

## Chapter 95. Streets and Sidewalks

Section

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*Cross-reference: Sidewalk and drainage facility construction in conjunction with construction of structures or buildings, see §§150.50 through 150.57*

### **FOREIGN MATERIALS ON PUBLIC STREETS**

**§ 95.01 DEFINITION.** For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

**FOREIGN MATERIAL.** Any mud, dirt, gravel, construction materials, debris or other material foreign in nature to the surface on which it is deposited. This shall not include materials lawfully applied to streets or sidewalks for the control of ice and snow or dust and shall not include materials applied by public agencies for traffic control purposes.

('72 Code, § 14B-1) (Ord. 312, passed 12-9-85)

### **§ 95.02 DEPOSIT OF FOREIGN MATERIALS PROHIBITED**

It shall be unlawful for any individual, corporation or firm to deposit or cause to be deposited foreign materials on the public streets.

('72 Code, § 14B-1) (Ord. 312, passed 12-9-85) Penalty, see § 95.99

### **§ 95.03 RESPONSIBILITY TO ENSURE COMPLIANCE**

It shall be unlawful for any individual, corporation or firm in charge of a worksite or an unpaved public parking lot to fail to take reasonable and appropriate steps to assure that vehicles leaving their sites do not deposit foreign materials on public streets or sidewalks.

('72 Code, § 14B-2) (Ord. 312, passed 12-9-85) Penalty, see § 95.99

**§ 95.04 FAILURE TO REMOVE MATERIALS PROHIBITED**

It shall be unlawful for any individual, corporation or firm depositing foreign materials on the public streets or sidewalks, or failing to maintain a work site or an unpaved public parking lot as to assure that vehicles leaving their sites do not deposit foreign materials on public streets or sidewalks, from failing to remove immediately from the public streets or sidewalks all foreign materials which they deposited or caused to be deposited on the public streets or sidewalks or which came from their worksite or unpaved public parking lot.

('72 Code, § 14B-3) (Ord. 312, passed 12-9-85) Penalty, see § 95.99

***SIDEWALK IMPROVEMENTS***

**§ 95.15 PETITION FOR AND APPROVAL OF IMPROVEMENT REQUIRED**

(A) Any petition for sidewalk improvement must be signed by at least a majority in number of the owners of property to be assessed, who must represent at least a majority of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved.

(B) The town may require the petitioner to submit as part of the written application that information, plans or other data as may be required to adequately determine if the requirements of this subchapter are met.

(C) When petition is made for sidewalk improvement to serve an area or development that is planned as part of a larger development project or subdivision, all of which is not to be developed at the time petition is made, the owner or owners shall submit plans in sufficient detail in order to determine the size and type improvement which will be necessary to serve the entire development or subdivision when completed.

(D) No sidewalk improvement in the town shall be made and no petition shall be approved except in accordance with the requirements of this subchapter; however, nothing herein shall be construed so as to prevent the Town Board of Commissioners from making sidewalk improvements on their own initiative without a petition being filed.

('72 Code, § 18-1)

**§ 95.16 IMPROVEMENT SPECIFICATIONS**

(A) All improvements to sidewalks within the town shall be governed by the following:

(1) The minimum distance for any sidewalk improvement shall be determined by the Board of Commissioners. The minimum distance for sidewalk improvements shall be one platted block.

(2) The size and type of sidewalk to be constructed and other accompanying facilities shall be determined by the Town Board in accordance with the recognized standards and accepted engineering practices and design and in accordance with applicable system plans adopted by the Board of Commissioners.

(3) The Board of Commissioners shall confer with the consulting engineer and any other person it deems necessary to see that those standards and engineering practices and designs are implemented.

('72 Code, § 18-2)

(B) Any sidewalks constructed under the provisions of this subchapter shall be installed in accordance with the approved plans, specifications and other requirements of the town.

('72 Code, § 18-4) Penalty, see § 95.99

**§ 95.17 FINANCING SIDEWALK IMPROVEMENTS WITHIN CORPORATE LIMITS**

(A) *Improvements to approved subdivisions or developed property.*

(1) When petition is received requesting the construction of sidewalks or sidewalk improvements to serve property within the corporate limits which is developed or has been previously approved as a subdivision, or where streets have previously been dedicated and accepted by the town, and where that area is not part of a new subdivision which has not been approved by the town, the consulting engineer or other person designated by the Board of Commissioners shall estimate the cost of the project and present the petition for that improvement or construction along with the estimated cost and other required information to the Board of Commissioners for approval. If the petition is approved by the Board of Commissioners and subject to the availability of funds, the town will install or have installed by contract under its supervision the construction or improvements which have been approved, and the construction or improvements shall be financed in accordance with this division.

(2) When an approved sidewalk improvement or construction project has been completed and the total cost thereof determined, unless the petition specifies another percentage, not more than 50% of the total cost of the sidewalk improvement or construction shall be assessed against the property owners whose property abuts upon that improvement at any equal rate per foot in accordance with and under the authority granted to the town by G.S. § 160A 216 through 160A-236 as amended. The remaining 50% or other percent of the total cost of those improvements or construction shall be borne by the town from funds appropriated for this purpose.

(3) Any property owner or owners shall have the opportunity in accordance with G.S. § 160A-232, to pay his or their proportionate share of the cost of those improvements or construction after the assessment roll is confirmed rather than paying his or their share in equal annual installments with interest as required by the statute.

(4) Except when the petition involves a single owner, in no instance shall a property owner be assessed on more than 600 feet of frontage abutting the sidewalk. If the property abutting the sidewalk has a frontage of more than 600 feet, the town shall pay for the remaining feet of frontage.

(5) In the event one of the property owners petitioning for sidewalk improvement owns a corner lot, the plans calling for sidewalk on both sides of the corner, he shall be assessed only for the side having the greater amount of frontage. The town shall pay for the remaining feet of frontage.

(B) *Improvements to proposed developments or subdivisions.* Sidewalk improvements or construction is a required improvement that must be accomplished prior to approval of the final plat by the Board of Commissioners.

(See Chapter 152, Subdivision Regulations.) ('72 Code, § 18-3)

#### **§ 95.18 SIDEWALKS TO BECOME PROPERTY OF TOWN**

All sidewalks constructed under the provisions of this subchapter shall become the sole property of the town and under its jurisdiction and control for any and all purposes whatsoever at the time those sidewalks are constructed.

('72 Code, § 18-4)

#### **§ 95.30 STREET ENCROACHMENTS PROHIBITED, EXCEPTIONS**

(A) After the effective date of this ordinance, no person or firm shall construct any sign (except "sandwich signs" as allowed for in the Zoning Ordinance), structure, building, wall, landscaping structure, or private utility such as lighting or sprinkler systems within the right-of-way of any town maintained street, or any street expected to be accepted and maintained by the Town in the future, except in accordance with this section.

(B) On a case by case basis, the Town Manager may grant an encroachment to an adjacent property owner upon the execution of a "Right-Of-Way Encroachment Agreement" to be prepared by the Town and the payment of a fee to be established from time to time by the Town Board of Commissioners. Encroachment agreements shall be in a form suitable for recording at the Deeds Office of the County of Mecklenburg and shall contain provisions to hold harmless the Town and any public utility franchised by the Town to use the public streets, and in addition, shall indemnify the Town for any and all damages and/or injury caused by the existence of the encroachment.

(C) Prior to the final acceptance of any street, existing or future, into the Town system for maintenance, an inspection shall be made for encroachments and such encroachments must be removed or a “Right-Of-Way Encroachment Agreement” must be obtained.

(D) Any and all encroachments, covered by an agreement or not, shall be removed by the party responsible upon reasonable notice by the Town, and failure to remove said encroachment shall result in the imposition of a civil penalty of \$100.00, and each day’s failure to remove said encroachment shall be treated as a separate offense. In cases of a threat to the safety of the public, the Town may remove the encroachment without notice, and assess the full cost of such removal to the responsible party.

(Ord. 953, passed 2-9-98)

**§ 95.40 DRIVEWAY, GENERAL**

(A) Except as otherwise provided in this section, no person may open, construct, reconstruct, alter, or relocate any driveway across any public sidewalk or into any Town-maintained street, or cut any curb for such purpose without having obtained a written permit from the Town Engineer or his designee.

(B) Any person who receives a permit under this section shall be responsible for constructing said driveway in accordance with the specifications established by the Public Works Department and for repairing any damage to the planting strip, sidewalk or street (including curb and gutter or drainage swale) caused by the driveway construction.

(C) The Engineer shall review the driveway construction and design plans and shall issue a permit unless he finds the driveway, if constructed, a danger to persons using the street or sidewalk intersected by the driveway, or public facilities (including utility poles, traffic signal standards, etc.), or will fail to comply with the specifications of the Town or any of the provisions of this section.

(D) No driveway may be constructed closer than three feet to a fire hydrant or catch basin or closer than 10 feet to the right-of-way line of a street that intersects with the street the driveway opens onto, unless specifically approved by the Engineer. Additional distances may be required by other standards, such as the Zoning Ordinance.

(E) Any person paving a private driveway that intersects with or opens onto a public street shall make the pavement of such driveway connect with and conform to the street and sidewalk cross sections in accordance with the specifications of the Town. Any variations must be approved by the Town Engineer.

(F) All driveways that abut streets that are maintained by the NC Department of Transportation, shall obtain permits in accordance with the policies and requirements of the NC Department of Transportation.

(Ord. 1578, passed 8-13-07)

**§ 95.41 DRIVEWAYS FOR BUSINESS ESTABLISHMENTS**

(A) Commercial driveways shall comply with the applicable specifications of the Town of Matthews, or the NCDOT as applicable.

(B) Commercial driveways shall fully comply with all provisions of the Matthews Zoning Ordinance with respect to number and location.

(C) The Town shall retain the right to deny any driveway permit when solely in the opinion of the Town that traffic flow and safety will be compromised or if other driveway access points adequately serve the business.

(Ord. 1578, passed 8-13-07)

**§ 95.42 BLANKET PERMITS – RESIDENTIAL SUBDIVISIONS**

(A) In lieu of individual driveway permits for all lots in a residential subdivision, the Engineer may issue a blanket permit for all lots within the subdivision, to be effective for a period of five (5) years from the date of acceptance of the final plat by the Board of Commissioners.

(B) To obtain a blanket permit, the developer shall submit a written request for the exemption as part of his preliminary construction submissions. The Town Engineer in writing, prior to initial construction, shall note the exemption in the file and establish the five-year period. This exemption shall apply to the initial construction on the lot and changes afterwards will require an individual permit. Driveways must still comply with the specifications of the Town.

(C) Upon the expiration of the five (5) year period, any additional driveways constructed on any lot shall require an individual driveway permit.

(D) Any residential subdivision final plat approved by the Board of Commissioners after July 1, 2004, but prior to the adoption of this ordinance shall be treated as if a blanket permit had been issued, in accordance with this section.

(Ord. 1578, passed 8-13-07)

**§ 95.43 TOWN INDEMNIFIED**

Any person obtaining a permit authorized by this subchapter agrees as a condition of the permit to indemnify the Town for and hold the Town harmless from any and all expense (including but not limited to attorney's fees, litigation costs and judgments) incurred as a result of claims made for damages arising out of operations conducted by the permit recipient pursuant to the permit.

(Ord. 1578, passed 8-13-07)

**§ 95.44 NOTICE OF VIOLATION**

When the Town Engineer finds that a property owner or agent has violated Sections 95.40 through 95.43, the Engineer or his agent shall give notice to the owner of the property requiring correction within a schedule required by the Engineer. Failure to correct any violation may result in the Town removing the violation and invoicing the cost of the removal to the owner.

(Ord. 1578, passed 8-13-07; Ord. 1978, passed 11-25-13)

**§ 95.99 PENALTY**

(A) Violation a misdemeanor. Any individual, corporation or firm who violates any provision of these sections shall, upon conviction, be guilty of a misdemeanor and shall be fined not exceeding \$500 and imprisoned not exceeding thirty (30) days. Each day that the violation continues to exist shall be considered a separate offense;

OR

(B) Citation and Civil Penalty. Failure to correct a violation within eight (8) hours after having been issued a warning requesting correction of a violation shall subject defendant to an issue of a citation for violation of those sections and to a civil penalty of \$50. An additional citation may be issued for each additional day that the violation continues to exist. This civil penalty may be recovered by the Town in a civil action in the nature of a debt if the defendant does not pay the penalty within seven (7) days after he has been cited for violations under Chapter 95. The Public Works Director, or his designee, is hereby authorized to issue citations pursuant to this Chapter. Any person(s) to whom a citation has been issued under this Section may appeal to the Town Manager, whose decisions shall be final; (Ord. 1978, passed 11-25-13)

OR

(C) Injunction and Order of Abatement. The provisions of this Chapter may be enforced by injunction and order of abatement.

(Ord. 1578, passed 8-13-07)