

Chapter 26

STREETS AND SIDEWALKS*

Art. I. In General, §§ 26-1—26-45

Art. II. Construction of Streets and Ways, §§ 26-46—26-64

Art. III. Construction of Sidewalks, Driveways and Driveway Entrances, §§ 26-65—26-73

ARTICLE I. IN GENERAL

Sec. 26-1. Awnings, shades and marquees over sidewalks—Permit required.

No person shall place or maintain over any sidewalk any permanent awning, shade or marquee without first receiving a permit therefor from the commissioner of public works. (Rev. Ords. 1973, § 19-1; Ord. No. 90, 10-6-75)

Cross reference—Licensing and permits generally, Ch. 17

State law reference—Authority to regulate structures projecting into ways, G.L. c. 85, § 8

Sec. 26-2. Same—Term and fee for permit.

The fee for a permit as required in section 26-1 shall be one dollar (\$1.00) and such permit shall continue in force until revoked in writing by the commissioner of public works. (Rev. Ords. 1973, § 19-2; Ord. No. 90, 10-6-75)

Sec. 26-3. Same—Metal cards to accompany permits.

The commissioner of public works shall furnish with each permit required under section 26-1 a metal card bearing the number of the permit, which card shall be affixed in a conspicuous place to the permanent awning, shade or marquee for which the permit was granted. (Rev. Ords. 1973, § 19-3; Ord. No. 90, 10-6-75)

Sec. 26-4. Same—Height and length limitations.

No permanent awning, shade or marquee shall be placed or maintained less than seven and one-half (7-1/2) feet from the ground at the lowest part, nor shall any such awning, shade or marquee extend beyond the line of the sidewalk. (Rev. Ords. 1973, § 19-4)

Sec. 26-5. Posts.

No person shall erect or maintain a post in any street or sidewalk for any purpose without a permit in writing from the commissioner of public works. (Rev. Ords. 1973, § 19-5; Ord. No. 90, 10-6-75)

Sec. 26-6. Reserved.

***Cross references**—City clerk's duties in regard to records of street acceptances, § 6-3; civil defense, Ch. 8; hawkers and peddlers remaining in one place on streets more than five minutes prohibited, § 17-29; temporary closing of streets, § 19-47; parks, recreation and public grounds, Ch. 21; planning and development, Ch. 22; poles, wires and conduits, Ch. 23; public works department, Ch. 25; zoning, Ch. 30

State law references—Jurisdiction of cities over highways, G.L. c. 82, § 17 et seq.; regulations relative to public ways generally, G.L. c. 85; authority to regulate use of ways for certain purposes, G.L. c. 85, § 10; regulations relative to sidewalks, G.L. c. 83, § 25 et seq.

Sec. 26-7. Numbering of buildings.

(a) Numbers in regular series, to be designated by the city engineer, shall be affixed to or inscribed on buildings abutting on any street or way, public or private. Such building numbers shall be displayed at a conspicuous location so as to be plainly seen from said street or way, provided however, that where such building numbers cannot be plainly seen from said street or way because of the building location or the presence of visual obstructions, such numbers shall be affixed or inscribed on a post, tree, stone or other object adjacent to the driveway or walkway to the building at a location which can be plainly seen from said street or way. Each such number shall be at least four (4) inches in height, of durable material and of a color or shading which contrasts sufficiently with the background where it is displayed as to be visible and legible from the street or way.

(b) A record of such numbering, including plans showing the locations of buildings for which numbers have been designated, shall be kept in the office of the city engineer.

(c) The owner of any building upon any such street or way shall forthwith display the number(s) so designated in the manner above prescribed. No such owner or occupant shall display on such building a number contrary to the provisions of this section, provided however, that it shall not be a violation of this section to display additional numbers which do not comply with the color, size or other requirements hereof so long as all numbers displayed at a building are consistent with the number(s) designated pursuant to subsection (a). (Rev. Ords. 1973, § 19-7; Ord. No. V-193, 8-10-98)

Cross reference—Buildings, Ch. 5

State law reference—Authority to provide for numbering of buildings, G.L. c. 40, § 21(10)

Sec. 26-8. Removal of snow and ice from sidewalks in certain districts.

Every owner or occupant of a building or lot of land abutting upon a sidewalk which is within a business district, as defined by chapter 30, and every owner or occupant of a building situated in other than a business district as defined by such chapter and which is used for a purpose permitted in districts zoned for business but not permitted in districts zoned for single, private or general residences, whether or not such use is a nonconforming use under the provisions of such chapter, which building abuts upon a sidewalk, or stands upon a lot of land abutting upon a sidewalk, shall cause any snow to be removed from the sidewalk and any ice on the sidewalk to be removed, sanded or salted within twenty-four (24) hours after such snow has ceased to fall or such ice has come to be formed. The preceding provision shall apply to snow and ice which falls from buildings, other structures, trees or bushes as well as to that which falls from clouds. (Rev. Ords. 1973, § 19-8; Ord. No. T-127, 3-4-91; Ord. No. T-165, 8-12-91; Ord. No. U-3, 2-22-94)

State law references—Removal of snow from sidewalks, G.L. c. 85, § 5; G.L. c. 40, § 21(2), (3), (4)

Sec. 26-8A. City snow clearing—Clearing of sidewalks used as school routes.

The commissioner of public works shall clear snow from certain city sidewalks including portions of both school pedestrian routes and specific arterial and collector roadways, subject to appropriation and the availability of city personnel and equipment. The commissioner, after consultation with the superintendent of schools, chief of police and other appropriate city personnel, shall determine the total number of miles of city sidewalks to be cleared for the purposes of this ordinance based on the availability of personnel, vehicles and funding. Each year during the month of November, the commissioner shall publish a list of said sidewalk snow clearing routes. Said list shall include the street names and, where appropriate, the names of intersecting streets up to which the sidewalks will be cleared. The commissioner shall send a copy of said list to the chief of police and the superintendent of schools. (Ord. No. U-23, 7-11-94)

Sec. 26-8B. Same—Snow clearing assistance.

The commissioner shall annually prepare lists of persons available to provide snow clearing assistance either for a fee or on a volunteer basis. The lists shall be prepared in consultation with appropriate school and senior services department personnel, interested neighborhood organizations, houses of worship, parent-teacher associations, and other similar groups that indicate a willingness to participate in snow clearing assistance. Said lists shall be made available during the month of November each year. The list of persons available to provide snow clearing assistance for a fee shall be available upon request to any Newton resident. Low income elderly or low income handicapped persons requesting volunteer snow clearing assistance shall be referred to the senior services department to be matched with available volunteers. For the purposes of this section, "elderly" shall be defined as a person sixty (60) years of age or older, "handicapped person" shall be defined as a person with a physical condition which substantially limits the ability to engage in physical snow clearance activities and "low income" shall be defined in accordance with guidelines established by the United States Department of Housing and Urban Development for the Community Development Block Grant Program. (Ord. No. U-23, 7-11-94; Ord. No. 175, 05-26-05)

Sec. 26-8C. Same—Snow clearance standards.

The commissioner of public works shall endeavor to minimize the blocking of sidewalks and intersections with plowed snow so as not to hinder pedestrian passage. The commissioner shall remove plowed snow from sidewalks and intersections that block pedestrian access, to the extent that such removal is feasible, as determined by the commissioner, and subject to appropriation. (Ord. No. U-23, 7-11-94)

Sec. 26-8D. Trial program for removal of snow and ice from sidewalks.

In order to allow for safe pedestrian and wheelchair passage, every owner or occupant of a building or lot of land abutting upon a paved sidewalk or any person having charge of such property shall use reasonable efforts to remove snow and ice from the sidewalk and handicap access ramps, and shall use reasonable efforts to treat said sidewalk and ramps to allow for a safe passageway of approximately thirty-six (36) inches in width, provided that where such sidewalk is less than thirty-six (36) inches in width the passageway shall encompass its entire width and handicap access ramps. Snow and ice shall be removed, and sidewalks and ramps shall be treated, within thirty (30) hours after such snow has ceased to fall or such ice has formed. This section shall apply to snow and ice which falls from buildings, other structures, trees or bushes, as well as to that which falls from clouds. This section shall not apply to owners or occupants of a building or lot covered by Section 26-8. The mayor or his designee is authorized to coordinate volunteer snow clearing assistance or to grant an exemption, renewable annually, for citizens who upon written petition demonstrate hardship due to a combination of health and financial duress. The provisions of this section shall take effect on November 1, 2011 and shall expire on November 1, 2013 unless terminated earlier or renewed or modified by the board of aldermen. During this trial period, enforcement shall be limited to issuance of notices of non-compliance for violations of any provision of this section. (Z-83, 3-21-11)

Sec. 26-9. Putting snow and ice upon streets, sidewalks and bridges.

(a) No person shall block, obstruct or otherwise hinder or impair pedestrian or vehicular traffic on the public ways of the city by placing snow or ice or permitting or causing snow or ice to be placed upon a street, sidewalk or bridge, except that snow or ice removed from a sidewalk may be piled in the adjoining gutter or on the loam border between the sidewalk and the street. This section shall not apply to municipal snow removal operations.

(b) Without limiting the applicability of the foregoing paragraph (a), the owner or occupant of property whose driveway or sidewalk is cleared of snow shall be responsible for promptly removing snow placed on the public way (street, sidewalk and/or bridge) adjoining the owner's property as a result of clearing snow from the driveway or sidewalk of the owner. For purposes of this paragraph, "clearing snow" shall include, but is not limited to,

plowing, shoveling, sweeping and any other similar means of removing snow from the driveway or sidewalk. This section shall not apply to municipal snow removal operations. (Rev. Ords. 1973, § 19-9; Ord. No. T-166, 8-12-91; Ord. No. X-97, 07-12-04)

Sec. 26-10. Gates, doorsteps, cellar openings, etc.

No person shall make or maintain any gate, doorstep, window, portico, porch or entrance or passageway to any cellar or basement, or any other structure projecting or swinging into or upon any street or sidewalk without a permit in writing from the commissioner of public works. No person shall suffer the platform or grate of the entrance to the passageway to his cellar or basement in any street or sidewalk to protrude above the surface thereof; and every such entrance or passageway shall, at all times, be kept covered by a suitable and substantial platform or grate, except when temporarily authorized to be kept open by the commissioner of public works. When so kept open, it shall be protected by a sufficient railing on both sides, at least two and one-half (2-1/2) feet high, and shall be lighted at night. (Rev. Ords. 1973, § 19-10)

Sec. 26-11. Apertures under streets and sidewalks, permit fees.

(a) No person shall make or cause to be made any aperture in or under any street or sidewalk for any purpose without first obtaining a written permit from the commissioner of public works. Permit fees shall be paid in accordance with the schedule set forth in paragraph (b) of this section. No person shall leave any aperture in a sidewalk, except when in actual use and properly guarded.

(b) The fees for street and sidewalk openings shall be as follows:

Application fee	\$100.00
Inspection and maintenance fee for excavations of 100 sq. ft. or less.....	\$150.00
Each additional 100 sq. ft. or portion thereof.....	\$50.00
Inspection and maintenance fee for corings	\$10.00 each
minimum charge	\$25.00

Inspection and maintenance fee for shut-off holes \$50.00

(Rev. Ords. 1973, § 19-11; Ord. No. 90, 10-6-75; Ord. No. T-161, 7-8-91; Ord. No. X-55, 6-16-03)

Sec. 26-12. Conditions of maintaining coalholes, vaults, posts, wires, etc., in streets.

Every owner of an estate maintaining any cellar, vault, coalhole or other excavation under the part of the street which is adjacent to or a part of his estate shall do so only on condition that such maintenance shall be considered as an agreement on his part to hold the city harmless from any claims for damage to himself or the occupants of such estate resulting from gas, sewage or water leaking into such excavation or upon such estate. Every such owner and every person maintaining a post, pole or other structure in a street, or a wire, pipe, conduit or other structure under a street, shall do so only on condition that such maintenance shall be considered as an agreement on his part with the city to keep the same and the covers thereof in good repair and condition at all times during his ownership and to indemnify and save harmless the city against any damages, costs, expenses or compensation which it may sustain or be required to pay by reason of such excavation or structure being under or in the street or being out of repair during his ownership, or by reason of any cover of the same being out of repair or unfastened during his ownership. (Rev. Ords. 1973, § 19-12)

Sec. 26-13. Excavations near streets.

No person shall dig a cellar or other cavity in the ground near to or adjoining any street unless he shall erect and maintain a barrier or fence on or near the line of such street, sufficient to protect travelers from falling into the place so dug, or being injured thereby. (Rev. Ords. 1973, § 19-13)

Sec. 26-14. Obstructing sidewalks generally.

No person shall place or cause or permit to be placed upon any sidewalk any snow or ice, lumber, iron, coal, trunk, bale, box, crate, cask, package, article or thing whatsoever, so as to obstruct free passage for travelers. (Rev. Ords. 1973, § 19-14)

Sec. 26-15. Obstructing free passage on sidewalks.

No person shall willfully or negligently obstruct the free passage of foot travelers upon a sidewalk in any street of the city, or willfully or negligently congregate with others upon a sidewalk or in a street or other public place of the city and obstruct the free passage of foot travelers or vehicles that are rightfully and properly passing thereon. (Rev. Ords. 1973, § 19-15)

Sec. 26-16. Vehicles on sidewalks; permit fee; bond.

(a) No person shall park a vehicle upon, obstruct, damage or destroy any sidewalk, berm or curbing.

(b) No person shall drive, wheel or draw any motor vehicle upon or across any sidewalk, berm or curbing except in accordance with a permit issued by the commissioner of public works as provided in subsection (c) or except as follows:

- (1) a motor vehicle which is registered or otherwise authorized to be driven on the public streets may be driven across that portion of sidewalk which constitutes the driveway entrance or apron; or
- (2) as may be required for municipal snow clearance operations.

(c) The commissioner of public works may grant a permit, upon payment of the fee specified in subsection (d), to any person authorizing the crossing or obstruction of a sidewalk, berm or curbing by vehicles where the same may be necessary to the performance of any work on any land, building or structure abutting thereon. All damage to any sidewalk, berm or curbing caused thereby shall be repaired and restored by the commissioner of public works to a condition satisfactory to him at the expense of the holder of such permit, and the commissioner of public works may require, as a condition of the issuance of any such permit, a bond in such amount and in such form and with such surety as may be satisfactory to him for the performance of the requirements thereof and of this section.

(d) The fee for a sidewalk crossing permit shall be as follows:

Application and inspection fee	\$50.00
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(e) Within three business days of the department's receipt of an application for a permit under this section, the commissioner of public works or the commissioner's designee shall inspect the site and make a determination whether to grant such a permit. (Rev. Ords. 1973, § 19-16; Ord. No. 90, 10-6-75; Ord. No. T-161, 7-8-91; Ord. No. V-2, 1-3-95; Ord. No. X-55, 6-16-03)

Sec. 26-17. Obstructing streets, sidewalks with staging for building, scaffolding, dumpsters, brick, timber, etc.

No person shall erect any staging for building, or scaffolding, or place or deposit a dumpster in connection with construction, or any stones, bricks, timber or other building materials in any street or on any sidewalk without first obtaining a written street occupancy permit therefor from the commissioner of public works. The fee for said street occupancy permit shall be fifty dollars (\$50.00). All rubbish shall be promptly removed by such person and in case of neglect the commissioner of public works shall cause it to be removed at the expense of such person. (Rev. Ords. 1973, § 19-17; Ord. No. 90, 10-6-75; Ord. No. X-55, 6-16-03)

Sec. 26-18. Same—Barriers to be maintained; restoration.

Whenever any street under permission granted pursuant to section 26-17 is obstructed, the person so licensed shall keep a suitable barrier, sufficiently lighted every night, around the part of the street so obstructed. He shall also, within such reasonable time as the commissioner of public works shall direct, mend and repair such street to the satisfaction of the commissioner of public works. (Rev. Ords. 1973, § 19-18; Ord. No. 90, 10-6-75)

Sec. 26-19. Playing ball, flying kites, throwing missiles in streets.

No person shall play ball, fly a kite or throw a stone or a snowball or any other missile in any street or upon or from any bridge. (Rev. Ords. 1973, § 19-19)

Sec. 26-20. Shooting arrows and air guns in streets.

No person shall shoot with or use a bow and arrow or air gun in a street or upon or from any bridge. (Rev. Ords. 1973, § 19-20)

Cross reference—Discharging firearms, § 20-62

Sec. 26-21. Cleaning carpets in streets.

No person shall shake or clean a carpet in any street or in any park or public ground. (Rev. Ords. 1973, § 19-21)

Sec. 26-22. Tables, stalls, etc, for sale of food or merchandise.

No person shall place or keep any table, stall, booth or other structure in any street or public grounds in the city for the sale of food, fruit, merchandise or other thing, without first obtaining permission from the commissioner of public works. (Rev. Ords. 1973, § 19-22; Ord. No. 90, 10-6-75)

Cross reference—Licensing and permits generally, Ch. 17

Sec. 26-23. Lighting, extinguishing streetlamps.

No person shall light or extinguish any public lamp in any street or public grounds without authority of the commissioner of public works. (Rev. Ords. 1973, § 19-23; Ord. No. 90, 10-6-75)

Sec. 26-24. Permitting material to remain upon sidewalks and streets.

No person shall suffer his fuel, dirt, ashes or other rubbish or any other material to remain on any sidewalk or any street, or in any manner to obstruct any sidewalk or street crossing, without a permit from the commissioner of public works. If so permitted to remain overnight, the owner thereof shall place and keep a sufficient light over or near the same through the night in order to give notice thereof to travelers. (Rev. Ords. 1973, § 19-24; Ord. No. 90, 10-6-75)

Cross reference—Licensing and permits generally, Ch. 17

Sec. 26-25. Permission required for construction of alley, driveway or garage entrance.

Subsequent to December 7, 1953, no alley, driveway or garage entrance shall be so constructed as to enter a street at any point of the curve forming the intersection of two (2) streets unless permission is obtained therefor from the board of aldermen, and any such alley, driveway or garage entrance hereafter constructed without such permission shall be removed by the owner or may be blocked up by the commissioner of public works upon request in writing therefor from the chief of police. It shall be the duty of the commissioner of inspectional services to bring this section to the attention of all applicants for building permits on corner lots and to refuse any such permit where it appears that this section will be violated, but his failure to do so shall not excuse any violation hereof. (Rev. Ords. 1973, § 19-25; Ord. No. 90, 10-6-75; Ord. No. S-301, 2-1-88)

Cross reference—Licensing and permits generally, Ch. 17

Sec. 26-26. Temporary obstruction of sidewalks for loading and unloading.

(a) Temporary obstruction of sidewalks during periods of loading or unloading is permitted; provided, that no vehicle shall be driven upon any sidewalk, berm or curbing except at a permanent driveway or pursuant to a permit issued by the commissioner of public works. (Rev. Ords. 1973, § 19-26; Ord. No. 90, 10-6-75; Ord. No. Z-100, 11-21-11)

Sec. 26-27. Placing signs on sidewalks.

No person shall, without authority from the commissioner of public works, place or cause to be placed on a sidewalk a showboard, placard or sign for the purpose of displaying the same or attracting attention thereto. (Rev. Ords. 1973, § 19-27; Ord. No. 90, 10-6-75)

Sec. 26-28. Removal of trees, shrubs for street work restricted.

Trees or shrubs may be removed for the purpose of straightening, resurfacing or reconstructing any street, gutter or berm when the straightening, resurfacing or reconstructing does not result in the widening of any street, gutter or berm, if there is first a public hearing held on the matter with notice as provided in G.L. c. 87, § 3, and notice of such hearing is sent to abutters, abutters to abutters, the board of aldermen, and mayor, except as otherwise provided in G.L. c. 87, § 5. (Rev. Ords. 1973, § 19-39(a); Ord. No. 62, 3-3-75)

Sec. 26-29. Use of portable grills for cookouts on city streets.

(a) No person shall use or maintain an outdoor fire for cooking, whether in a grill, hibachi or other portable apparatus on any public street, sidewalk, median strip, in any public street, public parking lot, private parking lot or private way to which the public has access. As used herein, outdoor fires shall include any heat or fuel source, including, but not limited to, wood, charcoal, propane gas, sterno or any other bottled or canned fuel source.

(b) The prohibition of paragraph (a) of this section shall extend to outdoor fires in, on or outside of an automobile or other motor vehicle but shall not apply in or upon:

- (1) Any private parking lot and private way to which the public has access where prior consent has been obtained from the owner or authorized person in control thereof, and provided further that no disturbance or annoyance is created thereby.
- (2) Any public property specified in paragraph (a) where a permit has been issued by the Police Department for a temporary street closure in accordance with the provisions of section 17-6 of the Revised Ordinances.
- (3) Any public property specified in paragraph (a) if the person using or maintaining such outdoor fire for cooking is duly certified as a hawker or peddler of beverages or food in accordance with Sec. 17-42 of the Revised Ordinances of 1979 and licensed in accordance with G.L. c. 101, §§ 22 and 22A.

(c) Whoever remains in, on, or upon any premises described herein in willful violation of this section may be arrested without a warrant, in accordance with G.L. c. 272, § 59 by an officer authorized to serve criminal process in the place where the offense is committed.

(d) Anyone found guilty of a violation of this section shall be punished by a fine of not more than fifty dollars (\$50.00) for each such violation. (Ord. No. S-81, 8-13-84)

Cross reference—Temporary closing of streets, § 19-47

Sec. 26-30. Licenses for cafe furniture on sidewalks.

(a) The commissioner of public works may grant revocable licenses for the placement of certain cafe furniture upon designated areas of the public sidewalk, in accordance with the following standards:

- (1) Licenses may only be granted to the proprietor of the business premises which immediately abuts the sidewalk area affected by the license. Such cafe furniture may be placed upon the sidewalk only during the business hours of the licensed party. All cafe furniture and trash receptacles must be removed at the end of each business day and in addition, must be removed at any time upon the request of the commissioner or his designee when he determines, in his sole discretion, that public works operations or the public convenience and welfare require such removal.
- (2) Licenses may only allow for the placement of tables, chairs and/or benches. Shade umbrellas or tables which have shade umbrellas attached thereto shall not be allowed. The number and type of such tables, chairs and benches shall be subject to the approval of the commissioner. All such tables, chairs and/or benches shall be temporarily placed upon the sidewalk surface and shall not be affixed thereto.
- (3) Licenses may only be granted in those circumstances where the commissioner of public works, after consultation with the chief of police, has determined that the placement of such cafe furniture would not interfere with adequate pedestrian passage upon the public sidewalk at the site, taking into account the flow and level of pedestrian traffic and the location of other fixtures upon the sidewalk including utility poles, newspaper vending boxes and the like. In no event shall a license be granted in circumstances where the placement of such cafe furniture would result in a pedestrian passageway upon the public sidewalk of less than four feet (4') in width.

(b) As a condition of the issuance of any such license the commissioner shall require the licensed party to indemnify, hold harmless and defend the City of Newton from any claims arising out of the licensed activity; and the commissioner shall require the licensed party to provide proof of adequate liability insurance and/or bond, in such form, amount, and with an insurance carrier or surety satisfactory to the commissioner for the performance by the licensed party of the requirements of the license and this section.

(c) The term of each license shall be one year and the fee for each such annual license shall be twenty-five dollars (\$25.00).

(d) Upon receipt of each license application the commissioner shall consult with the board of license commissioners, or its designee, and the commissioner- of inspectional services and commissioner of health and human services for their determinations that the placement of cafe furniture, as described in the application, would not violate existing licensing, zoning and public health requirements, respectively.

(e) All licenses granted pursuant hereto must include the following provisions:

- (1) That the licensed party shall place exterior trash receptacles in the sidewalk area and, at its expense, properly dispose of the trash deposited therein.

(2) That the licensed party shall be responsible for the clean-up of trash and debris from the sidewalk area and the neighboring area within a radius of twenty-five feet (25') of the sidewalk area affected by the license.

(f) The commissioner of public works may revoke or suspend any license granted pursuant to this section for any violation of the terms of such license or the provisions of this section. (Ord. No. T-305, 11-1-93; Ord. No X-175, 05-26-05)

Sec. 26-31. Sidewalk vending machines; permit required.

(1) Statement of purpose: The board of aldermen has determined that the increasing proliferation of sidewalk vending machines throughout the city requires that the placement and location of such machines be regulated in the interest of promoting public safety, in particular safe pedestrian, wheelchair and vehicular passage. In addition, the board has determined that regulation as to the size, type, and appearance of such machines is necessary in order to preserve the aesthetic character of neighborhoods throughout the city.

(2) Definitions: For the purposes of this section, the words and phrases used herein shall have the following meanings:

Bus Stop: An area in the roadway set aside for the boarding of or alighting from and the parking of buses.

Commissioner: Commissioner of public works or his/her designee.

Crosswalk: That portion of a roadway ordinarily included within the prolongation or connection of curblines and property lines at intersections, or at any portion of a roadway clearly indicated for pedestrian crossing by lines on the road surface or by other markings or signs.

Fire lane: That portion of a public or private parking lot, private driveway or private road which is designed to provide access to fire trucks.

Parking meter: Any mechanical device, not inconsistent with the provisions of Chapter 19 of these Revised Ordinances, placed or erected on any public way or municipal off-street parking area within the city for the regulation of parking.

Person: A person, firm, corporation, distributor, publisher, non-profit organization or other legal entity.

Public street or highway: The entire width between property lines of every way open to the use of the public for purposes of travel.

Roadway: That portion of a public street or highway between the regularly established curb line or that part, inclusive of shoulders, improved and intended to be used for vehicular traffic.

Sidewalk: That portion of a public street or highway set aside for pedestrian travel.

Sidewalk vending machine: Any coin or token operated box, or other container, stand, rack, storage unit or other dispenser or device installed, placed, used, operated or maintained for the display and sale or free distribution of newspapers, periodicals, magazines, advertisements or other printed matter.

Taxi stand: An area in the roadway in which certain taxicabs are authorized and required to park while waiting to be engaged.

Traffic-control signal: Any device using colored lights which conforms to the standards as prescribed by the

department of public works of the commonwealth, whether manually, electrically or mechanically operated, by which traffic may be alternately directed to stop and to proceed.

(3) Placement (location): No person shall place, install, or maintain a sidewalk vending machine or machines on any public sidewalk, public way, or other public property without obtaining a written permit from the commissioner in the manner provided in subsection (4). The commissioner shall grant or deny a permit in accordance with the provisions of subsections (4) and (5) of this section. Once the commissioner has granted a permit for a sidewalk vending machine, the permit holder shall not move nor otherwise relocate any machine listed in the permit application, nor install any sidewalk vending machine not listed in said permit, without notifying the commissioner pursuant to subsection (4)(b) of this section.

(4) Permit application, fee:

- (a) A permit shall be issued for the installation of a sidewalk vending machine, without prior inspection of same, upon receipt of a completed application form and payment of all fees as provided in this section, provided that said application shall include all of the information specified in subsection (4)(b), and shall list each such machine to be installed and maintained in the city, and provided that each such machine shall be in compliance with the standards set forth in subsection (6). Said permit shall be valid from the date of issuance through September 30 unless within 30 days of receipt of the application the commissioner notifies the applicant in the manner set forth in subsection (5) that the permit is denied or denied in part. No more than one permit shall be required per applicant regardless of the number of sidewalk vending machines the applicant maintains in the city; provided, however, that the permit holder shall be required to update the information provided in the permit application in the manner provided in subsection (4)(b).
- (b) The permit application shall be on a form provided by the commissioner and shall set forth each of the following:
- 1) a description of the proposed location of each sidewalk vending machine, which description shall include the location of each such machine indicating the street on which the machine is to be placed, and certification that such placement complies with the provisions of this section; and
 - 2) the name, address, and telephone number of the owner and the name, address, and telephone number of the person responsible for maintaining the machine.

The permit holder shall provide written notice to the commissioner no later than thirty (30) calendar days following a change in the location of a sidewalk vending machine and/or the installation of a sidewalk vending machine not previously listed in the permit application, which notice shall constitute an application to amend the permit. Said notice shall include a description of the location of each such machine as required in subsection (4)(b)(1) above. The permit shall be valid with respect to each machine so moved or installed as of the date notice is received by the commissioner, unless within thirty (30) days of receipt of said application the commissioner notifies the applicant, in the manner set forth in subsection (5)(a), that the permit is denied or denied in part, and provided that each such machine complies with the provisions of subsection (6).

- (c) *Application fee*: The commissioner shall charge an application and compliance fee of fifty dollars (\$50.00) for each vending machine.
- (d) *Renewal*: On or before September 30 of each year, the holder of a permit pursuant to this subsection shall provide the commissioner with a permit renewal application which shall include an updated list of all the sidewalk vending machines installed or maintained in the city by the permit holder. The renewal application shall be accompanied by an application fee in the amount of fifty dollars (\$50.00) per vending machine per year.

(5) Approval/denial of permit application:

- (a) The commissioner shall approve or deny each permit application, permit renewal application, or application to amend a permit within thirty (30) days after receipt thereof, based upon the proposed location(s) as stated in the application and the standards specified in subsection (6) below. When more than one location is proposed by the permit application, renewal application or application to amend, such application may be granted either in whole or in part, provided that when denial is solely as to location, it shall be without prejudice to amend such application or notice to state a different location or locations.

The commissioner shall notify the applicant in writing of a denial or denial in part, which notice shall contain the reasons for such denial.

- (b) *Appeal:* Any person aggrieved by the denial of a permit pursuant to subsection (5)(a) may appeal to the board of aldermen, provided that said appeal must be filed in writing with the clerk of the board of aldermen within one week after the commissioner issues the decision. In reviewing the commissioner's decision, the board shall apply the criteria contained in subsection (6). The board of aldermen shall have sixty (60) days from the date of the filing of the appeal in which to modify or reverse the commissioner's decision, provided, however, that if the board fails to act within such sixty (60) day time period, then the commissioner's decision shall be final. A decision by the board of aldermen to modify or reverse the commissioner's decision shall be in writing stating the reasons therefor and a copy of such decision shall be sent to the commissioner, the applicant, and the city clerk.

(6) Standards for installation, maintenance, and operation:

- (a) Any sidewalk vending machine which in whole or in part rests upon, in or over any public sidewalk or public way shall be placed so as not to obstruct pedestrian, wheelchair or vehicular passage, in accordance with the standards of this subsection. Sidewalk vending machines placed near the curb shall be placed so that the edge of the vending machine closest to the curb shall be no less than twelve inches (12") nor more than eighteen inches (18") from the edge of the curb. Sidewalk vending machines placed adjacent to the wall of a building shall be placed parallel to such wall and not more than six inches (6") from the wall.
- (b) Sidewalk vending machines may be chained or otherwise attached to one another so as to form a cluster, provided that:
- 1) machines so attached do not reduce the sidewalk passage to less than four feet (4'); and
 - 2) no more than three such machines shall be chained or otherwise attached together at a single location so as to create a cluster; and
 - 3) no more than two machines containing the same publication shall be located within one hundred feet (100') of each other; and
 - 4) at any location where there is more than one such cluster, the distance between each such cluster, measured from the edge of the machine located at either end of each cluster, shall be no less than four feet (4').
- (c) Each such sidewalk vending machine shall be maintained in a clean and neat condition and in good repair at all times.
- (d) Each sidewalk vending machine shall display, in a manner so as to be visible by any person using said machine, the name, address and telephone number of the owner of the machine and the person to contact in connection with the maintenance and operation of said machine.

- (e) No person shall place, install, or maintain any sidewalk vending machine which projects onto, into or over any part of the roadway of any public street, or which rests, wholly or in part, upon, or over any portion of the roadway of any public street.
- (f) No sidewalk vending machine shall exceed fifty inches (50") in height, thirty inches (30") in width, or two feet (2') in thickness.
- (g) No sidewalk vending machine shall display any advertising other than advertising in relation to the publication offered for sale or displayed in said machine.
- (h) No sidewalk vending machine shall be chained, bolted or otherwise attached to any property, including city property, without the permission of the owner or person in possession of the property.
- (i) No sidewalk vending machine shall be placed, installed, or maintained:
 - 1) within five feet (5') of any marked crosswalk;
 - 2) within five feet (5') of any fire hydrant, fire lane, fire call box, or police call box;
 - 3) within five feet (5') of any driveway;
 - 4) within five feet (5') of any taxi stand, or within fifteen feet (15') of any bus stop, unless such machine is placed against a wall and the machine so placed does not project into or otherwise interfere with the operation of the taxi stand or bus stop;
 - 5) within five feet (5') of any traffic control signal;
 - 6) at any location where such placement causes the sidewalk passageway for pedestrian and/or wheelchair travel to be reduced to less than four feet (4');
 - 7) on sidewalks in front of any parcel zoned for single or multiple family residences as defined in chapter 30 of these ordinances, except at designated bus and/or MBTA railroad stops in such areas;
 - 8) Notwithstanding compliance with the above provisions, a sidewalk vending machine shall be in violation of this section if it is placed so as to block access to getting into or out of a legally parked vehicle.

(7) Violations:

- (a) In the event that a sidewalk vending machine is determined to be in violation of any of the provisions of this section, the commissioner shall provide telephone and written notice of said violation(s) to the owner and the person responsible for maintaining said machine. The notice shall specify which provision(s) are violated and shall state the date for compliance, which date shall not be less than ten (10) business days from the date of the notice. The commissioner shall inspect each sidewalk vending machine on or after the date for compliance as stated in the notice. If upon such inspection it is determined that the sidewalk vending machine is not in compliance, the commissioner shall initiate removal proceedings in accordance with subsection (8) and may assess a fine as specified in subsection (7)(c).
- (b) Inspection fee: The commissioner shall charge an inspection fee for each sidewalk vending machine inspected pursuant to subsection (7)(a), which fee shall not exceed the lesser of the actual cost of inspecting the sidewalk vending machine(s) or ten dollars (\$10.00) per machine.

- (c) Fine for violations: In the event that a sidewalk vending machine is not in compliance with any of the provisions of this section as of the date for compliance pursuant subsection (7)(a), then the owner of such machine shall be subject to a fine of twenty-five (\$25.00) per day for each day of non-compliance until the date the violations are corrected or until the date the machine is removed in accordance with the procedure in subsection (8)(b).

(8) Removal:

- (a) Prior to the expiration of the date for compliance specified in the notice, the owner may request a hearing before the commissioner in regard to the violation(s), and, if the owner so requests, the machine shall not be removed until after said hearing. The commissioner shall remove a sidewalk vending machine which is in violation of this section, pursuant to subsection (8)(b), if the owner fails to correct said violation(s) for a period of thirty (30) days following the expiration of the date for compliance as stated in the written notice, or for a period of thirty (30) days following the expiration of the date for compliance established pursuant to a hearing.
- (b) A notice of removal shall be sent to the owner, which notice shall state the date the machine was removed, the reasons for removal, location where the machine is being stored, and the procedure for claiming the machine.
- (c) A sidewalk vending machine removed pursuant to subsection (8)(b) shall be released to the owner thereof, or a person designated for receipt of the machine by the owner, if claimed within forty-five (45) days of removal and upon the payment of reasonable charges of removal, storage, and any outstanding fines. Upon the failure of the owner to claim said machine and pay the charges specified herein within forty-five (45) days of the mailing of the written notice of removal, said machine shall be declared to be unclaimed surplus property in the possession of the commissioner, which shall be disposed of by the city purchasing agent pursuant to the provisions of section 2-186(b)(7) of these ordinances.
- (d) Notwithstanding the provisions of the foregoing subsection (8)(a), the commissioner may remove a sidewalk vending machine that poses an imminent danger of harm to persons or property, provided that the owner shall be notified of such removal as soon as practicable and provided that any machine so removed shall be stored in a safe place for a reasonable period of time in order to allow the owner to retrieve said machine.

(9) Severability: The provisions of this section are severable. If any provision of this section is held invalid, such invalidity shall not affect other portions of this section which shall remain valid. (Ord. No. T-311, 11-15-93; Ord. No. X-55, 6-16-03; Ord. No. X-165, 08-08-05)

Secs. 26-32—26-45. Reserved.

ARTICLE II. CONSTRUCTION OF STREETS AND WAYS

Sec. 26-46. Supervision of construction done by city; to conform to specifications before acceptance.

All streets or ways constructed by the city shall be constructed under the direction of the commissioner of public works. All streets or ways constructed on private land by the owners thereof shall be constructed only under the supervision of the city engineer. On all streets laid out preliminary construction required by the owner before acceptance shall conform to the specifications contained in section 26-47(m). (Rev. Ords. 1973, § 19-72; Ord. No. 90, 10-6-75; Ord. No. V-289, 3-20-00)

Sec. 26-47. Specifications.

The final construction of all streets or ways constructed completely by the owners, or constructed by the city under the law relating to the assessment of betterments, shall conform to the following specifications, which specifications shall constitute minimum requirements for the layout, construction and acceptance of streets or ways in the city:

- (a) A plan and profile of every street to be constructed shall be filed in the office of the city engineer, who shall fix the grade thereof and designate the design, grades and capacity of its drainage system. The capacity of its drainage system shall be such as will accommodate the runoff from the whole drainage area tributary thereto.
- (b) All streets shall be a minimum of forty-five (45) feet in width unless specifically exempted from this requirement by order of the board of aldermen. Streets shall conform to such cross section as may be determined by the city engineer. Streets having widths of forty-five (45) feet or more shall have roadways of not less than twenty-nine (29) feet in width. Streets or ways actually opened and used for public travel prior to January 1, 1874, may be constructed at a width of less than forty-five (45) feet as of right.
- (c) All corners of intersecting streets shall be rounded as approved by the city engineer and, under his direction, granite stone bounds shall be set at all angle points and curves. All streets shall be constructed having roadway surfaces of bituminous concrete laid on prepared gravel bases. They shall have borders, berms and slopes of loam and grass. Unless this requirement is specifically exempted on any given street by the board of aldermen, curbing of cut granite shall be laid throughout the entire length of the street including rounded street corners with corner blocks or curved curbing at all existing driveways. Such curbing shall be six-inch (6") width and eighteen-inch (18") depth with sawn top and shall be in lengths of six (6) feet or over.

All streets shall have sidewalks on both sides of the street, provided that the board of aldermen may exempt one or both sidewalks upon the board's determination that construction of such sidewalk(s) is not feasible and/or reasonable due to steep grade, site constraints, lack of use, inadequate width of the public way right-of-way or public safety reasons. The board of aldermen shall consult with the commissioner of public works prior to making such a determination.

Such sidewalks shall consist of either a two-inch (2") depth of bituminous concrete laid on a six-inch (6") gravel base or a four-inch (4") depth of cement concrete laid on a six-inch (6") gravel base, provided however that all sidewalks hereinafter constructed within business zones shall consist of cement concrete.

- (d) The entire area of that portion of every such street to be accepted shall first be cleared of all stumps, roots, brush and perishable material, and all trees not intended for preservation. All trees intended for preservation shall be protected from injury by means of boxes or fenders.
- (e) All loam, clay or other soft or spongy material shall be removed from the limits of the street, inclusive of sidewalks, to such depth as may be approved by the city engineer.
- (f) All work, both in excavations and fills, shall be brought to a subgrade of not less than ten (10) inches for the roadway and ten (10) inches for the sidewalks below finish grades, except that in ledges or boulders the excavations for roadways shall be to twelve (12) inches below finish grade. All side slopes in embankments and in earth excavations on adjoining lands shall be at the ratio of at least one and one-half (1-1/2) horizontal to one (1) vertical, to a berm of not less than one (1) foot in width outside the limits of the street.
- (g) Fills shall be made of clean sand, gravel, cinders, broken stone or other suitable material as approved by the city engineer. Under no circumstances shall stumps or any perishable material be used for making street fills.
- (h) Above the subgrade and to two (2) inches below finish grade approved binding gravel shall be used in the

preparation of the gravel base upon which to lay the surfacing material of bituminous concrete. The gravel base for a roadway during construction shall be thoroughly watered and rolled. Upon this gravel base shall be laid the surfacing course of bituminous concrete. The bituminous concrete shall conform in material, manufacture and method of laying to the commonwealth department of public works standard specifications for highways and bridges in current use at the time. Types of surfacing other than the above may be used only upon special order of the board of aldermen.

- (i) Borders, berms and slopes shall be loamed, fertilized, seeded to grass and rolled, all in a manner satisfactory to the city engineer.
- (j) All drain work and all highway construction work shall be done in accord once with standard specifications adopted and in current use by the city.
- (k) Catch basins shall be built on both sides of such streets at intervals of not more than three hundred (300) feet on continuous grades, at all low points in the grade and near the corners of intersecting streets. Catch basins constructed at low points in the grade shall have gutter-mouth inlets. All catch basins shall be of materials, forms and dimensions approved by the commissioner of public works and shall be connected by suitable drains, having manholes at intervals of not more than three hundred (300) feet, with a permanent drainage outlet duly and permanently secured to the city by proper legal instruments, or such drains may be constructed to the limits of a public way of the city intersecting such street.
- (l) Street signs and posts of design approved by the commissioner of public works shall be set in concrete at such points as he may designate.
- (m) All streets or ways hereafter laid out on private land shall be constructed by the owners thereof to the "rough grade" stage to the extent of and in accordance with the following specifications and under the supervision of the commissioner of public works:
 - 1) All streets or ways shall conform to the plan, profile and cross section as approved by the city board of survey, on file in the office of the engineering division of the department of public works or as approved by the commissioner of public works.
 - 2) The entire area of that portion of every such street to be accepted shall first be cleared of all stumps, roots, brush and perishable material, and all trees not intended for preservation. All trees intended for preservation shall be protected from injury by means of boxes or fenders.
 - 3) All loam, clay or other soft or spongy material shall be removed from the limits of the street, inclusive of sidewalks, to such depths as may be approved by the city engineer.
 - 4) All work, both in excavations and fills, shall be brought to a subgrade of not less than ten (10) inches for the roadways and six (6) inches for the sidewalks below finish grade, except that in ledges or boulders the excavation for roadways shall be to not less than twelve (12) inches below finish grade.
 - 5) All side slopes in embankments and in earth excavations on the adjoining lands shall be at the ratio of at least one and one-half (1-1/2) horizontal to one (1) vertical, to a berm of not less than one (1) foot in width outside the limits of the street.
 - 6) Other means of providing lateral support either in embankments or excavations, such as walls, cribbing, riprap or other may be employed only with and subject to the approval of the city engineer. The requirements of this paragraph shall apply to the providing of lateral support on or adjacent to all public streets and other public streets and other public property.

- 7) Fills shall be made of gravel or other material approved by the city engineer. Under no circumstances shall stumps or any perishable material be used for making street fills.
- 8) When the subgrade has been established and before the gravel has been placed, public utilities consisting of sewer, drain, water and gas, together with all connections to the proposed subdivision lots on both sides of the street, within the limits of the street, shall be installed unless specifically exempted by the board of aldermen from this requirement by a finding that public convenience and necessity are best served by such an exemption. Sewers, drains and water mains and their appurtenances shall be installed under the regulations of the city governing same.
- 9) Upon completion of the installation of all public utilities and the proper compaction of the trenches, above the subgrade and to within two (2) inches of finish grade for the roadway, and to finish grade for the sidewalk, binding gravel shall be placed and properly rolled and compacted. Loam shall be placed to a depth, after rolling, of six (6) inches in the grass borders, seeded and fertilized.
- 10) Curbing, stone bounds, street signs, etc., shall conform to the above specifications except that curbing shall be required only on corners of intersecting streets.
- 11) After the roadway has been graded and rolled, it shall receive by the penetration method an application of road oil eighty-five-hundredths (0.85) penetration at the rate of five-tenths (0.5) gallon per square yard followed by a coating of clear coarse sand.

No street or way shall be constructed on private land until a bond of a corporate surety authorized to do business under the laws of the commonwealth has been furnished to the city. Streets approved by the planning board prior to January 1, 1947, are exempted from any requirement stated in this section; provided, that the same are substantially constructed within one year after January 1, 1947, and shall conform to ordinances in effect at the time of approval. This subsection shall not apply to any streets or ways approved by the planning board after December 15, 1954. (Rev. Ords. 1973, § 19-73; Ord. No. 90, 10-6-75; Ord. No. V-289, 3-20-00; V-289, 3-20-00; Ord. no. X-188, 12-19-05)

Sec. 26-48. Prerequisites to acceptance generally.

No street or way shall be laid out and accepted by the city unless the construction thereof conforms to the provisions of section 26-47 and no permits for building thereon shall be issued by the commissioner of inspectional services. (Rev. Ords. 1973, § 19-74; Ord. No. S-301, 2-1-88; Ord. No. S-324, 5-2-88)

Sec. 26-49. Street betterments.

(a) Assessment of betterments for street construction:

- (1) Construction by the city using its own forces: Assessments shall be made upon owners of estates the frontage of which is passed in any part by streets or ways constructed by the city using its own forces under the law relating to assessment of betterments in proportion to the frontage of such estate on any such street or way. The assessment upon each such estate shall be calculated on the basis of frontage in proportion to the city's total cost. The total assessment upon any such estate shall be equal to its proportionate share, on the basis of frontage, of the total cost and no such assessment shall exceed the amount of the benefit adjudged by the board of aldermen in accordance with the law relating to betterments. For purposes of this subsection, the city shall be deemed to be "using its own forces" for such a construction project in instances where the city actually performs some portion of the work with its own forces even if portions of the work are done pursuant to contracts.
- (2) Construction by the city using outside contractors: Assessments shall be made upon owners of estates the

frontage of which is passed in any part by streets or ways constructed by the city using outside contractors under the law relating to assessment of betterments at the rate of forty-two dollars (\$42.00) upon each foot of frontage on any such street or way, provided, however, that the total assessment upon any such estate shall not exceed its proportionate share on the basis of frontage of fifty percent (50%) of the total cost. For purposes of this subsection, the city shall be deemed to be “using outside contractors” for a street construction project in instances where the city awards a contract to a contractor for all or substantially all of the work even if the city performs certain portions of the work (such as construction or installation of sidewalks and curbing).

(b) For purposes of this section "frontage" shall be defined as the boundary line of an estate which abuts upon any street or way without regard to whether said boundary line is considered the front, rear or side of said estate.

(c) The frontage of each estate subject to assessment shall be calculated by the city engineer in accordance with the following rules. In the event that an estate is subject to more than one of the following rules, each such applicable rule shall apply.

(1) In the case of estates which abut upon more than one street or way, the total actual frontage upon the first such street or way constructed by the city under the law relating to assessment of betterments shall be subject to assessment. However, whenever the city constructs subsequent such street(s) or way(s), the frontage subject to assessment shall be determined as follows:

a) If the frontage upon the street or way first constructed is equal to or longer than the frontage upon the street(s) or way(s) subsequently constructed, the frontage subject to assessment shall equal twenty five percent (25%) of the actual frontage on the subsequently constructed street(s) or way(s).

b) If the frontage upon the street or way first constructed is shorter than the frontage upon the street(s) or way(s) subsequently constructed, the frontage subject to assessment shall equal fifty percent (50%) of the actual frontage on the subsequently constructed street(s) or way(s).

(2) In the case of estates which abut upon two intersecting streets or ways, which streets or ways intersect to form an angle of less than forty-five (45) or more than one hundred thirty-five (135) degrees, the frontage subject to assessment shall be the length of the "setback line" as defined in Section 30-1.

(3) In the case of estates whose frontage upon a street(s) or way(s) consists of a curve with a radius of less than two hundred (200) feet, the frontage subject to assessment shall be the length of the "setback line" as defined in section 30-1.

(d) In the event of estates which are irregularly shaped such that the rules set forth above cannot be applied to calculate the assessment, the board of aldermen shall in consultation with the city engineer, determine the assessments by applying as closely as possible the principles and standards set forth in the above rules. (Ord. No. S-297, 3-7-88; Ord. No. X-120, 10-18-2004)

Sec. 26-50. Private way repair.

(a) Temporary repairs may be made upon private ways by the city only in accordance with the provisions of this section.

(b) For the purposes of this section, the following words and phrases shall have the meanings set out below:

(1) *Private way*. Any way which is not a public way.

(2) *Qualifying private way*. Any private way (as defined above) which, if it were to be laid out as a public way

under the standards set forth in section 26-47, would result in a layout which substantially and adversely affects existing land uses, historical or geological features.

- (3) *Major temporary repairs.* The surfacing or resurfacing of a way with bituminous concrete and the installation of drainage where appropriate as determined by current city standards and by recommendation of the commissioner of public works.
- (4) *Minor temporary repairs.* The filling of potholes, depressions and ruts with bituminous concrete or other suitable material, and not including installation of drainage.
- (5) *Privately funded repairs.* Repairs as deemed necessary and prudent by the commissioner of public works as further provided in subsection (e).

(c) **Minor temporary repairs.** The commissioner of public works may make minor temporary repairs on a qualifying private way upon receipt of a petition signed by no less than twenty-five percent (25) of the owners of the abutting estates on said private way. Such repairs shall be made only after the commissioner of public works has determined that such repairs are required by public necessity and prudence and subject to resource availability. The cost of minor temporary repairs shall be borne entirely by the city.

(d) **Major temporary repairs, assessments.** The commissioner of public works may make major temporary repairs on a qualifying private way upon determination by the board of aldermen that the public necessity requires such repairs. Such aldermanic action may be taken only after receipt of a petition signed by no less than fifty percent (50%) of the owners of the abutting estates on said private way and after a public hearing has been held on such petition.

- (1) One hundred percent (100%) of the total cost of major temporary repairs shall be assessed as betterments upon the owners of abutting estates in proportion to the lineal frontage of their estates; provided however, that in no event shall the betterments to be assessed on such owners exceed the betterments that would be assessed on such owners pursuant to section 26-49 if the way were to be laid out as a public way.
- (2) Upon notification by the board of aldermen of the board's determination that the public necessity requires major temporary repairs, the city engineer shall prepare a schedule showing the owners' names and assessments. The amount ascertained, assessed and certified by the mayor and aldermen shall form a lien against the estate until the same is paid. The city clerk shall furnish the city collector-treasurer, the comptroller of accounts and the commissioner of public works with a certified copy of such schedule with the order of the board of aldermen thereon, as approved by the mayor.
- (3) The city collector-treasurer, upon receipt of the certified copy of the schedule of assessments pursuant to the prior paragraph with the order thereon, shall send notices to the parties named therein with demand of payment of the amount assessed, and such amount shall be due and payable thirty (30) days after the assessment list has been committed to the collector-treasurer, after which time interest shall be charged thereon at the highest rate allowed by law, provided that if at any time before demand for payment by the collector-treasurer under the provisions of the General Laws, the owner of land assessed gives notice to the board of assessors to apportion such assessment, or if the board in its discretion makes such apportionment at any time before the proceedings for the enforcement of the collection without such notice to the board, such assessment shall be due and payable as provided by law and the first part of such apportionment, with interest thereon at the highest rate allowed by law, shall be added to the next annual tax bill thereafter. The board of assessors shall furnish to the city collector-treasurer and the comptroller of accounts a certificate of all assessments apportioned as above.

(e) **Privately funded temporary repairs.** The commissioner of public works may make temporary repairs on a private way upon receipt of a petition in a form satisfactory to the commissioner and signed by no less than

twenty-five percent (25%) of the owners of the abutting estates on said private way, provided that payment for such repairs is made in full by said petitioners. Such repairs shall be made only after the commissioner of public works has determined that such repairs are necessary and prudent to make such private way safe and convenient for travel and only after the commissioner of public works has also determined that the city has the necessary resources available to devote to such repairs. The commissioner shall require the petitioners to produce a certificate from the city collector-treasurer that the amount of cost of performing the repairs, as estimated by the commissioner, has been deposited with the city collector-treasurer, before such repairs are undertaken. Before beginning privately funded repairs as herein provided, the commissioner shall require execution of an agreement providing that the final cost of such work, even though in excess of the estimated amount deposited, will be paid within thirty (30) days after the rendering of the bill, provided however that such additional amount shall not exceed twenty percent (20%) of the original estimated amount, unless otherwise mutually agreed by the parties.

(f) **Delivery of crusher run or gravel.** The commissioner of public works may, upon request by any one owner of an abutting estate on any private way, provide and deliver crusher run or gravel, in quantities as he in his discretion shall deem appropriate, for use by the residents for filling potholes, depressions and ruts in such private way. The cost of providing such material shall be borne entirely by the city.

(g) No cash deposit shall be required for repairs made pursuant to subsection (c) or (d) of this section.

(h) Temporary repairs performed by the city pursuant to subsection (c), (d) or (e) of this section shall be subject to the following conditions:

- (1) The city shall be liable in an amount not to exceed five thousand dollars (\$5,000) for bodily injury, death or damage to personal property caused by defective repairs made by the city to private ways.;
- (2) A person so injured or damaged shall, within thirty (30) days thereafter, give to the city clerk, mayor, or collector-treasurer, written notice of the name and residence of the person injured, and the time, place and cause of said injury or damage;
- (3) In no event shall the city be liable for bodily injury, death or damage to personal property caused by reason of a defect or want of repair in any private way.

(i) Petitions for temporary repairs submitted pursuant to subsection (c) or (d) of this section must contain the following statement:

- (1) The undersigned agree to keep said private way open to the public use for the period of years that is the life of the repairs pursuant to this petition. (Ord. No. S-314, 6-20-88; Ord. No. S-335, 10-17-88; Ord. No. T-216, 2-18-92; Ord. No. V-289, 3-20-00; V-289, 3-20-00; Ord. No. X-111, 11-15-04)

Sec. 26-51. Public way improvements constituting specific repairs.

Major construction work on public ways that falls within one or more of the subsections below shall be deemed "specific repairs" which require approval by the board of aldermen pursuant to the provisions of G.L. c. 82, § 17:

(a) design changes which would result in a change of the flow of vehicular traffic, such as adding or deleting a traffic island or changing the width of the roadway portion of a way so as to result in a deletion or addition of one or more travel or turning lane(s);

(b) Projects that include the addition, relocation, or removal of vertical deflections in a public roadway surface constructed for the primary purpose of reducing vehicle speeds. Such devices include, but are not limited to: speed humps, raised crosswalks, and raised intersections;

Prior to approval of projects under (a) and (b), the board of aldermen shall review the associated traffic council action and its consistency with Board policies set forth in Section 19-33(a); and

(c) work that is privately funded and estimated by the city engineer to cost a sum greater than one hundred thousand dollars (\$100,000.00).

(Ord. No. U-20, 6-6-94; Ord. No. X-69, 12-15-03; Ord. No. Z-81, 2-22-11)

Secs. 26-52—26-64. Reserved.

ARTICLE III. CONSTRUCTION OF SIDEWALKS, DRIVEWAYS AND DRIVEWAY ENTRANCES

Sec. 26-65. Authority to construct; to conform to plans, etc.

No sidewalk, driveway or driveway entrance extending over or into any public way shall be constructed except by or upon written authorization from the commissioner of public works and in accordance with grades established by the city engineer. The construction of such sidewalks, driveways and driveway entrances shall conform to the requirements of section 26-47 which shall constitute minimum requirements. (Rev. Ords. 1973, § 19-86; Ord. No. 90, 10-6-75; Ord. No. V-289, 3-20-00; V-289, 3-20-00)

State law reference—Construction of sidewalks, G.L. c. 83, § 25

Sec. 26-66. Notice to construct, repair, etc.; cost of same.

Every owner of an estate abutting any sidewalk, driveway or driveway entrance privately constructed in violation of section 26-67 or constructed prior to April 9, 1952, without the permission of the commissioner of public works and not conforming to the specifications established by the city engineer under section 26-47 and to proper grades as may be determined by the city engineer in accordance with proper engineering standards, shall be liable to hold the city harmless from any claims for damage resulting from any defective condition of such sidewalk, driveway or driveway entrance. The commissioner of public works may at any time notify the owner in writing to repair such sidewalk, driveway or driveway entrance or to reconstruct the same to conform to specifications and grades established in accordance with this section or section 26-47. Such repair or reconstruction shall be at the expense of the owner. If such owner neglects or refuses for a period of ten (10) days after such notice to comply with the requirements thereof, the commissioner of public works may either remove such sidewalk, driveway or driveway entrance or may cause the same to be repaired or reconstructed, the cost of such removal, repair or reconstruction to be paid by the owner. Nothing in this section shall be construed to void or diminish any other penalty for violation of section 26-65. (Rev. Ords. 1973, § 19-87; Ord. No. 90, 10-6-75)

Sec. 26-67. Revamping of sidewalks, etc., to proper line and grade; cost of revamping.

Every owner of an estate shall be responsible for any revamping of a driveway or sidewalk required within his own property by the installation of betterment walks, or reconstruction of streets, sidewalks or driveway entrances to meet the proper line and grade as established by the city engineer. The expense of such revamping within his own property shall be borne entirely by the owner. (Rev. Ords. 1973, § 19-88)

Sec. 26-68. Plans, specifications and methods to be employed in construction.

Sidewalks shall be constructed in conformance with current specifications of the city. Upon the subgrade as established in section 26-47 shall be placed approved binding gravel thoroughly compacted and rolled to a depth below finish grade conforming to the specified thickness of the selected type of wearing surface. Upon this gravel base shall be applied, in conformance with current specifications of the city, either a bituminous concrete or cement

concrete wearing surface. Wherever required on driveway and driveway entrances, the wearing course shall be of greater thickness than the sidewalks, but in no case shall the gravel base be less than six (6) inches in depth. (Rev. Ords. 1973, § 19-89)

Sec. 26-69. Heating wires in sidewalks and driveway entrances; permission; approval of plans; rules and regulations.

Upon petition of any owner of an estate, the commissioner of public works, may, after a plan therefor has been approved by the inspector of wires, grant permission for the installation of heating wires in sidewalks and driveway entrances in accordance with rules and regulations for such installations promulgated under the authority hereof by the commissioner of public works and approved by the board of aldermen and in accordance with such terms and conditions as the commissioner of public works shall see fit to impose for the protection of the general public and public property. The expense of such installation, including all necessary excavation and repaving, whether or not performed by the city, shall be borne by the owner of such estate. (Rev. Ords. 1973, § 19-90; Ord. No. 90, 10-6-75)

Sec. 26-70. Sidewalk construction; when to be initiated by city.

(a) Whenever the city undertakes reconstruction of a public way which serves as either an arterial or collector roadway, such project shall include at the sole expense of the city, the construction of sidewalks at all locations within the project area where there are not existing cement concrete or bituminous concrete sidewalks, unless otherwise exempted under subsection (c). The word “reconstruction” shall be interpreted herein to mean any roadway improvement project which includes pavement reclamation or milling. The terms “arterial” and “collector” in this and the following section, shall be interpreted to mean those terms as used in the standards of the American Association of State Highway and Transportation Officials or any similar organization.

(b) The city shall construct sidewalks at its sole expense subject to the availability of funding at all locations which are included on a list of sidewalk snow clearing routes published by the commissioner of public works pursuant to section 26-8A of these ordinances and where there are not existing cement concrete or bituminous concrete sidewalks, unless otherwise exempted under subsection (c).

(c) No sidewalks shall be constructed under this section at those locations where the commissioner of public works determines that construction of a sidewalk is not feasible due to steep grade, site constraints, lack of use, inadequate width of the public way right-of-way or public safety reasons.
(Ord. No. S-324, 5-2-88; Ord. No. V-84, 6-3-96)

Sec. 26-71. Sidewalk construction requested by owners.

(a) Whenever the owner of an estate abutting on a public way requests that a sidewalk be constructed abutting such estate, the city may construct such sidewalk. The commissioner of public works shall receive the petitions of owners requesting the construction of sidewalks and shall prioritize them as follows:

First priority: Requests for sidewalk construction

- (1) on any arterial or collector roadway where there are not existing cement concrete or bituminous concrete sidewalks; or
- (2) at any location that may be deemed by the commissioner of public works or the chief of police to be a potentially serious safety hazard for pedestrians; or
- (3) on any public way which is being resurfaced or reconstructed; or
- (4) on an established pedestrian route to a heavily used destination such as a village center, school, bus stop,

train station, or recreation area.

Second priority: Requests for sidewalk construction at locations where sidewalks already exist on approximately fifty percent (50%) or more of the same side of the public way;

Third priority: All other requests for sidewalk construction.

(b) The owner of the abutting estate shall pay fifty percent (50%) of the total cost of sidewalks constructed under this section in the following manner:

- (1) in the event that said fifty percent (50%) amount is five hundred dollars (\$500) or more, it shall be assessed upon the owner of the abutting estate pursuant to G.L. c. 83, § 26, provided that nothing herein shall prohibit an owner from voluntarily prepaying said fifty percent amount;
- (2) in the event that said fifty percent (50%) amount is less than five hundred dollars (\$500), it shall be paid by the owner prior to construction;
- (3) notwithstanding the provisions of (2) above, in the event that such a sidewalk is constructed together with a curbing installation pursuant to section 26-73(b), and the owner's fifty percent (50%) share for the sidewalk and curbing costs totals five hundred dollars (\$500) or more, it shall be assessed upon the owner of the abutting estate pursuant to G.L. c. 83 §26, provided that nothing herein shall prohibit an owner from voluntarily prepaying said fifty percent (50%) amount.

(c) For those requests for sidewalk construction which are prepaid, the commissioner of public works shall proceed with the construction, subject to availability of funding and in accordance with subsection (d). For those sidewalk construction requests which are not prepaid, the commissioner, acting in accordance with subsection (d), shall periodically forward them to the board of aldermen for its consideration under the betterment laws.

(d) For those requests which are received prior to April 15 of each year, all actions by the commissioner of public works and the board of aldermen pursuant to subsection (c) shall be taken in accordance with the priorities assigned pursuant to subsection (a), provided however, that the commissioner of public works shall have the authority to act upon a *First Priority* request at any time, regardless of date received.

(e) Requests for replacement of an existing bituminous concrete or cement concrete sidewalk which is in good condition with a material which is different from the existing material shall not be approved unless (1) the replacement sidewalk would match the prevailing material of the existing sidewalks on the public way and (2) the owner pays the full construction costs to the city prior to construction or receives a permit from the commissioner of public works for a private contractor to construct the replacement sidewalk at the owner's sole expense. (Ord. V-84, 6-3-96)

Section 26-72. Materials for sidewalk construction.

(a) All sidewalks hereinafter constructed shall consist of either bituminous concrete or cement concrete in accordance with the provisions of section 26-47(c).

(b) The material used at a particular location should match the prevailing material of the existing sidewalks on the public way, as determined by the commissioner of public works. (Ord. V-84, 6-3-96)

Section 26-73. New curbing installation.

(a) Whenever the city undertakes reconstruction of a public way such project shall include the installation of curbing at those locations that the commissioner of public works determines to require curbing for the purpose of

public safety or drainage. The installation of curbing pursuant to this subsection (a) shall be at the sole expense of the city.

(b) Whenever the owner of an estate abutting on a public way requests that curbing be installed abutting such estate, the city may install such curbing. The commissioner of public works shall receive the petitions of owners requesting the installation of curbing and shall prioritize as follows:

First Priority: Request for curb installation

- (1) on any portion of an arterial or collector roadway, where there is not existing curbing; or
- (2) at any location that is deemed by the commissioner of public works or the chief of police to be a potentially serious safety hazard for pedestrians and/or motorists; or
- (3) to alleviate drainage or erosion problems, or where the steepness of the slope of the public way is 3% or greater.

Second Priority: Requests for curb installation at locations where curbing already exists on approximately fifty percent (50%) or more of the same side of the public way.

Third Priority: All other requests for curbing installation, except at those locations where the commissioner of public works determines that such curbing would serve no public purpose.

(c) Whenever curbing is installed pursuant to subsection (b), the owner shall pay fifty percent (50%) of the total cost thereof in the following manner:

- (1) in the event that said fifty percent (50%) amount is five hundred dollars (\$500) or more, it shall be assessed upon the owner of the abutting estate pursuant to G.L. c. 83 §26, provided that nothing herein shall prohibit an owner from voluntarily prepaying said fifty percent (50%) amount;
- (2) in the event that said fifty percent (50%) amount is less than five hundred dollars (\$500), it shall be paid by the owner prior to construction, except as otherwise provided in section 26-71(b)(3).

(d) For those requests for curbing which are prepaid, the commissioner of public works shall proceed with the installation, subject to availability of funding and in accordance with subsection (e). For those curbing installation requests which are not prepaid, the commissioner of public works, acting in accordance with subsection (e) shall periodically forward them to the board of aldermen for its consideration under the betterment laws.

(e) For those requests which are received prior to April 15 of each year, all actions by the commissioner of public works and the board of aldermen pursuant to subsection (d) shall be taken in accordance with the priorities assigned pursuant to subsection (b), provided however, that the commissioner of public works shall have the authority to act upon a *First Priority* request at any time, regardless of date received. (Rev. Ords. 1995, Ord. No. V-84, 6-3-96)