

AN ORDINANCE ENACTING ARTICLE 13-17 OF CHAPTER 13
OF THE FARGO MUNICIPAL CODE RELATING TO
BOULEVARD GARDENS

WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in accordance with Chapter 40-05.1 of the North Dakota Century Code; and,

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City shall have the right to implement home rule powers by ordinance; and,

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purposes; and,

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Enactment.

Article 13-17 of the Fargo Municipal Code is hereby enacted as follows:

ARTICLE 13-17 – BOULEVARD GARDENS

Section 13-1701. Definitions.

As used in this ordinance, unless the context otherwise indicates, the following definitions apply:

1. “Boulevard” means the public right-of-way lying between the property line and sidewalk, and between the sidewalk and the roadway, or where no sidewalk exists, between the property line and the roadway.
2. “Drip line” shall mean an imaginary vertical line that extends from the outermost branches of a tree’s canopy to the ground.
3. “Noxious weeds” means any species of plant or vegetation recognized by the North Dakota State Weed Board as a noxious weed.
4. “Public Health Department” means Fargo Cass Public Health or any representative thereof.

Section 13-1702. Plantings permitted.

- A. A property owner in the city shall be permitted to plant, care for and maintain gardens on the boulevards adjacent to their property, subject to the restrictions set forth below.
1. No garden shall be planted on the boulevard without written documentation that the property owner has contacted “North Dakota One-Call” for utility locations forty-eight (48) hours before digging, and has planned plantings which will not interfere with said utilities.
 2. Plantings shall not exceed thirty-six (36) inches in height. Plantings within thirty (30) feet of an intersection, five (5) feet from a driveway or alley, and the three (3) foot radius around fire hydrants shall not exceed twenty-four (24) inches. Height shall be measured from the sidewalk to the top of the plant or from the top of the curb to the top of the plant. A raised planting bed is included in such measurement.
 3. Plantings shall be maintained with no encroachment or overhang onto the adjacent sidewalk, curb, or street. The edge must be within one (1) foot of the outermost planting.
 4. Any proposed planting or site disturbance with the dripline of an existing street tree(s) must be approved by the City Forester.
 5. Plantings may include flowers, vegetables, native or turf grasses, and other plants, but in no event shall any noxious weed be planted or maintained.
 6. Plantings with thorns, spines, or sharp ridged parts, as well as shrubs (evergreen or deciduous) or other woody plants are not allowed.
 7. Shredded hardwood mulch shall be used around plants to prevent soil erosion and must not exceed the height of the adjacent curb.
 8. River rock or similar aggregate material shall not be used. Boulders and structures such as retaining walls, fences and steps are prohibited.
 9. Boulevard gardens shall only be permitted in areas of residential use in the city.
- B. The current property owner shall be solely responsible for the maintenance of the boulevard garden. Maintenance at a minimum shall include:
1. Removal of noxious weeds or invasive plants;
 2. Removal of accumulated sediment;

3. Removal of trash, leaves, grass clippings, or other debris; and
 4. Repairing areas of bare soil or erosion.
- C. A permit shall not be required for a boulevard garden.

Section 13-1703. Raised planting beds prohibited without permit.

- A. No property owner shall erect or maintain a raised planting bed on the boulevard unless granted a permit by the public health department. If the raised planting bed is four (4) inches or less, a permit shall not be required. The public health department may impose reasonable conditions upon issuance of the permit and the performance of the property owner thereunder to protect the health, safety, and welfare or when necessary to protect the boulevard and its current use. The public health department shall issue said permit for a period not to exceed one year, subject to annual renewal thereof. The initial permit shall automatically expire at the end of the initial calendar year and, thereafter, renewals of said permit shall extend for calendar-year periods.

A permit for a raised planting bed may be revoked or suspended by the public health department upon a finding that the permit was issued under false pretenses or for any violation of this article following written notice or, upon request for renewal, the renewal permit may be refused by the public health department. The permittee may appeal the revocation, suspension or refusal of renewal of the permit by timely request for a hearing before the public health department. The request for hearing must be either postmarked or received by the public health department within seven (7) days of the notice. The public health department shall hold a hearing on the permittee's request for hearing and shall render a decision on the matter after said hearing. The decision of the public health department may be further appealed to the board of city commissioners by filing a timely notice of appeal of the decision of the public health department with the city auditor. The notice of appeal must be either postmarked or received in the city auditor's office within seven (7) days of the date of the decision of the public health department.

- B. In addition to obtaining said permit and subject to the restrictions set forth in Section 13-0702, a property owner may erect and maintain a raised planting bed on the boulevard provided the owner complies with the additional restrictions set forth below.
1. Insurance required. The property owner must maintain general liability insurance at all times during the term of the raised planting bed permit. Proof of insurance must be provided to the public health department with a Certificate of Liability Insurance describing the limits of coverage and naming the City of Fargo as an additional insured party. If the raised bed is four (4) inches or less, proof of insurance shall not be required.

2. Size and height. A raised planting bed shall not be larger than four (4) feet wide by eight (8) feet long, or a total area of thirty-two (32) square feet. The raised planting bed shall not be higher than twelve (12) inches.
3. Setbacks. A raised planting bed shall be located at a minimum of two (2) feet from the edge of the sidewalk, two (2) feet from the edge of the alleyway or driveway, two (2) feet from the neighboring adjacent boulevard, and three (3) feet from the curb of the street.
4. Material. Permanent material, such as concrete, shall not be used.

Section 13-1704. Public works and utilities.

Notwithstanding the foregoing, all such boulevards remain public property and subject to the right of the city and private utility companies to perform necessary work, to plant, trim and otherwise maintain trees, to access utilities and store excess snow. In the event the city interferes with boulevard plantings in the course of such work, it shall be responsible only to restore the boulevard to the original grassy state. In no event shall the city or private utility company be liable for any damage to, disruption of or removal of plantings, either direct or indirect, as a result of the city or private utility company, their employees, agents or contractors performing any installation, maintenance or repairs. Further, the city shall have the right to remove or restrict any plantings that are deemed to interfere with the safety of pedestrians and motorists without notice.

Section 13-1705. Regulation, inspection and enforcement.

In order to provide for the public health and safety, the public health department shall have authority to enforce the provisions stated herein concerning the use and maintenance of boulevard gardens within the jurisdiction of such department. For any property deemed to be in violation, the public health department shall give notice of the alleged violation to the property owner to remove or abate the nuisance within a time specified by the public health department not exceeding thirty (30) days. The public health department may additionally determine whether a planting otherwise in compliance with this article nonetheless poses a nuisance of hazard, in the opinion of the public health department, and may take action to abate such nuisance or hazard. If the property owner fails to comply with the notice to remove or abate or if the property owner cannot be found, the public health department may remove or destroy the nuisance, which shall charge the expense against the parcel of land on which the work is done.

Section 13-1706. Private restrictions and covenants on property.

Notwithstanding the issuance of a permit by the public health department, private restrictions or covenants on the use of property shall remain enforceable and take precedence over a permit. Private restrictions include, but are not limited to, deed restrictions, condominium master deed restrictions, neighborhood association by-laws,

covenant declarations and deed restrictions. A permit issued to a property owner whose premises is subject to private restrictions or covenants that prohibit boulevard gardens or raised planting beds is void. The interpretation and enforcement of the private restriction is the sole responsibility of the private parties involved.

Section 2. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 3. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval, and publication.

Timothy J. Mahoney, M.D., Mayor

Attest:

First Reading: _____
Second Reading: _____
Final Passage: _____
Publication: _____

Steven Sprague, City Auditor