainment shall be submitted to the Planning Director. The permit applicant shall complete the application form provided by the city and shall provide the applicant's name, address, and telephone number along with a recent photograph showing the head and shoulders in a clear and distinguishable manner. The Planning Department may take the photograph if the applicant is unable to provide a photograph. The applicant shall also provide a description of the entertainment. Persons under the age of eighteen may apply for a permit provided that the parent or guardian of the minor co-signs the application and hold-harmless statement and accompanies the minor at all times during a performance.

B. Fee.—Permit fees for sidewalk entertainment for remuneration shall be set by resolution of the board of city commissioners. The permit fee shall be payable at the time an application is submitted.

C. Hold harmless agreement.—As part of applying for and obtaining a professional sidewalk entertainer permit, the permittee agrees to hold the city and its employees harmless from any and all claims or causes of action arising out of or related to the permitted activity.

D. Permits nontransferable.—Permits for professional sidewalk entertainment may not be transferred to, or held by, a person, firm, or entity other than the permittee.

E. Receipt of permit—agreement to comply with regulations.—Upon receipt of and signing the permit for professional sidewalk entertainment, the applicant agrees to comply with all rules and regulations established under this article as well as with all other applicable Fargo city ordinances or related regulations. The applicant also acknowledges that the permit may be immediately revoked or suspended as a result of any violation of applicable city ordinances or related regulations.

F. Effective date of permit.—Each professional sidewalk entertainment permit shall be effective for a period of one year from the time that it is issued; provided, however, that a shorter effective period may be prescribed for professional sidewalk entertainment by resolution of the board of city commissioners.

Source: 4644 (2008).

18-0310.4. Denial of professional sidewalk entertainment permit—appeal.

A person whose application for a professional sidewalk entertainment permit is denied may appeal to the city administrator for review of the denial. The appellant shall file the appeal in writing to the office of the city commission within ten days from the date the application is denied. The city administrator shall provide notice and opportunity to be heard. Further right of appeal shall be to the city commission, which shall constitute the final administrative decision.

~~Source: 4644 (2008).~~

~~18-0310.5. Suspension of sidewalk entertainer permit—review process.~~

~~A. Suspension based on violations. If the planning director determines that a professional sidewalk entertainer is in violation or one or more of the provisions of this article, the planning director may suspend professional sidewalk entertainer's permit for a period of not more than ninety (90) days. The planning director shall provide written notice to the permittee of the suspension, including the period of suspension and the basis for the suspension. The period of suspension shall commence from the time of delivery of the written notice to the permittee. Delivery shall be deemed to have been completed upon the earlier of (1) personal delivery of the written notice upon the permittee, (2) the expiration of three days after delivery of the written notice by any form of mail or third-party commercial delivery addressed to the address noted on the permittee's application and requiring a signed receipt and resulting in delivery to that individual.~~

~~B. Review of suspension order. The permittee may appeal the suspension by filing written notice of appeal with the office of the city commission within ten (10) days of delivery of the notice of suspension. The permittee's appeal shall be heard by the city administrator who shall provide the permittee with an opportunity to explain the basis for his challenge of the suspension. The city administrator is authorized to affirm, reverse, modify or amend the order of suspension, or to remand the matter to the planning director for further action as the city administrator may deem appropriate. A decision of the city administrator may be appealed to the board of city commissioners by filing a notice of appeal with the office of the city commission within ten (10) days of delivery of the notice of decision by the city administrator with the executive assistant. The permittee may not engage in sidewalk entertainment after revocation of the permit or during a suspension period even if an appeal of the order of revocation or suspension is pending.~~

~~Source: 4644 (2008).~~

~~18-0310.6. Revocation of professional sidewalk entertainer permit.~~

~~A. A professional sidewalk entertainer permit obtained through fraud or material misrepresentation on the permittee's application shall be void and the city administrator is authorized to revoke the permit. Prior to revocation, the city administrator or his designee shall provide the permittee notice and an informal opportunity to be heard on the decision to revoke.~~

~~B. A professional sidewalk entertainer permit may be revoked by the city administrator if the Planning Director or court has made a finding that the professional sidewalk entertainer has violated one or more provisions of this article at least two times within any twelve-month period, or if it is found that continued operation by the permittee would jeopardize the health, safety or general welfare of the public. Prior to revocation, the city administrator or his designee shall provide the permit holder notice and an informal opportunity to be heard regarding the decision to revoke a permit.~~

~~C. Any revocation of a permit under subsections A or B of this section shall be for the remainder of the current permit period.~~

~~D. The decision of the city administrator or his designee to revoke a sidewalk entertainer permit under subsection A or B shall be provided in writing to the permittee. The revocation decision may be appealed to the city commission upon the filing of a written appeal with the city commission office within ten days of receiving the city administrator's written decision concerning revocation of the permit.~~

~~Source: 4644 (2008).~~

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18-0310.7. Trespass—sidewalk entertainer.

Nothing in this article shall be construed to allow a sidewalk entertainer, professional or otherwise, to trespass upon privately owned property.

Source: 4644 (2008).

~~**18-0310.8. Requests for remuneration during sidewalk performance without a permit—infraction.**~~

~~Any person who performs or engages in sidewalk entertainment without a sidewalk entertainment permit and who requests any form of remuneration, either directly or passively, shall be guilty of an infraction. Only performers with a valid sidewalk entertainment permit issued pursuant to the provisions in this article may solicit remuneration, either directly or indirectly, during their sidewalk entertainment.~~

~~Source: 4644 (2008).~~

18-0311. Pushcarts.

Pushcarts meeting the requirements of this article shall be allowed in the pedestrian way of the Central Business District provided a permit is first obtained and provided that all pushcarts and their operators shall meet the following:

A. The pushcart shall not be motorized or propelled in any manner other than the walking motion of person operating the pushcart, with the exception that persons with disabilities may use a motorized system to propel the pushcart. No motorized assistance shall be used to locate the pushcart on the sidewalk or public place, with the exception that persons with disabilities may use motorized assistance.

B. With the exception of grilling performed on approved grilling pushcarts, pushcarts may not be utilized to cook foods, but only to heat and hold previously cooked foods at a safe temperature. The city health department shall have the authority to determine whether a food product requires cooking or may be re-heated. The pushcart shall be covered with an appropriate material to prevent exposure of the food or food product to wind, dust, insects and the elements and shall meet any such other regulations as may be required by the city health department or any other applicable regulatory agency. The pushcart operator shall display, in plain view, all required permits as set forth by federal, state, and local laws and shall provide a copy of health department and other regulatory agency permits and/or licenses to the city prior to the issuance of a permit by the city for the pushcart. The pushcart operator shall continuously maintain the required approvals, permits and/or licenses and provide evidence to the city of the continuous maintenance of them.

C. The pushcart shall have attached to it a proper container for the collection of waste and trash. The pushcart operator shall be responsible for the proper disposal of waste and trash associated with the pushcart operation. No grease, waste, trash or other debris from the pushcart operation shall be deposited on or released onto city property, which includes the streets, sidewalk or other public place nor into the gutter or storm drainage system. The pushcart operator shall keep the immediate area in a ~~5~~10-foot radius from the center of the pushcart clean of garbage, trash, paper, cups, cans or litter associated with the pushcart operation. Unless otherwise permitted by the city, a pushcart operator shall not locate a container for the collection of waste and trash on the streets, sidewalks or public places nor use city trash receptacles, city street cans or other city waste disposal containers for the disposal of waste and trash associated with the pushcart operation. A three-foot by five-foot (3' x 5') mat shall be used with pushcarts from which foodstuff is sold. Said mat must comply with standards set by the National Sanitation Foundation, or with equivalent standards.

D. The pushcart shall not have attached to it any bell, siren, horn, loudspeaker or any similar device to attract the attention of possible customers, nor shall the permit holder use any such device to attract attention.

E. Signs attached to the pushcart shall comply with the requirements article 25-03 of the Fargo Municipal Code, regarding outdoor advertising, including the Fargo Sign Code incorporated by reference therein.

F. The pushcart shall be set up only in the location set forth in the operator's permit issued by the city, and shall not impede, endanger or interfere with pedestrian or vehicular traffic.

G. The pushcart shall be set up so that a minimum of six feet of passage for pedestrians shall be provided at all times.

H. The pushcart shall not be stored, parked or left overnight on any street or sidewalk or in any parking space of the city.

I. The pushcart shall operate only at times between the hours of 7:00 a.m. and 2:00 a.m.

J. No item related to the operation of the pushcart shall be placed on the street, sidewalk, public place or anywhere other than in or on the pushcart.

K. Pushcart operators shall not consume nor be under the influence of alcohol or controlled substance while operating the pushcart.

L. The dimensions of the pushcart shall be no greater than the following:

1. 4 feet 6 inches in height as measured from the ground to the highest point of the pushcart; and
2. 24 square feet as measured in length and width (the overall footprint), excluding any trailer hitch; and
3. 5 feet for the height of any umbrella affixed to the pushcart, as measured from the base of the umbrella to the highest point of the umbrella. No freestanding umbrella or canopy shall be used.

The city reserves the right to require smaller dimensions based upon such factors as, but not limited to, pedestrian and vehicular safety and adequate sight distances.

M. The pushcart permit holder or her/his designee shall be in attendance at the pushcart at all times, except in case of an emergency.

N. The pushcart operator shall comply with all federal, state and local laws when operating the pushcart.

O. Design of pushcarts which are to be permitted for the Central Business District must be approved by the planning director or her/his designee, using the city's downtown design review guidelines, prior to a permit being issued for their use in the Central Business District. The applicant must provide a photograph, drawing or sketch of the design of pushcart as part of the application for a permit.

P. Pushcarts may not be located nearer than 65 feet from any other pushcart vendor. Pushcarts may not be located nearer than 65 feet from a business that holds a limited restaurant license or a restaurant license issued by the city health department; provided, however, that a pushcart may be located in front of the sponsoring restaurant for said pushcart or the base of commissary operations for the pushcart, as the case may be.

Q. No pushcart vendor shall sell, offer for sale, or solicit offers to purchase from any motor vehicle.

R. The owner or operator of a grilling pushcart must obtain permission from the city health department and the planning director before the grilling pushcart may used for grilling. A grilling pushcart must meet the standards set by the National Sanitation Foundation, or equivalent nationally-recognized standards for food equipment and must be constructed of appropriate material, must be of adequate

size, must be readily cleanable and must be in good repair, as approved by the city health director. In addition, a grilling pushcart must comply with all requirements of a pushcart set forth herein.

Source: 4379 (2004).

18-0312. Outdoor merchandise areas.

No person may own, set up or operate an outdoor merchandise area without first obtaining a permit. The planning director is authorized to issue a permit for an outdoor merchandise area that extends no more than thirty-six (36) inches beyond the property boundary adjacent to a public sidewalk. An outdoor merchandise area that extends more than thirty-six (36) inches beyond the property boundary adjacent to a public sidewalk shall not be allowed without the owner or operator first obtaining a permit in the form of an encroachment agreement pursuant to the provisions of this article.

Permit holders for outdoor merchandise areas and their employees shall meet the following:

A. Outdoor merchandise areas shall be located only in the area designated by the city and indicated in the encroachment agreement or on the permit, specifically excluding roadways. Merchandise and the fixtures or devices on which it is displayed shall be located so that they do not impede, endanger or interfere with pedestrian or vehicular traffic.

B. Merchandise and the fixtures or devices on which it is displayed shall be located so that a minimum of 6 feet of unobstructed clearance for pedestrian traffic, or the minimum required by the Fargo Building Code or the Americans with Disabilities Act, whichever requirement is more restrictive, shall be provided at all times.

C. No fixtures or devices on which outdoor merchandise is displayed shall be attached to the sidewalk or other public area without the permission of the city in the encroachment agreement.

D. Outdoor merchandise areas will be permitted only adjacent to the building or structure in which the retail business is located and shall not be permitted next to the curb of the street or in the middle of the sidewalk. In no event shall outdoor merchandise areas be permitted in roadways.

E. Merchandise and the fixtures or devices on which the merchandise is displayed must not block regulatory signs, crosswalks or intersections and shall be sufficiently lit during times of low light in order to provide for safe pedestrian passage alongside the outdoor merchandise area.

F. All merchandise located within an outdoor merchandise area shall be placed so that the outdoor merchandise and the fixtures or devices on which the merchandise is displayed are stable and not easily tipped and do not include sharp edges, protrusions, or other features which may be hazardous to the public. No canopy may be placed over a building exit.

G. All displays of merchandise within the outdoor merchandise area must meet a minimum height of 28 inches tall or of sufficient size or height so that safe pedestrian traffic is not impeded or must comply with the requirements of the Americans with Disabilities Act, whichever requirement is more restrictive.

H. All merchandise and the fixtures or devices on which the merchandise is displayed shall be moved inside the building or structure wherein the retail business is located during hours the retail business is open and during inclement weather, including, but not limited to, heavy rain, wind, ice or snow.

I. All merchandise and the fixture, or devices on which the merchandise is displayed must be secured so that it may not be dislodged during windy or stormy weather prior to being moved inside the building or structure wherein the retail business is located.

J. In the event of a declared emergency or in a situation where exigent circumstances arise, a permit holder shall remove all articles from the sidewalk when directed to do so by any law enforcement officer, fire official or emergency medical personnel.

K. The permit holder for the outdoor merchandise area shall be responsible for the maintenance, upkeep and security of the devices on which the merchandise is displayed and the city shall not be responsible for the same.

L. The permit holder for the outdoor merchandise area shall be responsible for keeping the outdoor merchandise area clean of garbage, trash, paper, cups, cans or litter associated with the operation of the outdoor merchandise area, and shall be responsible for clean up or repair of the sidewalk caused by use of the outdoor merchandise area.

M. The permit holder for the outdoor merchandise area shall not have on the premises any bell, siren, horn, bullhorn or similar loudspeaker or any such device to attract the attention of possible customers nor shall the permit holder use any such device to attract attention.

N. Outdoor merchandise areas shall not include merchandising of any live animals.

O. Alcoholic beverages may not be displayed or sold from outdoor merchandise areas.

Source: 4379 (2004).

18-0313. Outdoor dining areas.

No person may own, set up or operate an outdoor dining area without first obtaining a permit. The planning director is authorized to issue a permit for an outdoor dining area that extends no more than forty-two (42) inches beyond the property boundary adjacent to a public sidewalk. An outdoor dining area that extends more than forty-two (42) inches beyond the property boundary adjacent to a public sidewalk; includes placement of a fence, rope or similar structure, as may be necessary for the serving of alcoholic beverages, or a canopy or similar structure on the sidewalk; or which is placed at a location other than immediately adjacent to the appurtenant building shall not be allowed without the owner or operator first obtaining a permit in the form of an encroachment agreement pursuant to the provisions of this article.

Permit holders for outdoor dining areas and their employees shall meet the following:

A. The permit holder shall set up the outdoor dining area, including, but not limited to, the furniture, canopies, fencing and/or other accessories used for the outdoor dining area, only in the area designated by the city in the encroachment agreement or on the permit, specifically excluding roadways. The outdoor dining area shall not impede, endanger or interfere with pedestrian or vehicular traffic.

B. Furniture, canopies, fencing and/or other accessories used for the outdoor dining area shall be located so that a minimum clearance of 44 inches of unobstructed clearance within the pedestrian way, or the minimum required by the Fargo Building Code or the Americans with Disabilities Act, whichever is more restrictive, shall be provided at all times.

C. The permit holder shall provide proper containers or some other means for the collection of waste and trash within the outdoor dining area permitted. The permit holder shall keep the immediate area around the outdoor dining area and the outdoor dining area clean of garbage, trash, paper, cups, cans or litter associated with the operation of the outdoor dining area. All waste and trash shall be properly disposed of by the permit holder.

D. The permit holder shall comply with all city health and other applicable regulatory agency requirements, including, but not limited to, the requirements for food service. The permit holder shall

display in a conspicuous location all such required permits and/or licenses and shall provide copies of those permits and/or licenses to the city prior to issuance of a permit for an outdoor dining area by the city. The permit holder shall continuously maintain the required approvals, permits and/or licenses and provide evidence to the city of the continuous maintenance of them.

E. The permit holder shall be responsible for the maintenance, upkeep and security of the furniture and accessories of the outdoor dining area and the city shall not be responsible for the same.

F. The permit holder shall not have on the premises any bell, siren, horn, loudspeaker or any similar device to attract the attention of possible customers nor shall the permit holder use any such device to attract attention.

G. Employees of the permit holder for the outdoor dining area shall not consume alcoholic beverages while working in the outdoor dining area.

H. For any outdoor dining area where alcoholic beverages are served, the permit holder shall comply with all state and local regulations for the sale, possession and/or consumption of alcoholic beverages and shall provide the city with a copy of any and all required permits or licenses for the sale, possession and/or consumption of alcoholic beverages and the diagram and/or plans showing the location of the outdoor dining area which were submitted for the permit or license. In addition, the area where alcoholic beverages are sold, possessed and/or consumed must be effectively partitioned by rope, temporary fence, or other device designed and intended to separate the outdoor dining area from passersby.

I. The permit holder shall comply with the prohibitions on disturbing, annoying and unnecessary noises set forth in article 11-02 of the Fargo Municipal Code.

J. Design of the furniture and accessories for an outdoor dining area to be located in the Central Business District must be approved by the planning director prior to a permit being issued for their use in the Central Business District. The applicant must provide a photograph, drawing or sketch of the design of the furniture and accessories to be used for the outdoor dining area as part of the application for a permit.

K. Tables, chairs, ropes, fences and any other structure or item placed on the sidewalk must be removed from the sidewalk at the end of the business day, at business closure, or in the event of inclement weather, unless arrangements for assembly and storage of such items on a part of the sidewalk are approved in an encroachment agreement.

L. Cooking, food preparation or self-service food shall not be allowed in such outdoor dining areas.

M. No canopy may be placed over a building exit.

Source: 4379 (2004).

18-0314. Community events and festivals.

The planning director is hereby authorized to grant a permit, after notice, a hearing before the review committee and approval by vote of the majority of the members of the review committee in attendance, for certain types of community events or festivals to take place upon the public streets, sidewalks, squares, avenues or alleys of the city.

A. The sponsor of the event or festival shall submit to the planning director a written application for a permit at least 45 days prior to the opening of the community event or festival for which a permit is desired. The application shall state:

1. The time, date and location of the festival or event;

2. The group, firm or individual by whom the festival or event will be sponsored;

3. The purpose of the festival or event;

4. The activities that will be held.

B. A hearing must be held by the review committee, after notice of the application and of the hearing is given. The provisions of sections 20-0901 through 20-0904 of the Land Development Code shall apply to the requirements for such applications, notice, the burden of proof or persuasion and date of decision and time period for appeals, with the exception that appeals of final decisions must be filed within 24 hours of the date of the decision. The decision of the review committee may be appealed to the board of city commissioners.

C. In granting permits for community events and festivals, the review committee shall consider the following:

1. The nature of the event or festival and how it can serve the community of the city and its citizens;

2. The time period during which the event or festival will occur;

3. The location of the event or festival and whether the location inhibits the safe flow of traffic in the city;

4. Whether the activities would be in compliance with other applicable laws;

5. Whether the event or festival is to benefit nonprofit community service organizations. Commercial events or festivals which generate profit for the private sector, other than profit incidental to the festival or event which is made by persons other than the sponsor of the festival or event, shall be permitted only if the applicant submits evidence to the review committee that the event or festival constitutes a community service; and

6. The general health, safety and welfare of the participants in the event or festival and the citizens of the city.

D. The annual Downtown Street Fair, sponsored by the Downtown Community Partnership, is deemed a festival and shall be automatically allowed.

E. The sponsor of the event or festival shall provide all cleaning services necessary to rid the festival area of all debris and litter created as a result of the event or festival.

F. The issuance of a permit to a sponsor shall authorize only that sponsor and participants specifically authorized by the sponsor to participate in that community event or festival without the restrictions imposed by this chapter.

G. Authorized participants in a community event or festival for which a permit has been issued shall not be required to obtain a city permit required by the provisions of sections 18-0307 through 18-0316, for the period during which the community event or festival takes place; provided, however, that in no event may any person affix any structure to the sidewalk or other public right of way during such community event or festival without an encroachment agreement.

H. Community events and festivals will be posted in city hall, near the office of the city auditor and on the city's website.

Source: 4379 (2004).

18-0315. Planning director to issue permits.

The planning director shall be authorized to issue permits under this article for a term of up to one year Such permits may be extended for additional periods of up to one year per extension. The denial of a permit by the planning director may be appealed to the review committee by delivery of notice of appeal within five business days of the date notice of decision is mailed to the applicant whose application has been denied. The planning director may designate one or more city employee to exercise the planning director's functions under this article.

Source: 4379 (2004).

18-0316. Application.

Businesses or property owners within the Central Business District are eligible to obtain a permit under this article for use of the sidewalk fronting said business or property and of the sidewalk in general as to pushcart operators. Each application for an encroachment agreement for an outdoor dining area or outdoor merchandise area shall be filed with the planning director and shall include, but not be limited to, the following:

A. The name, address and telephone number of the applicant.

B. For permits to allow outdoor dining areas, the application shall include a site plan showing the proposed location of furniture, canopies, fencing and other accessories for the outdoor dining area; a description, drawing, sketch, or photograph showing the design of all furniture, fencing, canopies and accessories to be used in the outdoor dining area; location for the outdoor dining area; and other pertinent information related to the use of the outdoor dining area. For permits to allow outdoor merchandise areas, the application shall include a site plan showing the location of the outdoor merchandise area, the proposed location of fixtures or devices on which the merchandise is to be displayed, and other pertinent information related to the use of the outdoor merchandise area.

C. For permits to allow pushcarts, the application shall include the name and phone number of the sponsoring restaurant or the location of the base of commissary operations that has been approved by the city health department and the application shall include information about the type of food or other product to be sold; proposed times and area of operation; description, drawing, sketch, or photograph of the type of pushcart to be used; and other pertinent information related to the method of doing business under the permit.

D. For permits for pushcarts to allow the sale of food, food products and/or beverages and for permits or encroachment agreements for outdoor dining areas, the applicant shall provide and maintain a certificate of insurance for comprehensive general liability and products and completed operations coverage in a minimum amount of $1,000,000.00 per occurrence and in the aggregate, provided that those certificates may be furnished as evidence of such coverage purchased for the applicant's principal place of business for serving food, food products and/or beverages, so long as such certificates meet the minimum acceptable requirements established in this section. For permits or encroachment agreements for outdoor merchandise areas, the applicant shall provide and maintain a certificate of insurance for comprehensive general liability and products and completed operations coverage in a minimum amount of $1,000,000.00 per occurrence and in the aggregate, provided that those certificates may be furnished as evidence of such coverage purchased for the applicant's retail business, so long as such certificates meet the minimum acceptable requirements established in this section. All certificates shall be issued by an insurance company authorized to do business in North Dakota, shall name the city as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the city. The permit holder or encroachment agreement party shall continuously maintain the insurance required by this section and shall continuously provide the city with evidence of the insurance required by this section.

E. The permit holder shall execute a statement on the permit application wherein the applicant holds harmless and indemnifies the city from any claims or causes of action arising out of or related to the permitted activity, including, but not limited to, compliance with the Americans with Disabilities Act, the Fargo Building Code and all other health and safety laws and regulations.

F. Written approval from the city health department and/or other applicable regulatory agency showing that the outdoor dining area has been inspected and is in compliance with current requirements for food handling establishments or sale of other product.

G. Such additional information as may be requested by the planning director or review committee which may be necessary to determine compliance with this article.

H. Payment of the permit fee and/or encroachment fee set by resolution of the board of city commissioners.

I. The planning director shall have the same remedies and enforcement powers as are set forth in article 20-011 of the Land Development Code.

Source: 4379 (2004).

18-0317. Encroachment agreements.

The planning director is hereby authorized to execute encroachment agreements only in the Central Business District, as defined in article 18-03, after notice, a hearing before the review committee and approval by vote of the majority of the members of the review committee in attendance.

The procedure for obtaining an encroachment agreement authorizing a structure or merchandise on the sidewalk or other public place shall be as follows:

A. Written application shall be made to the planning director or her/his designee. If the property is being leased, the lessee shall also sign the application.

B. The application shall include those items described in section 18-0316.

C. The application shall state the reason the encroachment is being requested.

D. Before approving an encroachment agreement, a hearing must be held by the review committee, after notice of the application and of the hearing is given. The provisions of sections 20-0901 through 20-0904 of the Land Development Code shall apply to the requirements for such applications, notice, the burden of proof or persuasion and date of decision and time period for appeals, with the exception that appeals of final decisions must be filed within 24 hours of the date of the decision. The decision of the review committee may be appealed to the board of city commissioners.

E. An encroachment agreement with property owners (and lessees, where applicable) may only be executed by the planning director after a hearing on the application and approval by vote of a majority of the members of the review committee in attendance. An application for an encroachment agreement with property owners (and lessees, where applicable) may only be approved if the review committee determines that the encroachment can be allowed without detriment to the health, safety and welfare of the general public. In determining what constitutes detriment to the health, safety and welfare of the general public, the following factors, among others not specifically enumerated, shall be considered:

1. The location, type and size of the encroachment, including the encroaching structure(s) or merchandise.

2. The proximity of the encroaching structure(s) or merchandise to a traveled road, whether public or private.

3. Whether the encroaching merchandise, display, tables, chairs or other structure(s) will unreasonably interfere with pedestrian or vehicular passage or safety.

4. Whether the encroaching structure(s) or merchandise will interfere with an existing water or wastewater line, storm water facility or other utility.

F. The review committee shall set forth in writing the reason for granting or denying an encroachment pursuant to this section. The terms of an encroachment agreement shall include, but not be limited, to the following:

1. The agreement shall be subject to termination upon 30 days notice at such time as the review committee may deem the encroachment, including activities associated with the encroachment, to create a safety hazard to pedestrians or vehicular traffic or other safety hazard or a public nuisance or otherwise not be in keeping with the health, safety and welfare of the general public.

2. The owner (and lessee, where applicable) obtaining the encroachment agreement shall agree that, upon such termination, if the owner (or lessee, where applicable) shall fail to remove the encroachment within 30 days following the giving of the notice by the city in accordance with subsection F(1) of this section, the city shall be authorized to remove the encroaching structure and recover all costs associated therewith from the property owner.

3. The property owner (and lessee, if applicable) shall agree to indemnify and hold harmless the city from any and all liability that may arise by virtue of the encroachment, including, but not limited to, compliance with the Americans with Disabilities Act, the Fargo Building Code and all other health and safety laws and regulations. The applicant shall provide and maintain a certificate of insurance for comprehensive general liability and products and completed operations coverage in a minimum amount of $1,000,000.00 per occurrence and in the aggregate providing coverage for all the dates of the approved festival or community event, including the days allowed for set up and tear down of such festival or event. All certificates shall be issued by an insurance company authorized to do business in North Dakota, shall name the city as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the city.

4. If the property is sold or, where applicable, if the lease is terminated after execution of the encroachment agreement, the encroachment agreement shall be null and void and a new encroachment agreement with the new property owner and, where applicable, with the lessee, shall be required prior to the encroachment being permitted to continue.

5. The length of the term of the encroachment agreement, which term may not exceed three years. Upon filing and review of a renewal application, an encroachment agreement may be extended for additional periods of up to three years per extension.

G. No structure may be affixed to the sidewalk, or any street or other public property, without an encroachment agreement approved by the board of city commissioners. Neither the review committee nor the planning director have authority to approve or enter into encroachment agreements for any such fixture.

Source: 4379 (2004).