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Any person who is convicted of violating or failing to comply with any of the provisions of this Chapter may be punished by a fine of not more than \$1000.00 or by imprisonment not to exceed 30 days or both.

It shall be the Municipal Judge’s decision to use the sentencing defined in Article 5 of Chapter 13 of the Revised Ordinances of the City of Cando.

**CHAPTER FIFTEEN
OPENING AND VACATING
STREETS, ALLEYS, AND PUBLIC PLACES**

ARTICLE 1 – Survey – Plat - Eminent Domain

15.0101 Survey, plat, and estimate

Whenever the City Council deems it necessary to open, lay out, widen, or enlarge any street, alley, or public place, it shall cause an accurate survey and plat to be made by a competent civil engineer, with an estimate of the probable cost. Such engineer shall retain a copy and file the survey, plat, and estimate in the office of the City Auditor.

15.0102 Taking private property by purchase or eminent domain – Special assessments levied - Limitation on general tax

If it is necessary to take private property in order to open, lay out, widen, or enlarge any street or alley, it shall be done by purchase or by the exercise of the right of eminent domain. When property is purchased or a judgment for damages is entered for property taken for any such improvement, the City Council shall certify the purchase or judgment to the special assessment commission, which shall levy special assessments upon the property benefited to pay such judgment or the purchase price. Not more than three-fourths of the purchase price or judgment may be paid by the levy of a general tax upon all the taxable property in a city.

ARTICLE 2 – Grades - Vacation

15.0201 Grades of streets, alleys, and sidewalks - Established - Record - Changing - Liability

The City Council, may establish the grade of all streets, alleys, and sidewalks as the convenience of its inhabitants may require. A record of the grades, together with a profile thereof, shall be kept in the office of the City Auditor. If the city changes the grade of any street after it has been established, it shall be liable to the abutting property owners for any damage they may sustain by reason of any permanent improvements made by them to conform to the grade as first established.

15.0202 Vacation where sewers, water mains, pipes, and lines located - Conditions

No public grounds, streets, alleys, or parts thereof over, under, or through which have been constructed, lengthwise, any sewers, water mains, gas, or other pipes, or telephone, electric, or cable television lines, of the city or the city's grantees of the right of way therefore, may be vacated unless the sewers, mains, pipes, or lines have been abandoned and are not in use, or unless the grantee consents thereto, or unless perpetual easements for the maintenance of the sewers, water mains, gas, or other pipes, or telephone, electric, or cable television lines have been given. Any vacation of areas within which are located electric facilities, whether underground or aboveground, is subject to the continued right of location of such electric facilities in the vacated areas.

ARTICLE 3 - Petition

15.0301 Petition for vacation - Contents - Verification

No public grounds, streets, alleys, or parts thereof shall be vacated or discontinued by the City Council except on a petition signed by all of the owners of the property adjoining the plat to be vacated. Such petition shall set forth the facts and reasons for such vacation, shall be accompanied by a plat of the public grounds, streets, or alleys proposed to be vacated, and be verified by the oath of at least one petitioner.

15.0302 Petition filed with City Auditor - Notice published - Contents of notice.

If the City Council finds the petition for vacation is in proper form, and it deems it expedient to consider such petition, it shall order the petition to be filed with the City Auditor who shall give notice by publication in the official newspaper at least once each week for four weeks. The notice shall state that a petition has been filed and the object thereof, and that it will be heard and considered by the City Council or a committee thereof on a certain specified day which shall be not less than 30 days after the first publication of the notice.

15.0303 Hearing on petition - Passage of resolution declaring vacation by City Council

The City Council, or such committee as may be appointed by it, shall investigate and consider the matter set forth in the petition specified in 20-0302 and, at the time and place specified in the notice, shall hear the testimony and evidence of persons interested. After hearing the testimony and evidence or upon the report of the committee favoring the granting of the petition, the City Council, by a resolution passed by a two-thirds vote of all its members, may declare the public grounds, streets, alleys, or highways described in the petition vacated upon such terms and conditions as it shall deem just and reasonable.

ARTICLE 4 – Resolution – Expenses - Appeal

15.0401 Resolution to be published, filed, and recorded - Effect

Before the resolution shall go into effect, it shall be published as in the case of ordinances. A transcript of the resolution, certified by the City Auditor, shall be filed for record and recorded in the office of the recorder of the county, and such resolution shall effect the conveying to the abutting property owners all of the right, title, and interest of the city to the property vacated.

15.0402 Expenses for vacating streets, alleys, and public ways – Deposit required

All expenses incurred shall be paid by the petitioners, who shall deposit with the City Auditor the sum as may be necessary before any such expense is incurred. The amount shall be determined by the City Council, and any part thereof not used shall be returned.

15.0403 Aggrieved person may appeal to district court

Any person aggrieved by the decision of the City Council granting the vacation of any public grounds, street, or alley, within 15 days after the publication of the resolution, may appeal to the district court of the county in accordance with the procedure provided in section 28-34-01 of the North Dakota Century Code. The judgment of the court therein is final.

ARTICLE 5 – Penalty

Any person who is convicted of violating or failing to comply with any of the provisions of this Chapter may be punished by a fine of not more than \$1000.00 or by imprisonment not to exceed 30 days or both.

It shall be the Municipal Judge's decision to use the sentencing defined in Article 5 of Chapter 13 of the Revised Ordinances of the City of Cando.