

TITLE 16

STREETS AND SIDEWALKS, ETC¹

CHAPTER

1. MISCELLANEOUS.
2. EXCAVATIONS.
3. REGULATIONS FOR THE PLACEMENT OF SIDEWALKS WITHIN THE CITY.
4. PROPERTY NUMBERING.

CHAPTER 1

MISCELLANEOUS

SECTION

- 16-101. Obstructing streets, alleys, or sidewalks prohibited.
- 16-102. Trees projecting over streets, etc., regulated.
- 16-103. Trees, etc., obstructing view at intersections prohibited.
- 16-104. Projecting signs and awnings, etc., restricted.
- 16-105. Banners and signs across streets and alleys restricted.
- 16-106. Gates or doors opening over streets, alleys, or sidewalks prohibited.
- 16-107. Littering streets, alleys, or sidewalks prohibited.
- 16-108. Obstruction of drainage ditches.
- 16-109. Right-of-way maintenance by owners or occupants of abutting property.
- 16-110. Parades regulated.
- 16-111. Operation of trains at crossings regulated.
- 16-112. Animals and vehicles on sidewalks.
- 16-113. Fires in streets, etc.

16-101. Obstructing streets, alleys, or sidewalks prohibited. No person shall use or occupy any portion of any public street, alley, sidewalk, or right of way for the purpose of storing, selling, or exhibiting any goods, wares, merchandise, or materials. (Ord. # 1970-13, May 1970)

16-102. Trees projecting over streets, etc., regulated. It shall be unlawful for any property owner or occupant to allow any limbs of trees on his property to project out over any street, alley, or sidewalk at a height of less than fourteen (14) feet. (Ord. # 1970-13, May 1970)

¹Municipal code reference

Related motor vehicle and traffic regulations: title 15.

16-103. Trees, etc., obstructing view at intersections prohibited. It shall be unlawful for any property owner or occupant to have or maintain on his property any tree, hedge, billboard, or other obstruction which prevents persons driving vehicles on public streets or alleys from obtaining a clear view of traffic when approaching an intersection. (Ord. #1970-13, May 1970)

16-104. Projecting signs and awnings, etc., restricted. Signs, awnings, or other structures which project over any street or other public way shall be erected subject to the requirements of the building code.¹ (Ord. #1970-13, May 1970)

16-105. Banners and signs² across streets and alleys restricted. It shall be unlawful for any person to place or have placed any banner or sign across any public street or alley except when expressly authorized by the governing body. (Ord. #1970-13, May 1970)

16-106. Gates or doors opening over streets, alleys, or sidewalks prohibited. It shall be unlawful for any person owning or occupying property to allow any gate or door to swing open upon or over any street, alley or sidewalk except when required by statute. (Ord. #1970-13, May 1970)

16-107. Littering streets, alleys, or sidewalks prohibited. It shall be unlawful for any person to litter, place, throw, track, or allow to fall on any street, alley, or sidewalk any refuse, glass, tacks, mud, or other objects or materials which are unsightly or which obstruct or tend to limit or interfere with the use of such public ways and places for their intended purposes. (Ord. #1970-13, May 1970)

16-108. Obstruction of drainage ditches. It shall be unlawful for any person to permit or cause the obstruction of any drainage ditch in any public right of way. (Ord. #1970-13, May 1970)

16-109. Right-of-way maintenance by owners or occupants of abutting property. Owners of property and occupants of property which abuts a public street shall cut the grass, weeds or plants and maintain the appearance the right-of-way between their property and the pavement. Maintaining the property shall include the obligation to remove snow or debris from any public sidewalk. Maintaining the property shall include removing all litter. If any property owner fails to complete these obligations within five days of actual

¹Municipal code reference

Building code: title 12, chapter 1.

²Banner and sign restrictions are addressed in the Administrative Policy, Streets # 4 of record in the recorders office.

notice to the owner or any occupant or five days of mail notice to the address shown on the tax records, the Public Works Director or Codes Director may have the situation corrected and assess a reasonable charge against the property in accordance with the provisions of TCA 6-2-201 or they may cite the owners or occupants to appear in court or may do both. (Ord. # 2002-35, Sept. 2002)

16-110. Parades regulated. It shall be unlawful for any club, organization or similar group to hold any meeting, parade, demonstration, or exhibition on the public streets without some responsible representative first securing a permit from the recorder. No permit shall be issued by the recorder unless such activity will not unreasonably interfere with traffic and unless such representative shall agree to see to the immediate cleaning up of all litter which shall be left on the streets as a result of the activity. Furthermore, it shall be unlawful for any person obtaining such a permit to fail to carry out his agreement to immediately clean up the resulting litter. (Ord. #1970-13, May 1970)

16-111. Operation of trains at crossings regulated. No person shall operate any railroad train across any street or alley without giving a warning of its approach as required by state law. It shall be unlawful to stop a railroad train so as to block or obstruct any street or alley for a period of more than five (5) consecutive minutes. (Ord. #1970-13, May 1970, modified)

16-112. Animals and vehicles on sidewalks. It shall be unlawful for any person to ride, lead, or tie any animal, or ride, push, pull, or place any vehicle across or upon any sidewalk in such manner as to unreasonably interfere with or inconvenience pedestrians using the sidewalk. It shall also be unlawful for any person to knowingly allow any minor under his control to violate this section. (Ord. #1970-13, May 1970)

16-113. Fires in streets, etc. It shall be unlawful for any person to set or contribute to any fire in any public street, alley, or sidewalk. (Ord. #1970-13, May 1970)

CHAPTER 2

EXCAVATIONS¹

SECTION

- 16-201. Permit required.
- 16-202. Permission of manager of codes administration required to remove materials from public ways.
- 16-203. Applications.
- 16-204. Fee.
- 16-205. Deposit or bond.
- 16-206. Manner of excavating--barricades and lights--temporary sidewalks.
- 16-207. Barricades required.
- 16-208. Warning lights required at night.
- 16-209. Damaging, extinguishing, etc., warning lights.
- 16-210. Unguarded excavations or openings.
- 16-211. Restoration of streets, etc.
- 16-212. Insurance.
- 16-213. Time limits and hours when work may be performed.
- 16-214. Supervision.
- 16-215. Driveway curb cuts.
- 16-216. Agreements to hold the municipality harmless from all claims, etc.

16-201. Permit required. It shall be unlawful for any person, firm, public or private corporation, association, or others, to make any excavation in any street, alley, or public place, or public ways, or to tunnel under any street, alley, or public place without having first obtained a permit as herein required, and without complying with the provisions of this chapter; and it shall also be unlawful to violate, or vary from, the terms of any such permit; provided, however, any person maintaining pipes, lines, or other underground facilities in or under the surface of any street may proceed with an opening without a permit when emergency circumstances demand the work to be done immediately and a permit cannot reasonably and practicably be obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the office of the Public Works Department is open for business and said permit shall be retroactive to the date when the work was begun, provided, it is satisfactorily shown, to the Director of Public Works or designated representative, that an emergency did in fact exist. (Ord. #1973-6, March 1973)

¹State law reference

This chapter was patterned substantially after the ordinance upheld by the Tennessee Supreme Court in the case of City of Paris, Tennessee v. Paris-Henry County Public Utility District, 207 Tenn. 388, 340 S.W. 2d885 (1960)

16-202. Permission of Director of Public Works or designated representative required to remove materials from public ways. No person shall dig, quarry or cause to be dug or quarried any dirt, earth, sand, stone or paving or remove any such materials from in, on or under any street, road, alley, sidewalk or other public way within the jurisdiction of this municipality without specific direction or permission of the Director of Public Works or designated representative. Each location of such digging, quarrying or removal shall constitute a separate offense. (Ord. #1973-6, March 1973)

16-203. Applications. Applications for such permits as required herein, shall be made to the Director of Public Works or designated representative, and shall state thereon the location of the intended excavation or tunnel, the size thereof, the purpose thereof, the person, firm, corporation, association, or others doing the actual excavating, the name of the person, firm, corporation, association, or others for whom the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done. Such application shall be rejected or approved by the Director of Public Works or designated representative within twenty-four (24) hours of its filing with the Public Works Department, provided, same is filed twenty-four hours before the close of the regular business week of the office of the Public Works Department. The Public Works Department shall have twenty-four hours during its regular business week that it is open for business, to approve or reject such applications. (Ord. #1973-6, March 1973, as amended by Ord. 1997-9, April 1997)

16-204. Fee. The fee for such permits shall be twenty-five dollars (\$25.00) for excavations which do not exceed twenty-five (25) feet in area or tunnels not exceeding twenty-five (25) feet in length; and one dollar (\$1.00) for each additional square foot in the case of excavations, or lineal foot in the case of tunnels.. (Ord. #1973-6, March 1973, as amended by Ord. 1997-9, April 1997)

16-205. Deposit or bond. No such permit shall be issued unless and until the applicant therefore has deposited with the Director of Public Works or issued unless and until the applicant designated representative a cash deposit. The deposit shall be in the sum of five hundred dollars (\$500.00). Where the amount of the deposit is clearly inadequate to cover the cost of such restoration, the Director of the Public Works or designated representative may increase the amount of the deposit to an amount considered by him to be adequate to cover the cost. From this deposit shall be deducted the expense to the municipality of relaying the surface of the ground or pavement, and of making the refill if this is done by the municipality or at its expense. The balance shall be returned to the applicant by the Director of Public Works or designated representative without interest after the tunnel or excavation is completely refilled and the surface or pavement is satisfactorily restored.

In lieu of a deposit the applicant may deposit with the Director of Public Works or designated representative a surety bond in such form and amount as the Director of Public Works or designated representative shall deem adequate to cover the costs to the municipality if the applicant fails to make proper restoration. (Ord. #1973-6, March 1973, as amended by Ord. 1997-9, April 1997)

16-206. Manner of excavating--barricades and lights--temporary sidewalks.

Any person, firm, public or private corporation, association, or others making any excavation or tunnel shall do so according to the terms and conditions of the application and permit authorizing the work to be done and in compliance with all other ordinances and regulations relating thereto. Sufficient and proper barricades, lights, and traffic control shall be maintained to protect persons and property from injury by or because of the excavation being made. If any sidewalk is blocked by any such work, a temporary sidewalk shall be constructed and provided which shall be safe for travel and convenient for users. (Ord. #1973-6, March 1973, as amended by Ord. 1997-9, April 1997)

16-207. Barricades required. Notwithstanding, the aforesaid provisions, any person or any applicant as herein defined, who shall dig or cause to be dug any ditch, drain or other excavation or cause any embankment or other obstruction to be constructed in, on, under, across or adjoining any street, alley, road, sidewalk or other public way or shall perform work in and around any utility manhole in or adjoining any public way within the jurisdiction of this municipality, shall have the same guarded at all times with a substantial barricade and traffic control devices approved by the Director of Public Works or designated representative, sufficient and suitable to warn persons traveling on or using such street, road, alley, sidewalk or other public way of the presence of such excavation or utility manhole and against danger there from. (Ord. #1973-6, March 1973, as amended by Ord. 1997-9, April 1997)

16-208. Warning lights required at night. Any person who shall dig or cause to be dug any ditch, drain, trench, or other excavation or cause any embankment or other obstruction to be constructed in, on, under, across or adjoining any street, road, alley, sidewalk or other public way or shall perform work in and around any utility manhole in or adjoining any public way within the jurisdiction of this municipality shall, in addition to the barricades required by the above § 16-207, post or otherwise place red or amber lights at the ends and dies of each excavation, utility manhole or other obstruction during the entire night, and if such excavation or other obstruction shall extend more than fifty feet along such street, road, alley, sidewalk or other public way, then additional red or amber lights shall be placed each twenty-five feet or fraction thereof. Where excavations or other obstructions shall extend across any street, road, alley, sidewalk or other public way, red or amber lights shall be placed at six foot intervals along such excavation or other obstruction.

All such lights shall be of type approved by the city and in compliance with the Manual on Uniform Traffic Control Devices (latest adopted edition) and shall be secured in such a manner as not to be displaced by winds or storms. (Ord. #1973-6, March 1973, as amended by Ord. 1997-9, April 1997)

16-209. Damaging, extinguishing, etc., warning lights. No person shall break, molest, put out, remove or in any manner interfere with any warning lights required by this chapter. (Ord. #1973-6, March 1973)

16-210. Unguarded excavations or openings. It is hereby declared to be a nuisance and unlawful for any person to make any excavation or to establish any opening adjacent to any sidewalk or public right of way within the jurisdiction of this municipality without the erection of barricades or other proper precautions to prevent danger to persons or vehicles passing along such sidewalk or public right of way. Each day that such excavation or opening shall remain without barricade or other proper precaution, shall constitute a separate offense. (Ord. #1973-6, March 1973)

16-211. Restoration of streets, etc. Any person, firm, public or private corporation, association, or others making any excavation or tunnel in or under street, alley, or public place or public way in this municipality shall restore such street, alley, or public place. Single road cuts shall be resurfaced the full width of the roadway for a minimum of seventy-five feet (75') unless approved by the director of Public Works. Road cuts at intersections shall be resurfaced the full width of the roadway for fifty feet in each direction past the intersection. When multiple street cuts will occur within two hundred feet (200') of each other, then the entire width of the street shall be resurfaced continuously; a minimum of fifty feet (50') before the first cut to fifty feet (50') past the last road cut. All restoration including resurfacing shall be paid for by such person, firm, corporation, association, or others promptly upon the completion of the work for which the excavation or tunnel was made. All construction shall be in strict accordance with the Hendersonville Construction Manual. The Director of Public Works shall have the option to do the resurfacing or require the aforesaid parties to resurface same. In case of unreasonable delay in restoring street, alley, or public place or public way, the Director of Public Works or designated representative, shall give notice to the person, firm, corporation, association or others unless the excavation or tunnel is restored properly and within the time specified on the permit, the municipality will do the work and charge the expense of doing the same to such person, firm, corporation, association or others. Repairs are expected to be completed within 45 days after the utility work is done. If within the specified time the conditions of the above notice have not been complied with, the work shall be done by the municipality, and accurate account of the expense involved shall be kept, and the total cost shall be charged to the person, firm, corporation, association, or others who made the excavation or obstruction or tunnel. (Ord. #1973-6, March 1973, Ord # 2006-31, June 2006)

16-212. Insurance. In addition to making the deposit or giving the bond hereinbefore required to insure that proper restoration is made, each person applying for an excavation permit shall file a certificate of insurance indicating that he is insured against claims for damages for personal injury as well as against claims for property damage which may arise from or out of the performance of the work, whether such performance be by himself, his subcontractor, or anyone directly or indirectly employed by him. Such insurance shall cover collapse, explosive hazards, and underground work by equipment on the street, and shall include protection against liability arising from completed operations. The amount of insurance shall be prescribed by the Director of Public Works or designated representative, in accordance with the nature of the risk involved; provided, however, that the liability insurance for bodily injury shall not be less than \$100,000 for each person and \$300,000 for each accident, and for property damages not less than \$25,000 for any one (1) accident, and \$75,000 aggregate.

Such liability insurance policy shall contain a rider annexed to such policies containing the following provisions.

"This policy shall not be canceled, terminated, nullified, or changed by the company unless thirty days (30) prior written notice is sent to the insured and this municipality by registered mail addressed to the Director of Public Works Department."

Such bond and insurance shall be in a form as approved by the city attorney. (Ord. #1973-6, March 1973)

16-213. Time limits and hours when work may be performed.

(1) Each application for a permit shall state the length of time it is estimated will elapse from the commencement of the work until the restoration of the surface of the ground or pavement or other public way, or until the refill is made ready for the pavement to be put on by the municipality if the municipality elects to restore such surface, or pavement and in the event the municipality does not elect to make the restoration of such resurfacing of such pavement, then the application for a permit shall state the length of time that all work, including the pavement, including resurfacing, shall be completed. It shall be unlawful to fail to comply with this time limitation unless permission for an extension of time is granted by the Director of Public Works or designated representative.

(2) Further, every person holding a valid permit from the Director of Public Works or designated representative of municipality to perform an excavation or to otherwise cause any obstruction in, on or under any street, road, alley, sidewalk or other public way within the jurisdiction of this municipality, shall perform the work permitted only within the hours stipulated on such permit. Work not completed during any stipulated period of hours shall be bridged, backfilled or otherwise rendered usable for pedestrian or vehicular traffic, and as may be specified by the Director of Public Works or designated representative until the next period of hours, during which work is permitted. Each violation of the permitted hours of work shall constitute a violation of this section. Any person found guilty of two or

more offenses shall be disqualified from obtaining further excavation permits for a period not to exceed six months. (Ord. #1973-6, March 1973)

16-214. Supervision. The Director of Public Works or designated representative may from time to time inspect or have inspected, all excavations and tunnels being made in or under any public street, alley, or other public place or public way in the municipality and see to the enforcement of the provisions of this chapter. Notice shall be given to him at least twenty-four (24) hours before the work of refilling any such excavation or tunnel commences. (Ord. #1973-6, March 1973, as amended by Ord. 1997-9, April 1997)

16-215. Driveway curb cuts. No one shall cut, build, or maintain a driveway across a curb or sidewalk without first obtaining a permit from the Public Works Department. Such a permit will not be issued when the contemplated driveway is to be so located or constructed as to create an unreasonable hazard to pedestrian and/or vehicular traffic. Driveways shall be constructed in accordance to the provisions set forth in Article VI, supplementary district regulations, of the Hendersonville Zoning Ordinance, latest revision. Driveway aprons shall not exceed out into the street. (Ord. 1973-6, March 1973)

16-216. Agreements to hold the municipality harmless from all claims, etc. Anyone, any person, firm, public or private corporation, association or others, who undertakes any excavation, construction and, under or upon or over any public streets, roads, alleys, sidewalks, or other public ways shall agree by virtue of the issuance of such permit as required herein and whether or not such permit is obtained, agrees that in any event, that they save this municipality harmless from all claims for damages that may result to persons or property by reason of the construction, operation or maintenance of such installation, excavation, construction and related activities. (Ord. #1973-6, March 1973)

CHAPTER 3

**REGULATIONS FOR THE PLACEMENT OF SIDEWALKS WITHIN
THE CITY²**

SECTION

- 16-301. Purpose and intent.
- 16-302. Development of plan required.
- 16-303. Adoption of funding program.
- 16-304. Required sidewalk construction.

16-301. Purpose and intent. It is the purpose of this chapter to provide for the health, safety and welfare of the citizens of Hendersonville by developing a plan for the location of sidewalks within the city and by adopting a funding mechanism which is intended to equitably share the financial burden required for the construction of the sidewalks depicted upon the plan. (Ord. #1993-23, June 1993)

16-302. Development of plan required. (1) Responsibility for plan preparation. It shall be the responsibility of the director of public works to prepare a plan for the location and placement of sidewalks within the city.

(2) Scope and content of the plan. The plan for sidewalks shall be sufficient so as to indicate the general location of sidewalks within the city. Such plan shall contain adequate information as to the basis for the routes chosen for sidewalks shown upon such plan and recommendations for the establishment of priorities for funding of the various improvements recommended in the plan.

(3) Reviews and recommendation by planning commission. Prior to presentation of the sidewalk development plan to the board of mayor and aldermen for adoption, such plan shall be submitted for review and recommendation to the Hendersonville Regional Planning Commission. The planning commission shall submit its recommendations to the board of mayor and aldermen.

(4) Revision of plan required. At least annually, the plan for sidewalk development shall be reviewed and its funding priorities updated for submission within the Annual Budget. (Ord. #1993-23, June 1993, modified)

Rev. 1/2005

²See also the subdivision regulations in the zoning ordinance. These are of record in the office of the recorder.

16-303. Adoption of funding program. In order to provide a means for the timely implementation of the various projects contained within the sidewalk development plan, the following funding mechanism is hereby adopted:

(1) Means of fee calculation. The sidewalk fee shall be \$25.00 per linear foot of lot frontage for all uses except industrial. The fee for industrial uses will be \$12.50 per linear foot. Lot frontage shall be defined as any portion of the lot boundary running along a proposed or existing street right-of-way.

(2) Types of properties to which fee applies. The sidewalk development fee is to apply to all properties, irrespective of use.

(3) Amount of the fee. The sidewalk fee shall be \$25.00 per linear foot of lot frontage for all uses except industrial. The fee for industrial uses will be \$12.50 per linear foot. This fee will be reevaluated every four years for appropriate adjustments to reflect cost of living. Payment of this fee shall in no way remove or reduce the responsibility of the individual to provide a suitable location and grading for placement of sidewalks and appropriate easements as required for public access, except for areas zoned for industrial uses. If utility locations or other unforeseen obstacles make it impractical to provide a suitable location for the sidewalk, payment of an additional fee can be paid. This additional fee shall be approved by the Public Works Director and provide funds sufficient to grade and construct drainage for the designated location for the sidewalk.

(4) Point of fee assessment. The sidewalk development fee is to be paid at the point in time when a building permit is obtained.

(5) Fee waiver. In any instance where an individual makes a commitment to construct sidewalk(s) along the street frontage(s) of the property upon which the building being applied for is to be located, no fee will be assessed. In any instance where a site has an existing sidewalk in good repair, as determined by the city public works director, no fee will be assessed.

(6) Hendersonville Regional Planning Commission override. The Hendersonville Regional Planning Commission reserves the right to require sidewalks, if during the review process the membership determines it is in the best interest of the city to have sidewalks constructed.

(7) Compliance of existing site. Any existing site must meet the provisions of this chapter at the time of any development subject to the provisions of the design review ordinance.

(8) Local government funding. For the next ten (10) years the mayor shall in the proposed budget for each year project an expenditure of a minimum of one half of one percent (0.5%) of the budget for the construction of sidewalks along routes designated in the Master Sidewalk Plan. (Ord. #1993-23, June 1993, Ord. 2004-7, March 2004)

16-304. Required sidewalk construction. Sidewalks shall be constructed along the frontage of at least one side of the street and cul-de-sacs shall have sidewalks for the entire length in residential subdivisions zoned more dense than Low Density Residential District (R-40) for all developments with final plats filed for Phase I, Section 1, or other new

development. Sidewalks shall be installed prior to final acceptance of the roadway by the City of Hendersonville. (Ord. #1993-23, June 1993)

CHAPTER 4

PROPERTY NUMBERING

SECTION

- 16-401. Mailbox required to display street number.
- 16-402. Number displayed on building, property, or sign.
- 16-403. Multiple occupancies -- display of number.
- 16-404. Street numbers shall not be limited by sign regulations.
- 16-405. Enforcement.
- 16-406. Violation and penalties.

16-401. Mailbox required to display street numbers. All improved properties or occupancies which utilize a curbside mailbox shall display their street number prominently on said mailbox in such a manner as to:

- (1) Be legible from the street on which the property is located;
- (2) Be of sufficient size so as to be seen easily from the street the address is on;
- (3) Be visible from both directions; and
- (4) Be set on a background of a contrasting color.

All one and two family dwellings shall display numbers a minimum two (2) inches in height while all other properties/occupancies shall be a minimum of four (4) inches in height. (Ord. #1989-17, May 1989)

16-402. Number displayed on building, property, or sign. All approved properties or occupancies which do not utilize a curbside mailbox shall display their street number prominently on their building, property, sign, or similar location. All criteria concerning legibility, size and visibility contained in § 16-401 shall apply. (Ord. #1989-17, May 1989)

16-403. Multiple occupancies -- display of number. Improved properties with multiple occupancies such as office buildings, shopping centers, and apartment complexes shall display the development's street number or range of numbers prominently on their building, property, sign or similar location. These street numbers shall comply with the criteria for legibility, size, and visibility as contained in § 16-401. (Ord. #1989-17, May 1989)

16-404. Street numbers shall not be limited by sign regulations. Street numbers displayed for purposes of this chapter shall not be limited by the sign regulations (title 14, chapter 3) provided the non-compliance is only that necessary to comply with this chapter. (Ord. #1989-17, May 1989)

16-405. Enforcement. Enforcement of the provisions of this chapter shall be the responsibility of the Codes Administrative Department. (Ord. #1989-17, May 1989)

16-406. Violation and penalties. All property owners or occupants notified in writing that they are in violation of this chapter shall have thirty (30) days to comply. Failure to comply shall result in being cited into city court, and subject to a fine not to exceed fifty dollars (\$50.00). (Ord. #1989-17, May 1989, modified)