



# Metropolitan Nashville and Davidson County, TN

## Legislation Text

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An ordinance to amend Chapter 13.20 of the Metropolitan Code of Laws to restrict obstructions within the public way or public right-of-way.

WHEREAS, pursuant to Chapter 13.20 of the Metropolitan Code, anyone who excavates in or obstructs the public right-of-way for construction or other purposes is required to obtain a permit from the Nashville Department of Transportation and Multimodal Infrastructure; and

WHEREAS, obstructions and excavations which close or occupy the public right-of-way pose significant hardships upon pedestrians, motorists, and passersby attempting to negotiate safe passage from one location to another; and

WHEREAS, obstructions and excavations which close or occupy the public right-of-way for an extended period can have a significant detrimental effect upon access to and quality of life in adjacent neighborhoods and communities; and

WHEREAS, it is in the best interests of the Metropolitan Government of Nashville and Davidson County to restrict obstructions and excavations which close or occupy any portion of the public right-of-way or public way.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That subsection B of section 13.20.020 of the Metropolitan Code is hereby amended by deleting subsection B.1.b in its entirety.

Section 2. That subsections A and C of section 13.20.030 of the Metropolitan Code are hereby amended by deleting these subsections in their entirety and substituting in lieu thereof the following:

### 13.20.030 Permit.

A. No permits affecting multimodal pathway travel within the public way or public right-of-way shall be issued for any construction activities or special events for a period of seven (7) days or more. Otherwise, permits shall be issued by the director to any person qualified under Section 13.20.050 of the metropolitan code, meeting all other requirements of this chapter, and upon receipt of the appropriate permit fee.

C. In connection with the issuance of a permit under this chapter, the director may install, or may require installation and maintenance of, traffic-control devices. Such devices and their placement shall meet the requirements of the latest edition of the Manual for Uniform Traffic Control Devices (MUTCD). The director shall adopt rules and standards with regard to this requirement, particularly as to safe accommodation for cyclists and pedestrians, including accessibility for disabled persons, and make compliance therewith a condition upon the issuance of a permit under this chapter.

Section 3. That subsection E of section 13.20.030 of the Metropolitan Code is hereby amended by deleting subsection E.2 in its entirety and substituting the following in lieu thereof:

E. Obstruction Permits.

2. The fee to place a trailer or dumpster in the public right-of-way is ten dollars per day.

Section 4. That subsection G of section 13.20.030 of the Metropolitan Code is hereby amended by deleting it in its entirety and substituting the following in lieu thereof:

G. Right-of-Way Temporary Closure Permits and Fees. In addition to any other fees required by this chapter, permits requiring the temporary closure of the metropolitan government's rights-of-way shall be subject to the following fees: The fee for closure permits shall be fifty-five dollars for six or fewer days, except within the right-of-way permit high impact area, where the fee shall be one hundred dollars for six or fewer days. Closures authorized for a period of seven days or more pursuant to section 13.20.160 will be charged at the rate of ten dollars per day except within the right-of-way high impact area, where closures for a period of seven days or more will be charged at the rate of twenty dollars per day. Fees for inspection services for special events and parades shall be charged based on time required at the rate of fifty dollars per hour, per inspector.

Section 5. That section 13.20.095 of the Metropolitan Code is hereby amended by deleting the section in its entirety and substituting in lieu thereof the following:

13.20.095 Commencement date and completion date signs required.

Any person, including any department, agency or contractor of the metropolitan government, or any public utility, that shall dig or cause to be dug any excavation, or cause any obstruction to be placed in, on, under, across or adjoining any street, road, or other public way in connection with any non-emergent excavation, construction, or paving project that is estimated to last seven or more days in duration shall -- at least seven full calendar days in advance of such activity -- display a sign visible to the motoring public indicating the expected commencement date and completion date for the project, as well as the name, address, and telephone number of a contact person available to provide information regarding the project and to address inquiries from the public. Such signs shall be in a format, quantity, location, and size as specified by the director.

Section 6. That section 13.20.120 of the Metropolitan Code is hereby amended by deleting it in its entirety and substituting in lieu thereof the following:

13.20.120 Interfering with warning lights prohibited.

No person shall break, molest, put out, remove or in any manner interfere with any warning lights required by this chapter. In addition to any criminal penalty that may be applicable, any violation of this provision shall be assessed as a civil penalty at the rate of fifty dollars per day.

Section 7. That section 13.20.140 of the Metropolitan Code is hereby amended by deleting subsection B in its entirety and substituting in lieu thereof the following:

B. Pavements, other than curbs, gutters and sidewalks, removed or damaged as a result of excavating in, on, under or across any street, road, alley or other public way within the jurisdiction of the metropolitan government shall be replaced by and at the expense of the person making such excavation. The pavement replacement shall be performed by a reputable paving contractor within thirty days of backfilling the excavation; or within such shorter or longer time as the director may require. All pavement replacement under this subsection shall be made in accordance with the requirements of Section 02522 of the department of public works specification documents, shall provide an even grade and level surfacing to facilitate transit, and shall only be performed during the presence of inspection personnel of the department of public works.

Section 8. That Chapter 13.20 of the Metropolitan Code is hereby amended by adding a new section immediately following subsection 13.20.150, designated as subsection 13.20.160 and providing as follows:

13.20.160 Policy Compliance and Exceptions

A. Any person seeking to dig, or cause to be dug any excavation, or to cause any obstruction in, on, over or under any street, road, alley, sidewalk, or other public way, or to close or occupy any portion of the public right-of-way by means of or in connection with any non-emergent excavation or obstruction within the jurisdiction of the metropolitan government, prior to engaging in such activities, shall satisfy the following provisions:

1. If the digging, excavation, or obstruction causes a closure of a public way less than seven (7) days, the applicant will be required to provide an ADA compliant alternative pathway that will accommodate the safe passage of pedestrians, cyclists, and disabled persons for the duration of the closure. The alternative pathway shall be signed and marked in accordance with MUTCD, and shall, whenever feasible, be located on a public thoroughfare of equal or lesser traffic volume and intensity than the obstructed pathway with an equal level of protection provided for the user. Prior to the issuance of a permit, the applicant must provide a traffic control plan demonstrating these accommodations.
2. If the excavation or obstruction is estimated to cause a closure of a public way of seven (7) days or more, the applicant must:

a) submit an application for an exception to the metropolitan government department of public works.  
b) submit a construction package to the metropolitan government department of public works for review. This construction package shall include a traffic control plan signed by a professional engineer licensed in the State of Tennessee.

3. Applicants must provide payment of a Right-of-Way Temporary Closure Fee. Closures for longer than seven days will be charged at the rate of ten dollars per day except within the right-of-way high impact area, where closures for longer than seven days will be charged at the rate of twenty dollars per day. If the closure is attributable to placement of a trailer or dumpster in the public right-of-way, the charge shall be ten dollars per day, not to exceed two thousand dollars per year, per location. Closures in excess of ninety days are prohibited unless specifically approved by the director. Fees for inspection services for special events and parades shall be charged based on time required at the rate of fifty dollars per hour, per inspector;<sup>4</sup>. The amount of any permit bond, and the amount of any certificate of public liability insurance, as required under Section 13.20.050, may be increased by the director, commensurate with the duration of the excavation or obstruction.

4. The applicant must have obtained all other approvals and permits for said construction, excavation, or special event activities as required by the metropolitan code of laws.

5. The applicant must demonstrate that the overriding public interest (as opposed to the private interest of the applicant or the owner of the property upon which said construction or special event activities shall occur) will be significantly promoted by permitting the applicant to engage in activities in excess of that permitted under Chapter 13.20.

B. Notice of an application for an exception shall be given by the director of the metropolitan government department of public works to persons who may be adversely affected by the granting of the exception and to the district councilmember. Any person who claims to be adversely affected by such an exception, if allowed, may file a written statement with the director. Such statement shall contain sufficient factual information to support the claim.

- C. Exceptions shall be granted by notice to the applicant containing any necessary conditions, including a time limit on the permitted activity. The exception shall not become effective until all conditions are agreed to by the applicant. Non-compliance with any condition of the exception shall terminate it and subject the person holding it to the requirements of Chapter 13.20.

Section 9. That this ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

### Analysis

This ordinance amends Chapter 13.20 of the Metropolitan Code of Laws to restrict obstructions and excavations which close or occupy any portion of the public right-of-way or public way.

Chapter 13.20 of the Metropolitan Code of Laws governs excavations and obstructions in, on, over or under any street, road, alley, sidewalk or other public way. This includes a permitting system to allow individuals excavate in or obstruct these public ways.

This ordinance amends Section 13.20.030 of the Metropolitan Code to prohibit permits affecting multimodal pathway travel within the public way or public right-of-way to be issued for any construction activities or special events for 7 days or more. Currently, there is no time limitation for these permits.

Section 13.20.030.E currently provides that the fee to place a trailer or dumpster in the public right of way is ten dollars per day, with a \$2,000 cap per year, per location. This ordinance removes the \$2,000 cap and allows the department to set the fee, as derived from the actual internal operating costs of administering the related services.

Section 13.20.030.G, which governs permits for the temporary closure of a Metropolitan Government right-of-way, would also be amended. The current fee for a closure of a right-of-way of five or less days is \$55. Closures of five or more days are currently charged at ten dollars per day. This would allow for the fees to be set by the department, as derived from the actual internal operating costs of administering the related services.

Section 13.20.095, governing signage for commence and completion dates for excavation and obstruction projects, would be amended to require the sign include the name, address, and telephone number for a contact person for the project. The format, quantity, location, and size of the signs are to be as specified by the director of the Nashville Department of Transportation and Multimodal Infrastructure ("NDOT").

In addition, this ordinance adds a new Section 13.20.160 entitled "Policy Compliance and Exceptions" to the Chapter. This requires those seeking to engage in any excavation, obstruction, or closure of the right-of-way to satisfy certain conditions, which include providing ADA compliant alternative pathways, submit an application for exception and construction package to NDOT if the excavation or obstruction is anticipated to last more than 7 days, pay the temporary closure fee, obtain the necessary approvals and permits, and demonstrate the overriding public interest will be promoted by allowing the applicant to engage in activities in excess of those permitted under Chapter 13.20. Notice of an application of an exception must be given to those persons who may be adversely affected by such exception and to the district councilmember. Exceptions shall be granted

by notice to the applicant containing any necessary conditions.

Additional housekeeping changes would be made to this Chapter, including a clarification in Section 13.20.120 that any interferences with warning lights required by Chapter 13.20 will be assessed as a civil penalty punishable at the rate of \$50 per day and language clarifications in Section 13.20.140.B.