

CHAPTER 7

STREETS AND SIDEWALKS

Revised Chapter 7, Ordinance #2008-01, Adopted 04/07/08
Sections of Chapter 7 Revised, Ordinance #2013-16, Adopted 12/02/13
Sections of Chapter 7 Revised, Ordinance #2019-05, Adopted 03/18/19

7-101 DEFINITIONS

- a) Public Property or Area – All lands and real property owned by the City of Philip, South Dakota, including areas dedicated to the City for public use such as parks, streets, alleys, boulevards, etc.
- b) Boulevard – That area of public or publicly dedicated property included within the definition of “Public Property or Area” commonly found between the street and platted public right-of-way which in some instances is the inner edge of the sidewalk. In areas where there are curbs, it is defined as the platted public right-of-way from the back of the curb to the property line or the inner edge of the sidewalk. In areas without curbs, it is defined as the platted public right-of-way from the street to the property line or the inner edge of the sidewalk. (Refer to Ord. #7-101(d) for definition of edge.) When used herein, the term shall include all such property whether a sidewalk exists or not.
- c) Private Property – All property not constituting public property.
- d) Edge – The term “outer edge” shall be construed to be the edge nearest to the center of the street or alley, and the term “inner edge” shall be the edge furthest from the center of the street or alley.

7-102 OBSTRUCTING STREETS, SIDEWALKS, AND PUBLIC PLACES

No person shall obstruct any street, alley, sidewalk, or public place in the city in any manner, except as hereinafter provided.

7-103 RECEIVING GOODS OR MERCHANDISE

Any person receiving or delivering any goods or merchandise may place such merchandise on the edge of the sidewalk in front of his business for a period not to exceed three hours.

7-104 MATERIAL STORAGE - PERMITS

The Street Public Works Director may grant permission, in writing, to any person to deposit and keep materials for building along the edge of any public street adjacent to the building to be erected or repaired for a period of time not exceeding three months. Such material shall not obstruct or occupy more than one-third of the width of any sidewalk, street, or road and shall not impede the free flow of water in the gutter.

7-105 USE OF STREETS AND SIDEWALKS

No streets, alleyways, or sidewalks may be used in a fashion as to endanger or impede vehicular or pedestrian traffic.

7-105.1.1 CLEARANCE OF OVERHANGING PROJECTIONS OVER STREETS AND SIDEWALKS

Minimum clearance of overhanging projections over streets and sidewalks within the city shall be maintained. Sidewalk awnings and canopies shall have a minimum clearance of eight (08) feet. All signs shall have a clearance of ten (10) feet above the sidewalk and shall not extend beyond the outer edge of the sidewalk. For overhanging trees refer to Ordinance #3-303.2 (b). All other overhanging projections shall have a

minimum clearance of ten (10) feet above the sidewalk and sixteen (16) feet above the streets.

7-106 PLANTING AND MAINTENANCE OF TREES, SHRUBS AND BUSHES

The planting and maintenance of trees, shrubs and/or bushes on any private property within the boundaries of the City of Philip, South Dakota shall meet the following requirements:

7-106.1 PLANTING

- a) Trees, shrubs and/or bushes must be planted at least three (03) feet from the property line on the side and rear yards when there is no street or alley abutting said property line. Refer to Ordinance #3-303 for planting regulations abutting public rights of way (streets, alleys, boulevards, etc.).
- b) All trees, shrubs and/or bushes must be planted at least ten feet (10') from any fireplug or water hydrant.
- c) No trees, shrubs and/or bushes shall be planted so that its natural growth will eventually interfere with any above ground utility wire.
- d) No trees, shrubs and/or bushes shall be planted within five feet (5') of any underground water, sewer or other utility line.

7-106.2 MAINTENANCE

- a) All trees, shrubs and/or bushes that have been identified as dead, diseased, broken, decaying or otherwise containing dangerous limbs and branches which pose a potential health hazard of danger to the public must be removed.
- b) All trees, shrubs and/or bushes within the City limits of the City of Philip, South Dakota must be maintained at a height and in an area where such plant will not obstruct a clear vision of intersecting roadways or otherwise constitute a traffic hazard. (Cross reference 3-303.2)

7-106.3 PROPERTY OWNER AND/OR OCCUPANTS RESPONSIBILITIES

- a) Every owner and/or occupant of property within the City of Philip, South Dakota, shall be responsible for the proper maintenance, care and pruning of all trees as defined in Ordinance #7-106.2 on their respective properties and when necessary, the removal of dead, diseased or otherwise dangerous trees or parts thereof.
- b) The City and its representatives shall have the jurisdiction and authority to identify any trees, shrubs and/or bushes in violation of any of the provisions of Ordinance #7-106.2 and notify the property owner in writing of said violation of ordinance. The property owner will be given a minimum of thirty (30) days to correct the violation by pruning, trimming or removing the tree, shrub and/or bush. If the problem is not corrected within the thirty (30) day time frame, the City will have the violation corrected at the property owner's expense. (Cross reference Ordinance 3-303.2)

7-107 RESERVED

7-108 EAVES PIPES

No person shall place or maintain any pipe, leading from the eaves of any building, in such a position that the water discharge thereby may flow upon or over any public sidewalk.

7-109 BURNING ON CITY STREETS

It shall be unlawful for any person to burn leaves or other material on any city street.

7-110**REMOVAL**

Any obstruction or sign, which is placed in violation of these provisions, may after ten days written notice, be removed by the city at the owner's expense.

7-111**PARADES, ASSEMBLIES AND SPECIAL EVENTS****7-111.1****DEFINITIONS**

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

- a) Activity – A parade or public meeting or assembly or special event.
- b) Funeral Procession – A single direct movement from a funeral to the place of burial of a human body, under direction of an authorized funeral director.
- c) Parade – A march or procession of any kind.
- d) Public Meeting or Assembly – A planned or organized gathering of a group of persons, or any ceremony, show, exhibition or pageant which may reasonably be expected to result in the gathering of a group of more than ten (10) person, upon any public street, sidewalk, park or other public property.
- e) Special Event – A community activity or activities that involve the use of public facilities, buildings, streets, sidewalks or property.
- f) Use – To construct, erect, or maintain in, on, over or under any street, right-of-way, park or other public place, any building, structure, sign, equipment or scaffolding, to paint, spray or write on the surface of a public right-of-way thereof, or to otherwise occupy in such a manner as to obstruct the normal public use of any public street, right-of-way, park or other public property within the city, including any use related to parade or special events.

7-111.2**PERMIT REQUIRED**

It is unlawful for any person to hold, manage, conduct, aid, participate in, form, start or carry on any parade, public meeting, assembly or special event, as defined in this chapter, in or upon any public street, park or other public property in the city unless and until a permit to conduct such meeting, assembly, parade or special event has been obtained in compliance with the provisions of this chapter, except as herein provided.

7-111.3**EXCEPTIONS**

This chapter shall not apply to any of the following:

- a) Funeral or wedding processions;
- b) A governmental agency acting within the scope of its functions;
- c) Students going to and from school classes or participating in educational activities, providing such activity is authorized by the school district and is under the immediate direction and supervision of the school authorities authorized by the school district to approve and supervise such activity.

7-111.4**APPLICATION**

Application for permits must be in writing on a form obtained from the city finance office and shall be filed not less than forty-five (45) days prior to the proposed activity. Late applications may be accepted if filed sufficiently in advance of the date of the proposed activity to enable the city council adequate time to determine that the activity will meet the requirements set forth in Section 7-111.5.

Application shall set forth the following information:

- a) The name, address and telephone number of the person requesting the permit. If the activity is proposed to be conducted for, on behalf of, or by any organization, the name, address and telephone number of the organization's headquarters and leader shall be provided;
- b) The name, address and telephone number of the person(s) who will be directly in charge of and responsible for the event or parade.
- c) The purpose of the event or parade.
- d) The date, time and location or route of the event or parade.
- e) The approximate number of persons who will participate; and, the number and of kind of vehicles, equipment and animals which will be used;
- f) Plans for the assembly and dispersal of the event or parade, including times and locations thereof; and,
- g) Such other reasonably relevant information as the Mayor, City Council and/or Chief of Police may request for investigation of the application.

7-111.5 FINDINGS REQUIRED

The city council shall issue a permit as provided for hereunder when, from a consideration of the application and from such other information as may otherwise be obtained:

- a) The conduct of such activity will not substantially interrupt the safe and orderly movement of other traffic;
- b) The concentration of persons, animals and vehicles will not unduly interfere with proper fire and police protections of, or ambulance service to, areas where the activity will take place or areas contiguous to such areas;
- c) The conduct of such activity will not unduly interfere with the movement of firefighting equipment en route to a fire, or the movement of other emergency equipment;
- d) The conduct of such activity is not reasonably likely to cause injury to person or property;
- e) There will be adequacy of applicant supervision for the proposed activity;
- f) Such activity is not to be held for the sole purpose of advertising the goods, wares, or merchandise of a particular business establishment or vendor.

7-111.6 CONDITIONS TO PERMIT

The City Council shall have the authority to impose such conditions as are necessary to insure that all of the findings mentioned in Section 7-111.3 shall exist during the continuation of the activity.

7-111.7 PRIOR APPLICATION

If a prior permit application shall have been made for an activity proposed to be held at the same time or place, the City Council may refuse approval of the later application. In case of such refusal, the applicant shall be provided a written notice that he or she may apply of an alternate time and place.

7-111.8 NOTICE OF ISSUANCE OR DENIAL – APPEAL

The City Council shall act upon the permit application at its next meeting following receipt of the notice contingent upon meeting the filing requirements in 7-111.4. If the permit is denied, the Finance Office shall mail to the applicant within three days of the Council's decision, a notice of the denial and the reasoning.

7-111.9 APPEAL PROCEDURE

The applicant shall have the right to appeal the denial of a permit to the City Council. A notice of the appeal shall be filed with the City Finance Office within seven days after the mailing of the notice of the denial. The City Council shall act upon the appeal at its next meeting following receipt of the notice of appeal.

7-111.10 CONTENTS OF PERMIT

Conditions to the issuance of any permit shall be set forth in the permit.

7-111.11 DUTY OF PERMITTEE

A permittee hereunder shall comply with all the terms and conditions of the permit and with all applicable laws and ordinances.

7-111.12 REVOCATION OF PERMIT

The Chief of Police, under the direction of the Mayor and City Council, may revoke any permit issued hereunder upon the failure of the permittee to comply with the terms and conditions of the permit or if the activity, because of the manner in which it is being conducted, or for any other reason, is jeopardizing those elements of the public safety or welfare set forth in Section 7-111.5.

7-111.13 PUBLIC CONDUCT DURING A PARADE, ASSEMBLY OR SPECIAL EVENT

- a) It is unlawful for any person to unreasonably obstruct, impede or interfere with any parade or public meeting or assembly or special event or with any person, vehicle or animal participating in such a parade, meeting, assembly or special event for which a permit has been granted in accordance with the herein provisions.
- b) The chief of police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a highway or part thereof constituting part of the route of a parade. The chief of police shall post signs to such effect, and it is unlawful for any person to park or leave unattended any vehicle in violation thereof.

7-111.14 HOLD HARMLESS AND INSURANCE

Any permittee shall, with their application, acknowledge a hold harmless clause where the permittee using the public property agrees to hold the city harmless from loss. Any activity in this section where alcohol is permitted to be consumed, sold and/or served shall also show proof of general liability insurance in the amount of not less than one million dollars (\$1,000,000).

7-201 PERMIT REQUIRED FOR EXCAVATIONS

- a) Any person, with the exception of utility companies (as defined in Subsection B), who shall make or cause to be made, any excavation within the City of Philip, must first obtain a building/excavation permit with the Public Works Director authorization and contact South Dakota One Call.
- b) Utility companies who shall make or cause to be made, any excavation within the City of Philip, must contact South Dakota One Call prior to any excavation. Utility companies include electric cooperatives, telephone companies, cable companies, propane companies, fuel oil companies, and the City of Philip.

7-201.1 EXCAVATION REPAIRS

Approval for any excavation covered shall be issued only upon the express condition that the applicant shall refill such excavation in accordance with the requirements of the City, and shall restore the pavement or surfacing, as the case may be, to its former condition. The City Council shall adopt and amend as necessary such requirements which shall set forth the manner in which various types of excavations shall be backfilled or refilled and the manner in which any street surfacing shall be placed. Applicant shall be responsible for said excavation for a period of two years.

7-202 EXCAVATION BARRIERS

Any person receiving approval to make excavation in or upon any street, alley, sidewalk or public ground shall, during the progress and continuance of the work, erect, and maintain around the same both day and night suitable guards, fences, flares, and signals so as to prevent injury to persons, animals, or vehicles on account of such excavations. No open trench shall be left open for any more time than considered absolutely necessary or reasonable.

7-203 BOND OR DEPOSIT REQUIRED

The Building Committee and/or Public Works Director may require, prior to approving a permit, a deposit of money or bond sufficient to cover the cost of refilling the excavation and putting the street, sidewalk or public ground in the same condition as prior to the excavation.

7-204 DEPOSIT FORFEITED

If at any time within a year of permit issuance the Building Committee and/or Public Works Director determines that the work has not been properly refilled, he shall cause such work to be put in proper condition and charge the cost to the sum deposited or the sureties on the bond. The deposit shall be returned upon certification by the Public Works Director that all work required has been performed satisfactorily.

7-301 DISPOSAL OF ICE AND SNOW

It shall be the duty of the owner or person in possession of any property abutting on any sidewalk to keep such sidewalk free of ice and snow and to cause any accumulated snow to be removed within twenty-four (24) hours after the termination of any snowfall, or snow accumulation. When it is impossible to remove the ice from such walk, the occupant shall sprinkle some suitable material upon same to prevent the walk from becoming slippery and dangerous to travel.

It shall be the duty of the owner or person in possession of any public or private driveway, sidewalk, parking lot, or parking area to dispose of accumulated snow upon such property in such a manner that any snow when removed shall not be deposited upon any sidewalk, within or upon any public street or alley, after such public street or alley has been cleared of snow by grading of such snow away from the curb or picking up and carrying away of such snow by the city, or in a manner that will obstruct or interfere with the passage or vision of vehicle or pedestrian traffic.

7-302 CITY MAY REMOVE SNOW AT EXPENSE OF OWNER/OCCUPANT

In the event any owner or person in possession of any property shall neglect, fail to, or refuse to remove such snow or ice within the time provided, the Public Works Director may have such snow removed with the costs to be assessed against the abutting property owner. (SDCL 9-30-5)

7-401 PERMIT – DRIVEWAY, SIDEWALK, CURB & GUTTER CONSTRUCTION

When constructed separately from an overall construction project, property owners shall submit applications for building permits for approval by the City Council for driveway approaches, sidewalks curbs, or curb and gutter. When these improvements are constructed simultaneously or as one project, only one application is necessary to include all improvements, and where any or all are a part of new construction projects, only one permit for the overall construction shall be issued. All improvements, installations, and engineering recommendations shall be in conformance with specifications or recommendations authorized by the Public Works Director and approved by the City Council.

7-402 DRIVEWAY APPROACHES

No driveway approaches shall protrude or extend into the streets beyond the curb line, unless otherwise authorized by the City Council. Concrete driveway approaches shall be of four-inch Portland Cement Construction, with the slope gradual to accommodate modern vehicles. On gravel thoroughfares, driveway approaches constructed shall permit flow of surface water without drainage interference and shall permit proper blading and maintaining of streets.

All private driveways shall be constructed at the owner's expense and equipped with a drainpipe of not less than twelve inches to carry off the water and shall be kept open by the owner or occupant of the premises. The City Council may direct driveway approaches be constructed and the cost assessed against any abutting property owner per SDCL.

7-403 SIDEWALKS

Sidewalk construction shall include base materials of at least two inches in thickness, of approved materials. Sidewalks shall be no less than four inches in thickness (the use of standard two-by-four form boards shall be acceptable), of Portland Cement Construction, and not less than five feet wide in residential areas, with slope toward street at one-fourth inch per foot. (Cross reference Ord. 7-406)

When considered necessary and advisable for the peace, welfare, safety of the people, and/or when curb and gutter is installed, the City Council may direct that a new sidewalk be constructed and assessed to any abutting property owner in accordance with SDCL.

7-403.1 SIDEWALKS FOR NEW RESIDENTIAL OR NEW COMMERCIAL CONSTRUCTION

Any owner of real estate, located within the corporate limits of the City of Philip, upon which is to be built new residential or new commercial construction, shall have constructed within twelve (12) months after the issuing of the building permit for such construction, sidewalks meeting the specifications contained Chapter 7 herein. This Ordinance shall not apply to construction projects limited to the addition of a garage or storage shed, or projects consisting of remodeling an existing structure or adding an addition to an existing structure, so long as said addition measures fewer square feet than the original structure.

7-403.2 REPAIRS

Every owner of a lot adjacent to a sidewalk shall keep such in repair and any owner who shall fail to keep the sidewalk in repair when notified shall be liable to the City for any damage caused by neglect.

7-403.3 FAILURE TO REBUILD OR REPAIR

Whenever the Council shall deem it necessary to repair or rebuild any sidewalk, it shall notify the owner of the adjacent lot to rebuild or repair the sidewalk at his own expense within a time designated.

If such sidewalk is not repaired or rebuilt in the manner and time designated, the Council by resolution may cause the same to be repaired and the costs thereof shall be assessed against the owner of the adjacent lot abutting such sidewalk.

7-404 CURB AND GUTTER

Curb and gutter shall be of Portland Cement Construction, not less than 3,000 PSI, with curb six inches in width, and extending six inches above the gutter. Gutter shall be of six and one-half inch in thickness, extending twenty-four inches into the street. The City Council may direct the curb and gutter be constructed at the cost assessed against any abutting property owner per SDCL. (Cross Reference Ord. 7-406)

7-405 BARRIER FREE CONSTRUCTION

Handicap accessibility curb ramps shall be installed at all crosswalks, in both business and residential areas, when making new installations of sidewalks, curbs or gutters, or improving or replacing existing sidewalks, curbs or gutters, so as to make the transition from street to sidewalk easily negotiable for handicapped persons in wheelchairs and for blind persons. All such ramps shall be constructed or installed in accordance with design specifications according to the most current American National Standards Institute or according to the Americans with Disability Act specifications. (SDCL 9-46)

7-406 CONFORMITY WITH EXISTING INSTALLATIONS

Where a sidewalk, curb or gutter has previously been installed, all additional sidewalks, curbs or gutters shall be constructed of concrete and shall conform to existing installations and shall be so constructed that the top surface thereof is on the same plane as existing installations.

7-406.1 NON-CONFORMING DRIVEWAY, SIDEWALK, CURB AND GUTTER

Every driveway, sidewalk, curb and gutter hereafter constructed, which does not conform to the provisions hereof, shall be rebuilt by the owner of the adjacent lot, at his own expense, within a time designated in the notice given by the City.

7-407 NARROW STREETS AND ALLEYS

Where a sidewalk, curb, or gutter is constructed in a street or in an alley less than one hundred feet in width, such sidewalk, curb or gutter shall be constructed as herein provided, except that the distance from the center of such street or alley shall be prescribed by resolution of the Council upon application made for a permit.

7-501 DESIGNATION OF ADDRESS

Following generally accepted rules of address assignment, the City of Philip, South Dakota shall assign official street and road names and shall issue physical addresses to every dwelling unit, place of business or other locations, as deemed necessary within the corporate limits of the City of Philip, South Dakota.

7-502 POSTING OF DESIGNATED ADDRESSES

a) The owner or person in charge of any dwelling, building or business to which a

physical address has been assigned, as well as the occupant of the same, will be notified by the City of Philip, South Dakota of the address assigned.

- b) Within fourteen (14) days after the receipt of such notification, the owner or person in charge of the structure to which an address has been assigned, or the occupant must affix the assigned building number (address) to the structure, if the structure is visible from the named roadway, or to a sign post if the structure is not visible from the named roadway. In this case, the assigned address must be posted where the driveway leading to the addressed structure intersects with the named road. In either case, the assigned address must be clearly visible from the named roadway. The property owner, occupant or person in charge of the structure shall pay for costs and installation of the numbers.
- c) It shall be the duty of such owner, occupant or person in charge thereof, upon affixing the new number; to remove any different number(s) which might be mistaken for, or confused with, the number assigned to said structure.
- d) Each principle building shall display the assigned address to the frontage on which the front entrance is located. In case a principle building is occupied by more than one (01) business or family dwelling unit, each separate dwelling or unit must display a separate address.
- e) Numbers shall read horizontally from left to right or vertically from top to bottom, shall be in plain, block vertical (not slanted), and of good proportion. Numbers indicating the official address of each principle building or each front address to such building shall be posted in a manner as to be legible and distinguishable from the roadway on which the property is located. The numbers shall be boldly contrasting in color to the building to which they are attached and shall be of a height not less than four (4"). If a building or dwelling is situated in such a way that the address cannot be easily seen from the roadway in front of said structure, then a sign or address post must be placed at the entrance of the primary driveway. Said sign or address post shall be placed in such a way that it can easily be seen from the roadway, in addition to the numbers attached to the building. The numbers on the sign or address post shall be boldly contrasting in color to the background to which attached, shall read horizontally from left to right or vertically from top to bottom, shall be in plain, block vertical (not slanted), of good proportion, and shall be of a height not less than four inches (4").
- c) The owner or occupant or person in charge of any house or building, shall continually maintain the assigned numbers/letters in such a manner and location so the assigned numbers/letters are legible and distinguishable from the roadway on which the property is located.

7-503

PENALTIES

A fine, not to exceed \$50.00, shall be imposed in the event that the owner, occupant, or person in charge of any house or building refuses to comply with the terms of this ordinance by:

- a) Failing to affix the address assigned within fourteen (14) days after notification, or

- b) Failing to remove any old numbers affixed to such structure or primary driveway or elsewhere, which may be confused with the address assigned thereto within fourteen (14) days after notification, or
- c) Failing to maintain the assigned numbers in a manner so the assigned numbers are legible and distinguishable from the roadway on which the property is located.

Each day in violation constitutes a separate offense.

7-600

PRIVATE STRUCTURES PROHIBITED IN THE PUBLIC RIGHTS-OF-WAY

- a) It is unlawful for any person to erect, build, construct, deposit or place on or in any street, or any place where the public has the right of passage, in the public right-of-way, any building, structure, mailbox, or obstruction of any kind whatsoever.
- b) That any building, structure, or mailbox placed in the right-of-way in violation of this Ordinance is hereby declared to be a public nuisance.
- c) That violation of this Ordinance shall be a Class 2 misdemeanor.
- d) That this Ordinance does not apply to any traffic control device or traffic sign.