

Encroachment Policy

Applicable to Undocumented Existing Encroachments on Street & Sidewalk Reconstruction Projects, Property Redevelopment, & Newly Proposed Encroachments

As part of its long term planning efforts, it's the City's goal to develop the public right of way (ROW) areas into more pedestrian friendly environments with enhanced green spaces. These goals are identified in the Land Development Code, the Growth Plan, and Go 2030. The private construction process, as well as City-led street and sidewalk reconstruction projects, offer a unique opportunity to advance this goal.

As part of a street reconstruction project, the City may remove and replace not only the street from curb to curb but also, the boulevards, driveways and sidewalks as needed. On sidewalk reconstruction projects, ND Century Code requires property owner to construct and maintain sidewalks within the City. Additionally, if a site is undergoing a major remodel or redevelopment the area behind the curb may also be subject to removal and replacement.

As redevelopment and new development occur we are often approached by property owners wishing to add features within the ROW. Over the course of a street or sidewalk reconstruction project it is not uncommon to find areas where adjacent landowners have made modifications to the boulevard areas in order to minimize maintenance or to facilitate the use of their private property by extending that use into the public ROW. Such use of public ROW **may** be allowable, but it must be formally requested by the property owner and memorialized by an agreement between the adjacent land owner and the City.

As the City or the property owner designs and constructs these projects there is a need to formalize the process for addressing undocumented encroachments.

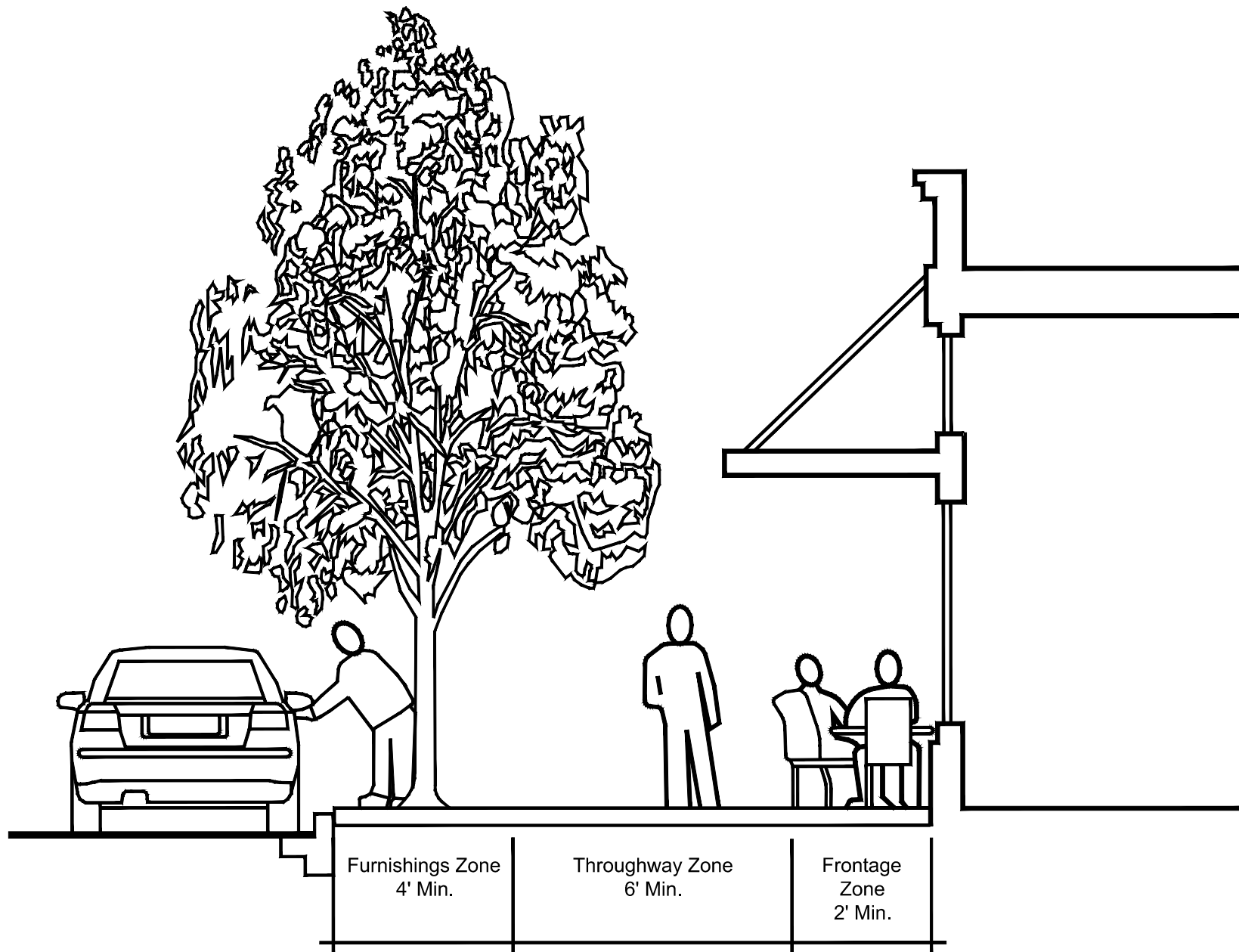
The following proposed Encroachment Policy will apply to all City of Fargo Right of Way:

- The policy's goal is to eliminate undocumented encroachments while restoring green space wherever possible.
 - Sidewalk Installation
 - The Downtown Urban StreetSide Zone (DUSZ) is the urban core of the City where it is expected that hard surfacing will exist from the curb to the face of the buildings (See Attachments A & B). This area shall consist of:
 - A Throughway Zone of 6' minimum width to allow for pedestrian movement.
 - A Furnishing Zone with a 4' width (measured from back of curb) to allow for street lights, utilities, plantings, furnishings, etc.
 - When space is available (without compromising the City's roadway design requirements), a Frontage Zone with a 2' minimum width will be allowed to accommodate plantings, furnishings, etc.
 - 4.5' minimum width on residential and collector roadways.
 - 6' minimum width on arterial roadways outside of DUSZ.
 - Boulevard Trees and Turf Installation
 - Boulevard tree installation shall adhere to the Land Development Code landscape standards, under advisement of the City Forester.
 - Boulevard areas will be evaluated with respect to the width of boulevard space available beyond the street section. If after installation of the sidewalk the remaining ROW space is:
 - Less than 1.5', the sidewalk will be widened.
 - More than 1.5' but less than 6', impressed concrete will be installed.
 - More than 6', turf will be installed.

- Paved and other hard-surface boulevards will be returned to vegetated green space consistent with public use, except in DUSZ.
 - Each property will be evaluated for driveway replacement and other improvements that facilitate normal use of the boulevard. Such improvements shall satisfy: 1) Allowable ROW usage that does not require an encroachment agreement, & 2) The property's current zoning designation requirements. Such improvements will be included in the cost of the associated project.
 - If the property owner wishes to use the boulevard, he/she may request an encroachment agreement.
 - Requests shall be in writing and shall include an explanation of the intended use and the need for that use.
 - In the DUSZ, City projects will include a poured concrete surface from building to curb. Any enhancements, such as an alternative surface type, or above ground amenities, will require an encroachment agreement for landscape enhancement.
 - Requests to encroach will be reviewed by City staff and a recommendation will be forwarded to the Public Works Project Evaluation Committee (PWPEC) for approval. PWPEC will approve, deny, or send a recommendation to the City Commission at their discretion.
 - Factors to be considered in granting an encroachment are:
 - Public Safety
 - Pedestrian Access
 - Satisfaction of ADA requirements.
 - Feasibility of alternative options.
 - Driveway Encroachment
 - Impact of primary operations.
 - Feasibility of alternative options.
 - Quality of Potential Green Space
 - Vegetated strips of less than 6' are generally not sustainable
 - Ability to provide for street trees
 - Alternatives to Encroachment and the Impacts on Property Owners
 - Encroachment agreements will include the following:
 - The encroacher agrees to hold the City harmless against any and all expenses, demands, claims or losses sustained by the City by use of the public ROW by the encroacher. The encroacher must provide the City a certificate of insurance indicating acceptance by the insurer of its obligation to defend and hold harmless the City.
 - The encroacher is responsible for paying for all costs above and beyond those the City would have incurred to return the area to a vegetated surface. Upon request, these costs can be special assessed under the associated City project.
 - Application fee for the encroachment in the amount of \$500.
 - Areas behind the driveway/sidewalk crossing plate may be exempt from an application fee.
 - An annual fee for the encroachment*
 - A minimum of \$500 per year or
 - The fee will be determined by taking the assessed value of the land adjacent to the ROW and determining a SF value. 10% of this square foot (SF) value will then be applied to the area of the encroachment and will be due annually.
 - Areas behind the driveway/sidewalk crossing plate may be exempt from an annual fee.
- *Existing encroachments in the Downtown Mixed Use (DMU) zone may be grandfathered in as exempt from an annual fee if the encroachment is an essential component to the building.
- Agreement expires upon sale or transfer of the property.
- Agreement expires when the property is repaired, reconstructed or improved at a cost that equals or exceeds 25% of the market value of the property prior to the improvement or repair, or if damaged prior to the damage occurring.

Please note: if there is an existing encroachment agreement on record the City will honor the terms of the agreement.

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ATTACHMENT B
Downtown Urban
StreetSide Zone Boundary

 **DOWNTOWN URBAN**
STREETSIDE ZONE (DUSZ)

